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Notice of Appeal.

(Filed, January 18th, 1928.)

New Jersey Supreme Court 10

PETER SHIELDS (Harry Darlington, Jr., Assignee), Plaintiff,	}	Action at Law. Notice of Appeal.
vs.		
CAPE MAY REAL ESTATE COMPANY, (Frank D. Schroth, Receiver, substituted), Defendant.	}	20

To McCarter & English, Attorneys of Plaintiff:

PLEASE TAKE NOTICE that the defendant, Cape May Real Estate Company (Frank D. Schroth, Receiver, substituted), appeals to the Court of Errors and Appeals in the last resort in all causes from the whole of the judgment and order entered in the above action on or about January 20th, 1927, discharging with costs the Rule to Show Cause why the judgment in favor of the plaintiff, Peter Shields, and against the defendant, Cape May Real Estate Company, should not be opened, upon the following grounds: 30

1. That the Supreme Court discharged said Rule to Show Cause, whereas the said court should have granted the same and opened and set aside said judgment for the following reasons: 40

(1) The said bond and warrant upon which said judgment was entered in favor of plaintiff, Peter Shields, and against defendant, Cape May Real Estate Company, was executed by said Company to said plaintiff, who was at the time its President and one of its Directors, and the execution and delivery of said bond and warrant was never approved or ratified by the Directors or Stockholders of said Company.

(2) That the claim in the affidavit of Peter Shields for \$22,500, constituting a portion of the total amount for which said judgment was entered, was for commissions for the sale of land of said Cape May Real Estate Company and unenforceable, as authority therefor was not in writing as required by the statute of frauds of the State of New Jersey.

(3) That the defendant, Cape May Real Estate Company, never authorized the execution and delivery of the aforesaid bond and warrant to the plaintiff, Peter Shields.

(4) That the aforesaid affidavit upon which said judgment was entered by confession upon said bond and warrant, does not in substance specify the true consideration of the bond and does not substantially comply with the statute in such case made and provided in that (a) said defendant Company was not indebted to said Peter Shields in the sum of \$31,041.75, (b) the sum of \$22,500 stated in said affidavit to be due and owing, was not due and owing, as the sale upon which said claim for commission was based, was not made nor consummated by said Peter Shields, (c) the balance of \$8,541.75 stated in said affidavit was in large part paid to the plaintiff, Peter Shields.

(5) Said bond and warrant was not given by said corporation for moneys expended by

said Peter Shields for its benefit nor for services rendered by him in effecting a sale of a portion of its property.

(6) The defendant corporation moved to annul said judgment within a reasonable time.

(7) The defendant corporation repudiated said judgment and the claim of said Peter Shields upon which said judgment was entered, within a reasonable time as contemplated by the decisions of the court of last resort in this State.

(8) Neither the defendant corporation nor Frank D. Schroth, its Receiver, were guilty of laches in repudiating said judgment and the claim of said Peter Shields, and moving in the above action to open and set aside the same—a written stipulation having been signed and filed in the above action by Frank D. Weaver, former attorney of record of plaintiff, Peter Shields, and J. H. Gaskill, former attorney of record of the defendant Company, as follows:

“Owing to the appointment of Receiver for the defendant and certain complications growing out of the same; it is hereby stipulated and agreed, between the counsel of the respective parties, that this matter may be continued without prejudice until such time as formal notice is given to the attorney of the plaintiff by the attorney of the defendant.”

No formal notice was given by the attorneys of the plaintiff, Peter Shields, pursuant to the aforesaid stipulation, and the substituted attorney for the Receiver promptly took depositions and brought the matter on for argument before the Supreme Court.

Petition to Open Judgment on Bond and Warrant.

Laches cannot be attributed to Frank D. Schroth, appointed Receiver of the defendant corporation by the Court of Chancery of the State of New Jersey.

Dated, January 17th, 1928.

10

LINDLEY M. GARRISON,
Attorney of Defendants-Appellants.

Petition to Open Judgment on Bond and Warrant.

(Filed February 16, 1923.)

20

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">PETER SHIELDS, Plaintiff, v. CAPE MAY REAL ESTATE COMPANY, Defendant.</p>	}
--	---

30

The petition of the Cape May Real Estate Company, a corporation of the State of New Jersey, respectfully shows:

40

FIRST.—That judgment was entered against your petitioner in the Supreme Court of this State on the twenty-fourth day of October, nineteen hundred and seventeen, at the suit of Peter Shields on a Bond and Warrant of Attorney dated the twentieth day of October, nineteen hundred and seven-

Petition to Open Judgment on Bond and Warrant.

teen, payable on demand, signed "Cape May Real Estate Company by Peter Shields, President."

SECOND.—That said Peter Shields was removed from the presidency of your petitioner company on the twenty-fifth day of October, nineteen hundred and seventeen, and that the present officers of your petitioner company had no knowledge of said Bond and Warrant of Attorney and the entry of said judgment until very recently, to wit, April 22nd, 1920, and at once took steps to investigate the same.

10

THIRD.—The minute book of the company now in the possession of the officers of your petitioner company shows no resolution or action of the directors of the company, authorizing the execution of said Bond and Warrant of Attorney.

20

FOURTH.—That said bond is payable on demand, and that no demand was ever made for the payment of the same nor does the affidavit upon which judgment was entered state that any demand was made.

FIFTH.—That Peter Shields, who signed said Bond and Warrant of Attorney as President of the Cape May Real Estate Company, is the same Peter Shields to whom said bond was made and who swore to the affidavit upon which judgment was entered.

30

SIXTH.—That no notice of said claim, the consideration of said bond, was ever given the stockholders of your petitioner company, or demand made for the payment of the same, or that judgment would be entered against the petitioner company.

40

Petition to Open Judgment on Bond and Warrant.

SEVENTH.—That your petitioner is not now, and was not at the time of the execution of said Bond and Warrant of Attorney, indebted to said Peter Shields in any sum whatever, and that said Bond and Warrant of Attorney was given without any consideration.

10

EIGHTH.—That no part of the property of petitioner was sold to the United States of America prior to July 1st, 1917, as set out in the affidavit upon which judgment was entered; that the consideration for the largest part of said Bond and Warrant of Attorney as set out in the affidavit is for services in connection with a sale of part of petitioner's property.

20

NINTH.—That at the time of said Bond and Warrant of Attorney were executed and said judgment entered, notices to all stockholders of petitioner company had been sent out for a meeting to elect officers; that prior thereto the resignation of said Peter Shields had been requested and refused to be given; that he no longer represented a majority holding of the stock of the company, and had every reason to believe he would no longer be continued as an officer in your petitioner company.

30

TENTH.—That said judgment was assigned by the said Peter Shields to Harry Darlington, Jr., for the consideration of one dollar (\$1.00). That your petitioner is informed that the said Harry Darlington, Jr., is the son-in-law of the said Peter Shields.

40

Your petitioner, therefore, prays that said judgment be opened, set aside and declared null and

Petition to Open Judgment on Bond and Warrant.

void and said Bond delivered up to be cancelled, and your petitioner will ever pray.

NELSON Z. GRAVES,
President.

JOSEPH H. GASKILL,
Attorney for Petitioner.

10

Nelson Z. Graves, being duly sworn, says he is and has been since October 25th, 1917, president of the Cape May Real Estate Company, the above named petitioner.

That he has read the foregoing petition and that the matters and things therein set forth are true to the best of his knowledge, information and belief.

20

NELSON Z. GRAVES.

Sworn and subscribed before me, this
24th day of June, A. D. 1920.

THOMAS J. HUNT,

A foreign Commissioner of Deeds for New Jersey in Pennsylvania, at the City and County of Philadelphia, S. W. Cor. Fifth and Walnut Streets.

30

Service of a copy of this petition acknowledged this 29th day of June, 1920.

WESCOTT & WEAVER,
Attorneys for Plaintiff.

40

Order to Show Cause.

State of New Jersey, } ss.:
County of Camden, }

10 Thomas L. Gaskill, of full age, being duly sworn according to law on his oath says that he served a true copy of the within petition upon Norman Grey, Attorney, by leaving a copy thereof at his office with a person in charge thereof at or about eleven o'clock in the morning of June 29th, 1920.

THOMAS L. GASKILL.

Sworn and subscribed before me this
29th day of June, A. D. 1920.

20 M. H. DIVERTY,
M. C. C. of N. J.

Order to Show Cause.

(Filed February 16, 1923.)

NEW JERSEY SUPREME COURT.

30 PETER SHIELDS, Plaintiff,
v.
CAPE MAY REAL ESTATE COMPANY, Defendant.

40 Upon reading and filing the petition of the above named defendant, with the affidavit of its president annexed,

Order to Show Cause.

It is, on this twenty-eighth day of June, A. D. one thousand nine hundred and twenty, on motion of Joseph H. Gaskill, attorney for the defendant,

10 ORDERED that the said Peter Shields, plaintiff, and Harry Darlington, Jr., assignee, show cause before our Supreme Court at the State House in the City of Trenton on the second Tuesday of November next, at the hour of ten o'clock in the forenoon or as soon thereafter as the same can be heard, why the said judgment should not be opened and declared null and void.

20 It is further ordered that a copy of this rule be served on the said Peter Shields and Harry Darlington, Jr., or their respectice attorneys within five days from the date hereof, which copies need not be certified.

It is further ordered that the parties hereto have leave to take testimony upon the usual notice before a Supreme Court Commissioner, to be used upon the hearing on the return of the rule.

FRANK S. KATZENBACH, JR.,
J. S. C.

30 Service of a copy of this rule acknowledged this 29th day of June, 1920.

WESCOTT & WEAVER,
Attorneys of Plaintiff.

State of New Jersey, } ss.:
County of Camden, }

40 Thomas L. Gaskill, of full age, being duly sworn according to law on his oath, says that he served a true copy of the within order upon Norman Grey,

Judgment Bond.

attorney, by leaving a copy thereof at his office with a person in charge thereof at or about eleven o'clock in the morning of June 29th, 1920.

THOMAS L. GASKILL.

10 Sworn and subscribed before me this
29th day of June, A. D., 1920.

M. H. DIVERTY,
M. C. C. of N. J.

Judgment Bond.

20 KNOW ALL MEN BY THESE PRESENTS,
that Cape May Real Estate Company, a corporation of the State of New Jersey, is held and firmly bound unto Peter Shields, of the City and County of Cape May, and State aforesaid, in the sum of sixty-two thousand and eighty-three dollars and fifty cents (\$62,083.50) lawful money of the United States of America, to be paid to the said Peter Shields, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made it does hereby bind and oblige
30 itself, its successors and assigns, firmly by these presents.

Sealed with its corporate seal, dated the twentieth day of October, in the year of our Lord one thousand nine hundred and seventeen.

The condition of this obligation is such, that if the above bounden Cape May Real Estate Company, its successors or assigns, or any of them, shall and do well and truly pay, or cause to be paid, unto the above named Peter Shields, his certain
40 attorney, executors, administrators or assigns, the

Judgment Bond.

just sum of thirty-one thousand and forty-one dollars and seventy-five cents (\$31,041.75) with interest, on demand, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue.

IN WITNESS WHEREOF, the said Cape May Real Estate Company has caused these presents to be signed by its president, its corporate seal to be hereto affixed, attested by its secretary, the day and year first above written.

CAPE MAY REAL ESTATE COMPANY,
By PETER SHIELDS,
President.

Attest:

C. EARLE MILLER,
(Seal) Secretary.

[CORPORATE SEAL]

To Francis D. Weaver, Esq., or to any attorney of any Court of Law in New Jersey or elsewhere:

This is to authorize you to appear for Cape May Real Estate Company, a corporation of the State of New Jersey, in any court of competent jurisdiction, in case of the breach of the condition of the above bond, and confess judgment for the penalty therein contained as of the last or any subsequent term, with costs of suit and release of errors, and this shall be your sufficient warrant.

IN WITNESS WHEREOF, the said Cape May Real Estate Company has caused these presents to be signed by its president and its corporate seal to be hereto affixed, attested by its secretary this

10

20

30

40

Affidavit of Peter Shields.

twentieth day of October, one thousand nine hundred and seventeen.

CAPE MAY REAL ESTATE COMPANY,
By PETER SHIELDS,
President.

10 Attest:

C. EARLE MILLER,
(Seal) Secretary.
[CORPORATE SEAL]

Affidavit of Peter Shields.

20 State of New Jersey, } ss.:
County of Camden, }

Peter Shields, being duly sworn, on his oath, deposes and says, that the true consideration of the bond of which the preceding is a copy, and on which judgment is about to be confessed, was and is as follows:

30 The sum of twenty-two thousand five hundred dollars, justly and honestly due and owing from said Cape May Real Estate Company to deponent, for his services and expenses in connection with the sale to the United States of America of a certain portion of the property of the company prior to July 1st, 1917, with interest from said date; the sum of eight thousand five hundred and forty-one dollars and seventy-five cents, money advanced by deponent for the benefit of the said Cape May Real Estate Company, between the 1st day of April, 1916, and the 1st day of October, 1917, as follows: For fire insurance on the property
40 of said company, seventy-nine dollars and fifteen

Affidavit of Peter Shields.

cents, with interest from July 16th, 1917; for materials furnished said company, work and labor performed by others for said company, one hundred dollars and thirty-two cents, with interest from July 1st, 1917; salaries and office expenses due the employees of the company, twenty-five dollars, with interest from August 1st, 1916, four hundred
10 dollars, with interest from Dec. 16th, 1916, seven hundred and eight dollars and ninety-six cents, with interest from October 1st, 1917; taxes due the State of New Jersey, the Township of Lower and the City of Cape May, in said county, one hundred and fifty dollars, with interest from August 1st, 1916; one thousand one hundred and seventy-six dollars and eighty-six cents, with interest from June 10th, 1916; one thousand seven hundred and thirty-one dollars and eighty-three cents, with interest from August 15th, 1917; interest on bonds
20 and mortgages upon the property of the company, two thousand seven hundred and three dollars and thirty-eight cents, with interest from June 7th, 1916; one thousand three hundred and thirty-five dollars, with interest from December 22nd, 1916, and one hundred and thirty-one dollars and twenty-five cents, with interest from January 15th, 1917, and that said bond and warrant were executed pursuant to a resolution of the Board of Directors of the Cape May Real Estate Company, and that
30 the debt for which judgment is confessed is justly and honestly due and owing to deponent, and that the judgment is not confessed to answer any fraudulent intent or purpose, or to protest the property of the defendant from its other creditors.

PETER SHIELDS.

Sworn and subscribed before me this
24th day of October, A. D. 1917.

E. G. C. BLEAKLY,
Sup. Ct. Com'r.

40

Judgment.

NEW JERSEY SUPREME COURT.

Of the Term of June, One thousand nine hundred and seventeen.

10

PETER SHIELDS,	} Plaintiff,
v.	
CAPE MAY REAL ESTATE	} Defendant.
COMPANY,	

20

The defendant's appearance to this action is entered, and judgment confessed to the plaintiff for the sum mentioned in the above obligation, by virtue of a warrant of attorney thereunto annexed, and pursuant to the directions of an act entitled "An Act directing the mode of entering judgments on bonds and warrants of attorney to confess judgments," whereupon it is considered that the said Peter Shields do recover against the said Cape May Real Estate Company, the sum of sixty-two thousand and eighty-three dollars and fifty cents, debt, and four dollars and fifty cents costs of suit.

30

Judgment signed, and ordered to be entered according to law, this twenty-fourth day of October, in the year of our Lord one thousand nine hundred and seventeen.

E. G. C. BLEAKLY,
Sup. Ct. Com'r.

40

Assignment.

NEW JERSEY SUPREME COURT.

PETER SHIELDS,	} Plaintiff,
v.	
CAPE MAY REAL ESTATE	} Defendant.
COMPANY,	

10

Westcott & Weaver, Attorneys.

Entered October 25, 1917.

Debt	\$62,083.50	
Costs	4.50	20

Assigned to Harry Darlington, Jr., as per the following assignment:

This Indenture, made the fifth day of August, in the year of our Lord, one thousand nine hundred and eighteen,

Between Peter Shields, party of the first part,
And Harry Darlington, Jr., party of the second part.

30

WHEREAS, the said party of the first part, on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and seventeen, recovered a judgment in the New Jersey Supreme Court against Cape May Real Estate Company for the sum of sixty-two thousand eighty-three dollars and fifty cents, and four dollars and fifty cents, cost of suit, as by the record thereof will appear:

NOW, THIS INDENTURE WITNESSETH, that the said party of the first part, in considera-

40

tion of one dollar and other considerations to him
duly paid, has sold, and by these presents doth
assign, transfer and set over unto the said party of
the second part, and his assigns, the said judgment
and all sum and sums of money that may be had
or obtained by means thereof, or on any proceed-
10 ings to be had thereupon.

AND the said party of the first part doth hereby
constitute and appoint the said party of the second
part and his assigns, his true and lawful attorneys
irrevocable, with power of substitution and revoca-
tion, for the use and at the proper costs and
charges of the said party of the second part, to
ask, demand and receive, and to sue out executions,
and take all lawful ways for the recovery of the
20 money due or to become due on the said judgment,
and on payment to acknowledge satisfaction or
discharge the same.

AND attorneys, one or more, under him for the
purpose aforesaid, to make and substitute, and,
at pleasure to revoke; hereby ratify and confirm-
ing all that my said attorney or substitute shall
lawfully do in the premises.

AND the said party of the first part doth cove-
nant that there is now due on the said judgment
the sum of thirty-one thousand forty-one dollars
and seventy-five cents and costs and interest from
October 24th, 1917, and that he will not collect
or receive the same, or any part thereof, nor re-
lease or discharge the said judgment, but will own
and allow all lawful proceedings therein, the said
party of the second part saving the said party of
the first part harmless of and from any costs in
40 the premises.

IN WITNESS WHEREOF, the said party of
the first part has hereunto set his hand and seal
the day and year first above written.

PETER SHIELDS. (Seal)

Signed, sealed and delivered 10
in the presence of
F. D. WEAVER.

State of New Jersey, } ss.:
County of Camden, }

BE IT REMEMBERED, that on this fifth day
of August in the year of our Lord one thousand
nine hundred and eighteen, before me, a Master in 20
Chancery of New Jersey, personally appeared
Peter Shields, who, I am satisfied, is the assignor
in the within deed of assignment named, and I
having first made known to him the contents
thereof he did acknowledge that he signed, sealed
and delivered the same as his voluntary act and
deed, for the uses and purposes therein expressed.

F. D. WEAVER,
M. C. C. of N. J. 30

Recorded August 6, 1918.

A true copy.

ENOCH L. JOHNSON,
Clerk.

Stipulation.

(Filed February 16, 1923.)

NEW JERSEY SUPREME COURT.

10

PETER SHIELDS,
Plaintiff,

v.

CAPE MAY REAL ESTATE
COMPANY,
Defendant.

20

Owing to the appointment of receiver for the defendant and certain complications growing out of the same; it is hereby stipulated and agreed, between the counsel for the respective parties, that this matter may be continued without prejudice until such time as formal notice is given to the attorney of the plaintiff by the attorney of the defendant.

Dated, September 1st, 1920.

30

FRANK D. WEAVER,
Attorney of Plaintiff.

J. H. GASKILL,
Attorney of Defendant.

Order of Substitution.

(Filed February 16, 1923.)

NEW JERSEY SUPREME COURT.

10

PETER SHIELDS,
Plaintiff,

v.

CAPE MAY REAL ESTATE
COMPANY,
Defendant.

10

20

It appearing that since the petition was filed to open the judgment entered in the above stated cause, and the rule to show cause granted thereon, that Frank D. Schroth has been appointed receiver of the Cape May Real Estate Company.

It is, thereupon, on this twenty-fifth day of December, nineteen hundred and twenty-two, on motion of Joseph H. Gaskill, attorney of the defendant, ordered that Frank D. Schroth, receiver of the Cape May Real Estate Company be and he is hereby substituted party defendant and petitioner in the above stated matter.

30

FRANK S. KATZENBACH,
Justice of Supreme Court.

I consent to the entry of the foregoing order.

WESCOTT & WEAVER,
Attorneys for Plaintiff.

Order of Withdrawal of Stipulation of Facts.

(Filed November 14, 1923.)

NEW JERSEY SUPREME COURT.

10

PETER SHIELDS,	}
Plaintiff,	
v.	}
CAPE MAY REAL ESTATE	
COMPANY,	
Defendant.	

20

On motion of Joseph H. Gaskill, attorney for the above named defendant, it is on this ninth day of November, One thousand nine hundred and twenty-three,

30

J. H. GASKILL,
Attorney of the Defendant.

We consent to the entry of the above Rule.

McCARTER & ENGLISH,
Attorneys of the Plaintiff.

40

Order of Substitution.

(Filed November 30, 1923.)

NEW JERSEY SUPREME COURT.

10

PETER SHIELDS,	}
Plaintiff,	
v.	}
CAPE MAY REAL ESTATE	
COMPANY,	
Defendant.	

20

It is on this twentieth day of November, A. D. One Thousand Nine hundred and twenty-three, on motion of Joseph H. Gaskill, attorney for defendant,

ORDERED, that Lindley M. Garrison, Esq., be and is hereby substituted as attorney for the above named defendant in the place and stead of said Joseph H. Gaskill.

Let this Rule be entered.

FRANK L. KATZENBACH, JR.

30

I consent to the entry of the above Rule.

JOSEPH H. GASKILL.

40

**Depositions on Behalf of Defendants-
Appellants.**

(Filed January 6, 1926.)

NEW JERSEY SUPREME COURT.

10	<p align="center">PETER SHIELDS, Plaintiff,</p> <p align="center">v.</p> <p align="center">CAPE MAY REAL ESTATE COMPANY, Defendant.</p>	} Action at Law.
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20 Deposition on behalf of the defendant in the above entitled cause, taken before me, Alfred B. Van Houten, a Master in Chancery of New Jersey, at my office, 75 Montgomery Street, Jersey City, New Jersey, this first day of October, 1925, at two o'clock in the afternoon, under rule to show cause entered in the above entitled cause, pursuant to notice hereto annexed.

APPEARANCES:

30 Messrs. McCARTER & ENGLISH (Mr. McLaughlin),
Attorneys for Plaintiff.

LINDLEY M. GARRISON, Esq., Attorney for Defendant and FRANK D. SCHROTH, Receiver.

40 It is stipulated that the depositions be taken stenographically and the signatures of the witnesses waived.

Frank D. Schroth—Direct Examination.

State of New Jersey, } ss.:
County of Hudson, }

FRANK D. SCHROTH, being first duly sworn according to law, on his oath, deposes and says:

Direct Examination by Mr. Garrison: 10

Q. Where do you reside? A. Trenton.

Q. You were appointed receiver of Cape May Real Estate Company, in an action in which Peter Shields was complainant, and Cape May Real Estate Company was defendant? A. Yes, sir.

Q. The actual appointment was made upon the advice of Vice Chancellor Backes? A. Yes, sir.

Q. Which appointment was made, as I recall it, on the 17th day of July, 1920? A. Yes, sir. 20

Q. And you have since that time continued to act as such Receiver? A. Yes, sir.

Q. Have you what was given to you, by whoever gave it to you, as the Minute Book of the company? A. I have.

Q. Will you produce it? A. I have two Minute Books here, sir.

Q. Where did you obtain these? A. I think I got them at the home of Mr. Graves, or the Merchant's National Bank of Cape May; I just don't remember where I got them; I may have gotten them at Mr. Graves' office. After my appointment as receiver I gathered all the records together from different sources and I got these from one of those different sources. 30

Q. They were represented to you, by whoever delivered them to you, as the regular Minute Books of the company? A. Yes, sir.

(Minute Books marked Exhibits D-1 and D-1a for Identification.) 40

Q. Now, were you given any other papers which were alleged to be Minutes? A. Yes, I have one other book.

Q. Will you kindly produce that? A. Yes, sir.

10 Q. Where did you get this? A. My recollection of that book is that I got from the office of Westcott & Weaver, in Camden.

Q. They were at that time counsel for Peter Shields? A. Yes, sir.

(Book produced by witness marked Exhibit D-2 and by agreement of counsel a photostatic copy is substituted in place of the original.)

Cross Examination by Mr. McLaughlin:

20 Q. Mr. Schroth, do you recall who gave you these Minute books, the first ones, which were called D-1 and D-1a? A. I do not, sir; there were a great many records, books, ledgers and vouchers, which I got from a number of different sources; some I got at the home of Mr. Graves at Cape May; some I got at the office of Mr. Graves in Philadelphia; others I got at the Merchant's National Bank in Cape May; and I gathered together, following my appointment as receiver, all of these various records from all the sources I could find. Just where I got these books I do not recall; I think I got those at the home of Mr. Graves, at Cape May.

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Taken and sworn to before me this
1st day of October, 1925.

ALFRED V. VAN HOUTEN,
Master in Chancery of New Jersey.

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State of New Jersey, }
County of Hudson, } ss.:

CHARLES C. NORRIS, being first duly sworn according to law, on his oath, deposes and says:

Direct Examination by Mr. Garrison: 10

Q. You are a member of the Philadelphia Bar, are you not, Mr. Norris? A. I am, sir.

Q. And have been for how many years? A. Twenty-two years.

Q. Were you connected with the Creditors' Protective Committee which was formed in respect of the affairs of N. Z. Graves and N. Z. Graves, Inc.? A. I was, sir; I was counsel for them.

Q. What shape did that committee assume for the purpose of that liquidation? A. They transferred assets which they had purchased at a prior Receiver's sale to a corporation which they formed, called the Mutual Liquidating Company. 20

Q. The name of that company was afterwards changed to what? A. That I don't know, sir. During my association it was not changed.

Mr. Garrison: I will state that the Minutes prove that it was subsequently changed to Greater Cape May, Inc. 30

Q. During the time you were connected with it, it was called the Mutual Liquidating Company? A. It was called the Mutual Liquidating Company.

Q. Who had the handling of that company on behalf of this committee of creditors; who actually attended to the physical handling of it? A. I did, sir.

Q. Where was your office at that time? A. My office was at 800 West End Trust Building, Philadelphia. 40

Q. Did that committee have in its possession any stock of the Cape May Real Estate Company?

A. It had.

Q. How much? A. My recollection is that it had something over 16,000 shares.

10 Q. Have you any knowledge as to whether this was more than a majority or less than a majority of the outstanding stock? A. I do know that it was more than a majority.

Q. It was a controlling interest in the company? A. A controlling interest in the company.

Q. What did you do in respect of directors to handle the affairs of the Cape May Real Estate Company after you had become possessed of this stock and therefore had the controlling interest?

20 A. We appointed several persons as directors. When I say appointed, I mean we designated them, and by reason of the control of the stock we had, they were elected as our representatives.

Q. When did your connection of this character begin with the Cape May Real Estate Company?

A. My recollection, sir, is that it began in the Fall of 1915.

Q. How long did it continue? A. And continued until October 12th, 1917.

30 Q. During that period where did you hold the meetings of the Board of Directors of the Cape May Real Estate Company? A. They were all held in my office, in the West End Trust Building, Philadelphia.

Q. What had you to do with the preparation of the Minutes of such meetings? A. I prepared all of the Minutes.

40 Q. I now show you two books, which have been marked for identification as Exhibits D-1 and D-1a, and ask you whether you have ever seen them before? A. Yes, I have.

Q. What are they? A. They are the Minute Books of the Cape May Real Estate Company, which were in my possession from the Fall of 1915 until October 12th, 1917.

Q. Do you know the signature of C. Earl Miller, who was secretary of that company? A. I do, sir.

10 Q. Look at one place in those books which represents his signature, and tell me whether that is his signature? A. Turning to page 222 I say, yes, that is the signature of C. Earl Miller, as secretary.

Mr. Garrison: Mr. McLaughlin does not require me to go through each place where this signature appears for me to identify the signature, and I now desire to offer the books in evidence.

20 (Minute books admitted, without objection, and marked Exhibits D-1 and D-1a, in evidence.)

Q. Did the Mutual Liquidating Company ever have any business arrangements with Peter Shields, in respect of the property which it had in its possession? A. Yes, sir; it did.

30 Q. I hand you, Mr. Norris, a printed copy of Statement of Claim and annexed papers, in a suit in the Court of Common Pleas No. 5, of the County of Philadelphia, September Term, 1917, of Peter Shields against Mutual Liquidating Company, and ask you to look at Exhibit A, and tell me whether that is a copy of the agreement that was made between Peter Shields and the Mutual Liquidating Company?

Mr. Garrison: I shall later offer an exemplified copy of this record.

40 Mr. McLaughlin: Right there, I think, I will object to that on the ground that it is

incompetent, immaterial and irrelevant, and outside of the scope of the pleadings in this matter.

A. Yes, sir; that is a copy.

10 Q. What payments, in respect of this contract, were received by the Mutual Liquidating Company from Shields?

Mr. McLaughlin: I object to that on the same grounds, namely, that it is outside of the scope of the pleadings, incompetent, immaterial and irrelevant to this issue; and if Mr. Garrison is going to continue his examination along this line I desire that my objection apply to all questions relating to it.

20 Mr. Garrison: So far as my consent is necessary I am entirely willing to take all of this testimony subject to the objection on the other side that it is irrelevant and immaterial. I understand that you do not object to it on the ground that it is incompetent because this is not an exemplified copy?

Mr. McLaughlin: We do not object to it on that ground.

30 A. Mr. Shields paid the sum of \$15,000; he paid the sum of \$10,000 and he made certain other payments; I cannot testify from recollection as to what those payments aggregate but he did make certain payments out of the proceeds of the sale of real estate as provided in this agreement.

40 Q. Now, to clear that answer up, as I understand it, if, in respect to the subject matter of this contract, he was able to find a purchaser for some of the property which you had agreed to sell Shields, you would then release it so it could be sold to his purchaser, and credit him with the

amount of money that he got, as if it were paid by him under this contract? A. Yes, sir; that is correct. Without reading the entire agreement to refresh my recollection, I believe that he was to receive a certain portion of the purchase price of each property which he sold, which was to be applied against his obligation under this contract. 10

Q. Now, did the Mutual Liquidating Company claim that Shields had not complied with his contract so that he was entitled to the transfer of the assets which are mentioned in the contract? A. Yes; he did not comply with all of the terms of the contract, and the assets were not transferred to him.

Q. What was finally done with the assets? A. The assets finally, on October 12th, 1917, were sold to Mr. Nelson Z. Graves. 20

Q. And transferred to him when? A. Transferred to him on October 12th, 1917.

Q. When had that bargain been made with Nelson Z. Graves, in consequence of which the transfer was made to him? A. That agreement was made about September 13th, 1917.

Q. You have stated that the Mutual Liquidating Company, after it acquired possession of a controlling interest in the Cape May Real Estate Company, designated the directors? A. That is true, sir. 30

Q. Did you ever designate Mr. Peter Shields as such director? A. I am not quite clear whether Mr. Shields was a director before the Fall of 1915; if he was not a director at that time then he was elected by virtue of our control of the stock.

Q. Suppose he was a director before that? A. If he was a director before that time he was continued as director, our stock was voted for him; if that appears to be the case. 40

Q. Did you cause his designation as president of the Cape May Real Estate Company, also? A. Yes, sir.

Q. Did you have any conversation with Peter Shields after the time in September, when you say that the Mutual Liquidating Company had agreed
10 with Graves to transfer the assets in question, which had been the subject matter of the Shields contract, to Graves? A. You mean September, 1917?

Q. Yes. A. Yes, sir.

Q. About what time in September, 1917, did you have this conversation? A. It was probably within three or four days after September 13th, 1917.

Q. What was the conversation, as well as you can remember it? A. We had undertaken—and
20 when I say "we" I mean the Creditors' Protective Committee had undertaken—to turn over and transfer the stock, and also to turn over to Mr. Graves, the purchaser, the resignations of such persons whom we had appointed or elected to the boards of the various companies, including the Cape May Real Estate Company, and I asked Mr. Shields to give me his resignation, and he said that he would later on, but he was not prepared to do it at that particular time.

Q. Did you have any subsequent conversations with him about the same subject matter? A. Yes, sir.

Q. What was the next date, or the next dates that you can remember? A. One conversation was just prior to October 12th, 1917, and the other one was shortly after October 12th, 1917.

Q. What were those conversations? A. In each instance I asked him to give me his resignation so that I might deliver it to Mr. Graves; and in
40 each case he replied that he would give it in due

time, but that he was not prepared to give it at those times.

Q. Did you say anything to Mr. Shields in respect of the situation between the Mutual Liquidating Company and Mr. Graves; and if so, what? A. Yes, sir.

Q. Whatever you are about to tell us, did you
10 say it in that first interview that you speak of as having been had with Mr. Shields about October 12th, 1917? A. Yes, sir; I did tell Mr. Shields a day or two after we concluded the contract, about September 13th, 1917, that we had sold all of the assets to Mr. Graves and that we wanted to deliver the resignations of all the directors, or such of them as might be asked for.

Q. Among those shares were these 16,000 odd shares of the Cape May Real Estate Company? A. 20 Yes, sir; that is true. So that there may be no confusion, if I might say this, the sale by the Creditors' Committee to Mr. Graves was of all of the assets, and as most of the assets, with some exceptions, did not have anything to do with this property, represented stock in the Mutual Liquidating Company, the transaction took the form of a sale of the stock of the Mutual Liquidation Company to Mr. Graves.

Q. And that would carry with it, of course, the
30 16,000 odd shares of the Cape May Real Estate Company? A. Which would carry with it those shares.

Q. Just so that the record may be complete in that respect, do you recall whether the agreement of April 1st, 1916, between the Mutual Liquidating Company and Shields was ever, by consent, extended beyond the original expiration date? A. Yes, sir; I do.

(Exemplified copy of statement of claim
40 to be marked Exhibit D-3 in evidence.)

Q. Was it so extended? A. Yes, sir; it was extended.

Q. When did the last extension expire? A. My recollection is that it expired on the last day of July, 1917.

10 Q. The 31st day of July, 1917? A. The 31st day of July, 1917.

Q. Have you any knowledge of some negotiations which Mr. Shields carried on with the Navy Department of the United States government, in respect of the sale of certain lands to the government? A. Yes, sir; I have.

Q. Can you tell us what land was the subject matter of those negotiations? A. It was a tract of land for an aviation field in the neighborhood of Yale Avenue, at Cape May, New Jersey.

20 Q. I show you a book produced by the receiver, a photostatic copy of which has been admitted in evidence as Exhibit D-2, and ask you whether you ever saw that book before? A. No, sir; I have never seen that book before.

Q. These other Minute Books you identified were in your office? A. Yes, sir.

30 Q. Where were the books of account of the company, between the dates that you have stated the Mutual Liquidating Company controlled the affairs of the Cape May Real Estate Company? A. They were always in my office.

Q. Was there any other depository of books or records of the company than your office during that period? A. No, sir; I had all the books and records of the company.

40 Q. Had you any knowledge at the time, or when did you first have knowledge, of a purported meeting of the board of directors of the Cape May Real Estate Company on September 20, 1917, held at Cape May City? A. The only knowledge I had of

it was sometime after October 12th, 1917; Mr. Shields, at the time I asked him for his resignation, told me that he had conducted a meeting elsewhere than in my office; I did not know and he did not tell me what business was transacted.

10 Q. When did you first have knowledge of a purported meeting of the board of directors of the Cape May Real Estate Company held at Cape May on October 20, 1917? A. I never knew of such a meeting.

Q. And October 30th, the same answer? A. I never knew of such meetings.

20 Q. Mr. Norris— A. Before you do that, may I qualify that last answer? I did not know what meeting he referred to, or whether it was a formal meeting of the Cape May Real Estate Company, or its directors.

Q. You are referring to something you say Shields told you about the September meeting? A. Yes, sir.

Q. He merely spoke of some meeting, and you did not know what it was? A. I did not know anything about what it was; he merely made the statement that he had held a meeting after September 12th, 1917.

30 Q. Now, have you something before you that will enable you to tell us what lands are the subject matter of the negotiations which Peter Shields carried on with the Navy Department? A. Yes, sir; I have from my files a blueprint showing the location of a tract of 57.727 acres situated on a plan of Cape May property.

40 Q. That is the legend; is that what you mean? A. As we knew it; and lying between Cape May Avenue on the South, and Cape May Harbor on the north, and by Princeton Avenue, or a projection of Princeton Avenue on the West, and a projection of Kansas Avenue on the East.

Mr. Garrison: I offer this blueprint in evidence in connection with the witness' testimony to illustrate what he has stated in respect to this.

(Blueprint marked Exhibit D-4 in evidence.)

10

Q. Now, title to that property at that time was vested in whom? A. In the Cape May Real Estate Company.

Q. What was the purchase price then being talked about? A. My recollection is that it was \$150,000.

Q. Was that purchase completed? A. It was never completed, so far as I know; and my knowledge extends no further than October 12th, 1917.

20

Q. You were present, as I understand, and prepared the minutes of all the meetings of the Board of Directors of the Cape May Real Estate Company between what dates? A. Between the Fall of 1915 and October 12th, 1917.

Q. During that period was any corporate action taken in respect of any commissions to be paid to Mr. Shields in respect of the sale of these 57 acres? A. No, sir; no action was taken.

30 Q. Do you know of any agreement between the Cape May Real Estate Company and Mr. Shields in respect of the payment to be made to him for the sale of this property? A. No, sir; I know of no such agreement.

Q. Are you qualified to state whether, during the period that you had active charge of this matter, there was or was not such an agreement? A. There was not such an agreement.

Q. Is Mr. T. M. Lamb still living? A. Yes, sir; he is.

40 Q. And is Mr. C. L. Busby still living? A. Yes, sir.

Q. And they are here present? A. Yes, sir.

Q. Where was the business of the Cape May Real Estate Company between the periods that you have mentioned, transacted? A. It was all transacted from my office in Philadelphia.

Q. Did they have another office anywhere else?

A. Yes, sir; they had an office in Cape May City, New Jersey. 10

Q. I hand you Exhibit D-2, and call your attention to the 11th page thereof, where you will find an itemization of various sums of money; the particular matter to which I call your attention reading as follows: "4th: For \$1,594.18 advanced by Mr. Peter Shields on account of salaries, interest, office expenses, fire insurance, etc., as follows:" and I ask you to look through what follows and tell us whatever you know in respect of those items. For instance, the first item is, "April 12, 1916, Russel Robinson, Carpenter." A. I know nothing of those items. 20

Q. Now, confine yourself to just that one for the present. A. For that particular item.

Q. Do you know anything about the next one; that is hardware? A. May I answer it in this way—

Q. Yes; any way that will give us light on it. A. My recollection is that Mr. Shields did incur some small expenses with relation to the Cape May Real Estate properties but they were very small in amount. Well, I have no recollection of these particular items, that is, Robinson, Ware, Calhoun, Cape May Light & Power Company. 30

Q. Just stop there for a minute. What did you want to say in respect of these particular items? A. I have no knowledge of those particular items; but I have a recollection that some items of that character, very small in amount, had been incurred by Peter Shields prior to October 12th, 1917. 40

Q. And if he did not receive reimbursement for those items from the company, according to your idea, he was entitled thereto; is that correct? A. I think he was entitled thereto.

10 Q. Now comes August 1st, 1916, to reinstating charter of company; do you know anything about that at all? A. Well, I have a recollection that the fees had not been paid to the State of New Jersey, and I remember that Mr. Shields had some negotiations concerning the reinstatement of the charter. If he paid that sum, I think that he was obligated to do so under the terms of his contract.

Q. The next item is apparently under the same date, civil engineer, account of salary, \$25? A. I don't know of that, but I do know that a number of plans were drawn at the direction of Mr. Shields.

20 Q. The next item is that of bookkeeper, \$400? A. I am very sure and I know that we never made such an appropriation, because the books were kept in my office.

Q. What do you mean by appropriation? A. By the board of directors of the company, or by anyone, authorizing such appropriation.

Q. What do you mean by appropriation? A. Payment.

30 Q. He doesn't contend you made it; he contends he made it. A. If he did, there was no reason for it, because all of the books were kept by me and my clerks.

Q. Am I correct in understanding your testimony, that there was not any obligation on behalf of the Cape May Real Estate Company to pay \$400 for a bookkeeper? A. Yes, sir; that is correct.

Q. And if he paid it, as I understand, it was unwarranted? A. Yes, sir.

40 Q. Office \$35.84? A. It is conceivable that he may have incurred some slight office expenses at Cape May.

Q. January 15th, 1917, J. S. Leaming mortgage, interest; what mortgage was that, do you know?

A. I do remember that there was a mortgage held by J. S. Leaming, and that foreclosure was threatened, and I remember that he did pay that sum.

10 Q. Is that part of what was in that contract, too? A. That would be part of his obligation under the contract.

Q. Reeves, plumbing, 50 cents; I suppose you don't know anything about that? A. I don't know about that.

Q. What is this next? A. Kreth & Sullivan, insurance, \$79.15; I know nothing about that.

20 Q. L. S. Eldridge, \$5. September 1st? A. I think that was a proper item; I think probably he paid that in connection with some proceeding in Cape May.

Q. Was Mr. Eldridge a Cape May lawyer or something like that? A. He was.

Q. Bell Telephone Company, phone; do you know anything about that? A. I know nothing about that.

Q. Did you have a telephone in the office down there? A. That I can't say.

30 Q. Williams, Brown & Earl, blueprints? A. It is conceivable that they may have made blueprints in connection with the sale of the property.

Q. Noah H. Brown, \$11.25. cleaning? A. It is conceivable that that was probably incurred as an expense; the company owned houses, which they rented.

Q. Secretary's salary \$600? A. I don't know of that at all, nor was there any authorization that that sum should be paid.

40 Q. Office expense, \$108.96? A. I know nothing about that.

Cross Examination by Mr. McLaughlin:

Q. Was the company, during this period from May 16th to September 16th, maintaining an office in Cape May? A. Yes, sir; it had an office in Cape May, which was the registered office.

10 Q. Was there someone employed in that office as secretary? A. No, sir.

Q. You are sure of that? A. I am quite sure of that.

Q. Then would you say that the item alleged in Mr. Shields' bill, page 11 of D-2 in "Fourth," namely—or rather on page 13 of D-2, for Secretary, salary \$600 was not paid as the secretary of the company? A. I can only answer it in this way, Mr. McLaughlin: It certainly was not authorized
20 to have been paid.

Q. You don't question the fact that Mr. Shields expended the moneys set out in his bill under "Fourth," do you? A. No; I have no reason to question that; he may have paid it.

Q. Can you say whether or not there was a bookkeeper employed in 1916 at the office in Cape May at all? A. I know there was not, sir.

Q. You know there was no bookkeeper there? A. That is correct, sir.

30 Q. Now, during this period from 1915 to October 12th, 1917, were you the Secretary of the Cape May Real Estate Company? A. No, sir; I was not the secretary.

Q. During that period who was the secretary? A. I can't remember, sir. During a large part of the period one of the gentlemen appearing on the Board of Directors, in the employ of Colonel Franklin D'Olier, was secretary.

40 Q. During part of the period? A. During part of the period; and subsequently C. Earl Miller.

Q. Do you recall approximately when Mr. Miller

was made secretary? A. C. Earl Miller became secretary on July 5th, 1917.

Q. And he was secretary, was he not, on September 20th, 1917? A. Yes, sir; he was.

Q. And he was secretary, was he not, on October 20th, 1917? A. I don't know, sir; I know nothing
10 whatever as to what occurred after October 12th, 1917.

Q. Then you don't know whether or not he was still secretary also on October 30th, 1917? A. No, sir; I don't know.

Q. These negotiations with the United States government, which you say Mr. Shields was conducting, regarding the purchase of a proposed aviation field, was it? A. Yes, sir.

Q. You say that he did not complete those negotiations for the sale? A. Yes, sir; I say that
20 the negotiations were not completed. What I mean by that is this: Up until October 12th, 1917, there had not been completed an agreement for sale.

Q. Now, let me ask you again: Do you say that Mr. Shields did not complete the negotiations for the sale of this property which you have referred to, to the government? A. That is my recollection, sir. By negotiations I understand you mean the consummation of negotiations in the form of an agreement, all the terms of which were agreed
30 upon?

Q. Yes? A. Yes.

Q. Then you say that he did not consummate the terms of this sale with the government; is that right? A. Yes, sir; that is correct.

Q. And did not sell the property to the government? A. That is correct, sir.

Q. I show you a paper, Mr. Norris, on the letterhead of Hepburn, Dechert & Norris, purporting to be a letter addressed to Mr. Peter Shields, 1512 H.
40

Street, N. W. Washington, D. C., dated May 1st, 1923, and ask you who signed that letter? A. That is my signature.

Q. For your firm? A. For my firm; yes, sir.

(Letter marked Exhibit P-1 for Identification.)

10

Q. In this letter occurs the following language: "Concerning the sale of land to the United States, I know that this sale was due entirely to your efforts"; what did you mean by that? A. I meant by that that he had conducted all the negotiations, had done a great deal of work. By sale I did not mean to imply that the sale had been consummated. Of course I have no knowledge beyond October 12th, 1917, as to whether or not an agreement was made or the sale accomplished.

20

Q. After that date, you mean? A. After that date.

Q. By that, I take it, you mean that you had no knowledge that the terms of the sale were actually concluded? A. I do know that up to October 12th, 1917, an agreement of sale with all of the terms defined, had not been reached.

Q. I will ask you that again. (Last question repeated.) A. No, sir; that is not what I mean. I mean to say that up to October 12th, 1917—

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Q. I think you answered the question, Mr. Norris. I don't want to hold you up, but— A. Won't you repeat the question?

Q. (Last question repeated.) A. That is correct. I have no knowledge that the sale was ultimately concluded, because my information extends only to October 12th, 1917.

40

Q. Now, Mr. Norris, I don't think it is intentional, but you do seem to be evading a direct answer to my question. A. I have no intention to evade it.

Q. Exactly; I don't think so. Will you please repeat my question again? (Last question repeated.) A. I have no knowledge whether or not a sale was actually concluded.

Q. Further down in this letter, Mr. Norris, occurs the following language: "The terms of the sale were definitely concluded, and my last knowledge of the transaction was that we had submitted a brief of title to the solicitors general department of the United States, who in turn referred it to, I think, the United States District Attorney of New Jersey." What do you mean by that language, namely, "The terms of sale were definitely concluded"? A. What I mean by that was this: The negotiations had been entered into in June or July, of 1917, for the sale of the property; my recollection is that an offer was made by the Cape May Real Estate Company to sell this tract of land, and it was accepted by the Navy Department, with certain conditions relating to dredging. Those conditions, however, were not finally determined, and all was to be subject to the approval of some higher authority, I don't remember what it was. A form of deed was prepared at my instigation, a brief of title was prepared, and it was submitted to the solicitor for the Navy Department and subsequently, at his direction, to an Assistant District Attorney for Northern New Jersey, whose name I have forgotten. But up to that time the same had not been concluded, because all of the terms had not been agreed upon. My recollection, after this lapse of time, is that a part of the consideration was to have been either set aside of the purpose price for dredging, or a contract was to have been entered into with some dredging company and the Cape May Real Estate Company; and that was to be finally approved by the Navy

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Department. That had not been done up to October 12th, 1917.

10 Q. Again referring to Exhibit P-1 for identification, I call your attention to the following language: "I do know, however, that up until this time you had been in constant negotiation with the United States and had consummated the terms of sale." A. Well, that was an entirely correct statement, so far as it went. My recollection is that those terms, which I have specifically stated a minute ago, had not been approved.

Q. You say that was a correct statement? A. That was a perfectly correct statement.

Q. That Mr. Shields had consummated the terms of sale? A. With the qualifications that I have stated, that is true, yes.

20 Q. I have read you everything in the sentence, Mr. Norris, that is relevant; I will again read the sentence: "I do know, however, that up until this time you had been in constant negotiation with the United States and had consummated the terms of sale" and now ask you was that statement correct? A. That was a correct statement, which I would like to qualify by stating that it was not intended to mean a consummation of a sale in the sense that if the purchaser had been an individual there could have been maintained an action for specific performance.

30 Q. In the next paragraph of the letter occurs the following language: "I also know that you advanced certain taxes on property of the Cape May Real Estate Company and other properties in Cape May, at a time when the Cape May Real Estate Company had not the moneys to pay these taxes"; is that correct? A. That is correct.

40 Mr. Garrison: I desire to offer in evidence from Volume 2 of the United States Statutes

at large a proclamation of Woodrow Wilson, President of the United States, dated the 2nd day of December, 1918.

Re-direct Examination by Mr. Garrison:

10 Q. And I hand the witness a copy of the proclamation and ask him whether he is able, from the language of that proclamation, to state whether the land which the president states herein he is about to condemn for the United States Government, does or does not embrace the 57 odd acres that he has been talking about? A. Yes, sir; that does include the area that I am talking about and is included in this description.

Charles C. Norris—Re-direct Examination.

20 Q. More land is included in the president's proclamation than the 57-odd acres that you have been talking about? A. That is true.

Q. But the 57-odd acres are included? A. That is true sir.

30 Q. You have been referring to what blueprint in respect of the land that is contained within the proclamation showing that it includes the 57-odd acres; what is the legend on that blueprint? A. "Condition of Field Property and Harbor in Cape May, New Jersey."

Mr. Garrison: I offer that in evidence to illustrate the witness's testimony.

Q. Won't you point out on that map what the proclamation does cover on the map? A. At the point of the westerly line of Yale Avenue with the high water mark of Cold Spring Harbor—

Q. That is at the north of the map? A. That is at the north of the map.

Q. And Yale Avenue is toward the east? A. 40

Toward the eastern side of the map; that is in a general easterly, then southerly, then westerly direction, following the water line of Cold Spring Harbor to the Atlantic Ocean.

10 Q. That makes sort of a bay-window effect there, right straight around? A. Yes, sir; to its point of intersection with the westerly line of Yale Avenue.

Q. This little block in there that is headed "United States Coastal Aerial Station", is, as I understand it, the 57½ acres that we have been talking about? A. Yes, sir.

(Map admitted in evidence without objection and marked Exhibit D-5.)

20 Mr. Garrison: Mr. McLaughlin, I assume that it would be much more satisfactory on both sides and for the court, if, instead of returning these books to the court with this examination we agree upon extracts therefrom, each of us taking such extracts therefrom as we may desire, and simply taking those up in place of the books which would be a very burdensome thing to have to copy; and I suggest that I select whatever parts of the Minutes I want and submit them to you, and you do, and we will each use those copies in place of the originals.

30 Mr. McLaughlin: The books will be kept in your custody for the time being so that they will be available for us for examination?

Mr. Garrison: Yes.

40 It is stipulated by and between counsel that they may arrange between themselves and substitute such excerpts from these minute books as they may desire, so that it will

not be necessary to return these large books with this testimony to the court as exhibits.

Taken and sworn to before me, this
1st day of October, 1925.

ALFRED B. VAN HOUTEN,
Master in Chancery of New Jersey.

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State of New Jersey, } ss.:
County of Hudson, }

NELSON Z. GRAVES, being first duly sworn according to law, on his oath, deposes and says:

Direct Examination by Mr. Garrison:

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Q. Where do you reside, Mr. Graves? A. Philadelphia.

Q. You were a director of the Cape May Real Estate Company, were you not? A. Yes, sir.

Q. Did you resign as a member of the Board of the Cape May Real Estate Company from the 15th day of May, 1915, down to and including the 30th day of October, 1917?

30

Mr. McLaughlin: I object to that as leading.

A. My recollection is that I did.

Q. You did resign? A. That is my recollection. Is that the time that Mr. Shields was operating under this contract?

Q. I understood that you were a director; now I am asking whether, between certain dates that I have mentioned, you sent in a resignation or

40

resigned, between the dates I have given you? A. Not unless the record shows it.

Q. Did you ever receive any notice of a special meeting of the Board of Directors of the Cape May Real Estate Company, to be held at the office at Cape May on the 20th day of September, 1917?

10 A. I did not, sir.

Mr. McLaughlin: I object to that on the ground that it has not been shown that Mr. Graves was a member of the board or was entitled to receive such notice.

Mr. Garrison: In answer to objection I wish to state that if the records do not show that Mr. Graves was a director at that time this answer is harmless, and if he was a director it is relevant and material.

20

Q. Did you ever receive any notice of a special meeting of the Board of Directors of the Cape May Real Estate Company to be held at the company's office at Cape May on October 20th, 1917?

Mr. McLaughlin: The same objection.

A. I did not, sir.

30 Q. Did you ever receive any notice of a special meeting of the Board of Directors of the Cape May Real Estate Company to be held in the City of Camden, at the office of Wescott & Weaver, on the 30th day of October, 1917?

Mr. McLaughlin: The same objection.

A. I did not, sir.

Taken and sworn to before me this
1st day of October, 1925.

40 ALFRED B. VAN HOUTEN,
Master in Chancery of New Jersey.

State of New Jersey, } ss.:
County of Hudson, }

THYELE M. LAMB, being first duly sworn, according to law, on his oath, deposes and says:

Direct Examination by Mr. Garrison: 10

Q. Where do you reside, Mr. Lamb? A. Ardmore, Pennsylvania.

Q. You were a director of the Cape May Real Estate Company, were you not? A. Yes, sir.

Q. Did you receive any notice to attend a special meeting of the Board of Directors of that company to be held at the company's office in the City of Cape May on September 20, 1917?

Mr. McLaughlin: I object to that on the ground that it has not been shown that Mr. Lamb was a director during this period or was entitled to receive such notice. 20

Mr. Garrison: My contention, of course, is that the Minutes are in evidence, which show that fact.

A. I received no notice of such meeting.

30 Q. Did you receive any notice to attend a special meeting of the Board of Directors of the Cape May Real Estate Company to be held at the company's office at the City of Cape May on October 20th, 1917?

Mr. McLaughlin: The same objection.

A. I received no such notice.

40 Q. Did you receive any notice to attend a special meeting of the Board of Directors to be held at the office of Wescott & Weaver, in the City of Camden, New Jersey, in October 30th, 1917?

Mr. McLaughlin: The same objection.

A. I did not.

(No Cross Examination.)

Taken and sworn to before me this
10 1st day of October, 1925.

ALFRED B. VAN HOUTEN,
Master in Chancery of New Jersey.

State of New Jersey, } ss.:
County of Hudson, }

CLARENCE L. BUZBY, being first duly sworn,
20 according to law, on his oath, deposes and says:

Direct Examination by Mr. Garrison:

Q. Where do you reside, Mr. Buzby? A. Lans-
downe, Pennsylvania.

Q. You were a director of the Cape May Real
Estate Company, were you not? A. Yes, sir.

Q. Did you receive any notice to attend a special
meeting of the Board of Directors of the Cape May
Real Estate Company to be held at the company's
30 office in the City of Cape May on September 20th,
1917?

Mr. McLaughlin: I object to that on the
ground that it has not been shown that this
witness was a director of the company dur-
ing that time or that he was entitled to re-
ceive such notice.

Mr. Garrison: The answer is that the fact
is shown by the exhibits that he was a di-
rector at that time.

40 A. No, sir.

Q. Did you receive notice to attend a special
meeting to be held at the office of the company in
the City of Cape May on October 20th, 1917?

Mr. McLaughlin: The same objection.

A. No, sir. 10

Q. Did you receive notice to attend a special
meeting of the Board of Directors of the Cape May
Real Estate Company, to be held at the office of
Wescott & Weaver, in the City of Camden, New
Jersey, on October 30th, 1917?

Mr. McLaughlin: The same objection.

A. No, sir. 20

Cross Examination by Mr. McLaughlin: 20

Q. As a matter of fact, Mr. Buzby, you would
not claim that you were a director of this company
on September 20th, 1917? A. On September 20th,
1917, well, I don't recall the dates, to tell you the
truth.

Q. You would say that you were a director on
October 20th, 1917, either, would you; I mean you
would not swear to it? A. May I have access to
the Minutes? Not just now, if you answer the ques-
30 tion. A. I don't recall.

Q. And you wouldn't swear that you were a di-
rector on October 30th, 1917, would you? A. I can't
recall that.

Taken and sworn to before me this
1st day of October, 1925.

ALFRED B. VAN HOUTEN,
Master in Chancery of New Jersey. 40

10 Mr. Garrison: Mr. McLaughlin, I hoped to have here today a Mr. Edwards. The minutes of a stockholders meeting held on October 25th, 1917, contain a certificate signed by Samuel J. Edwards, certifying that he had mailed a notice of that meeting to all of the stockholders of the Cape May Real Estate Company; I asked Mr. Edwards to come here today; he is connected with the office of Harvey Carr; but he was unable to come, because he had some business transactions or settlements which he couldn't leave. All I could ask him is whether or not he knew that that was the fact. If you will concede that he would so testify if he came here, I will close my testimony today. If not, I shall probably have to ask him that question down in Camden.

20 Mr. McLaughlin: I understand that he would so testify if he were here today.

It is stipulated that if Samuel J. Edwards were produced and sworn as a witness, he would testify that the contents of an affidavit signed by him and attached to the Minutes of October 25, 1917, as they appear in Exhibit D-1, are true; and that he did the things which he stated in the affidavit that he did.

30 State of New Jersey, }
County of Hudson, } ss.:

FRANK D. SCHROTH, being recalled for further examination, on his oath, deposes and says:

Direct Examination by Mr. Garrison:

40 Q. Have you had any connection since you have been receiver of the Cape May Real Estate Com-

pany with a condemnation proceeding instituted by the government of the United States? A. Yes, sir.

Q. Has that proceeding ended; has the government paid the condemnation money to you? A. It has not.

Q. That is still pending, that proceeding? A. 10 Yes, sir.

Q. And that proceeding, as I understand it, does cover the 57-odd acres which Mr. Shields was negotiating with the government concerning? A. Yes, sir.

Q. Has any money whatever been received on behalf of the 57½ acres which Mr. Shields was negotiating concerning, or any of the other lands comprised within that tract? A. No, sir.

Cross Examination by Mr. McLaughlin: 20

Q. Why is this proceeding still pending? A. It is in the Court of Claims, still being prosecuted.

Taken and sworn to before me this
1st day of October, 1925.

ALFRED B. VAN HOUTEN,
Master in Chancery of New Jersey.

30 Mr. Garrison: We will undertake to furnish to you from these D-1 and D-1a exhibits such portions as we desire to use in the Supreme Court if you will undertake similarly to do the same as to what you want to use, and we will then each O. K. those particular portions to be printed and returned, instead of asking the court to go through this mass of books.

Mr. McLaughlin: That is agreeable to us. 40

Depositions for Plaintiffs-Respondents.

TO THE CHIEF JUSTICE OF THE SUPREME COURT OF NEW JERSEY :

I, Alfred B. Van Houten, a Master in Chancery of New Jersey, do certify that the foregoing depositions were taken in my immediate presence and hearing, by Harry Schirmer, a stenographer selected by me and by me first duly sworn to fairly and truly take stenographically and reproduce the same in typewriting; and I believe the foregoing transcript, made by the stenographer selected by me and sworn as aforesaid, fairly and accurately states the testimony given.

ALFRED B. VAN HOUTEN,
Master in Chancery of New Jersey.

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Depositions for Plaintiffs-Respondents.

(Filed January 11, 1926.)

NEW JERSEY SUPREME COURT.

30

PETER SHIELDS, Plaintiff, v. CAPE MAY REAL ESTATE COMPANY, Defendant.	}	Action At Law.
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Depositions on behalf of the plaintiff in the above entitled cause, taken before me, Alfred B. Van Houten, a Master in Chancery of New Jersey, at

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Peter Shields—Direct Examination.

my office, 75 Montgomery Street, Jersey City, New Jersey, this nineteenth day of December 1925, at ten o'clock in the forenoon, pursuant to agreement of counsel.

APPEARANCES :

Messrs. McCARTER & ENGLISH (Mr. Egner) Attorneys for Plaintiff. 10
LINDLEY M. GARRISON, Esq., and CARLYLE GARRISON, Esq., Attorneys for Defendant.

It is stipulated that the depositions be taken stenographically and the signature of the witness waived.

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State of New Jersey, }
County or Hudson, }ss.:

PETER SHIELDS, being first duly sworn according to law, on his oath deposes and says :

Direct Examination by Mr. Egner :

Q. Mr. Shields, you were at one time a Director of the Cape May Real Estate Company? A. I was. 30

Q. You are the Peter Shields in whose favor the Board of Directors of the Cape May Real Estate Company, in a meeting held on October 20th, 1917, directed the execution of a bond and warrant for judgment to secure the payment of the sum of \$31,041.75? A. I am.

Q. You had been an officer and director of the Cape May Real Estate Company a great many years, had you not? A. I was. 40

40

Q. Since approximately what date? A. Well, February, 1903, up to 1909.

Q. Without going into too much detail, just tell us in your own words what the assets of the Cape May Real Estate Company consisted of?

10 Mr. Garrison: At what time, Mr. Egner?
Mr. Egner: Prior to 1917.

A. When Mr. Graves took the property over, the company had assets exceeding \$50,000.

Q. I don't mean moneys in bank, Mr. Shields; what real estate did the company own?

Mr. Garrison: Just prior to 1917 he is asking you.

20 A. The company owned altogether 5500 acres, out of which they had old Plan A, which comprised about 350 acres.

Q. And this property was in and about Cape May? A. Yes; in the City of Cape May.

Q. When did Mr. Graves acquire his interest in the Cape May Real Estate Company? A. In 1911.

30 Q. And he continued to hold that interest until approximately what date? A. I think he went into the receiver's hands within two years after that.

Mr. Garrison: Within two years?

A. That is my recollection. I think he went in the receiver's hands in either 1913 or 1914.

Q. Well, after he went into the receiver's hands, do you know what became of his shares of stock owned by him in the Cape May Real Estate Company? A. Yes.

40 Q. What became of it? A. It was turned over

to the bankers committee of his, Mr. Graves's creditors, who formed themselves into a holding company called the Mutual Liquidating Company.

Q. Can you tell us what gentlemen constituted the bankers committee? A. Through Honorable David Baird, of Camden, I met William Mitchell Elliott, who is President of the Central National Bank of Philadelphia, who was the active man for the bankers; associated with him as president was Mr. Franklin D'O'lier, who is now Colonel. 10

Q. Who else? A. Mr. W. A. Law was another; Mr. Gates McGarry. I never had much, if any, dealings, Mr. Egner, with any of the gentlemen except the first two.

Q. That is, Messrs. Elliott and D'Olier? A. Well, Mr. Law was present at some of the meetings, but he never was active. 20

Q. Who was in active control, as far as you observed, of the affairs of that committee? A. Mr. W. T. Elliott did all the business, so far as I was concerned; he had Mr. D'Olier at times, as I stated, in conference, but that wasn't very often; all the details of my negotiations were conducted exclusively through Mr. Elliott.

Q. Now you say, Mr. Shields, that this committee formed the Mutual Liquidating Corporation? A. That is right. 30

Q. Did that corporation in turn suggest, and through its stock ownership in the Cape May Real Estate Company, elect directors of that company? A. It did. Will you allow me to correct one thing? There was another Philadelphia man, a bond broker, who was on that committee, I just forget his name. I would just like a note made of that, because I stated that is all that I remember the names of.

Q. Now, when, after the Mutual Liquidating 40

Corporation acquired their stock, were you elected a member of the Board of Directors?

Mr. Garrison: You mean of the Cape May Real Estate Company?

10 Q. Of the Cape May Real Estate Company? A. Shortly afterward.

Mr. Garrison: When would that be? Can't you give us some idea?

A. Sometime in the month of April.

Mr. Garrison: April, 1917?

A. April 1916.

20 Q. Now, either before that time, immediately before that time or after that time, did you have any talks with Mr. Elliott or Mr. D'Olier, with respect to the sale of all or any part of the Cape May Real Estate Company's real estate to the United States, or any other party?

30 Mr. Garrison: I object to this question as irrelevant and immaterial to the issue here being tried, and on the ground that nothing that Mr. Elliott or Mr. D'Olier said to this witness, or agreed with this witness, can bind the Cape May Real Estate Company.

A. I did. I called to see Mr. Elliott and told him that in my opinion there was a likelihood of our country becoming involved in the great war, and that I considered that we had a wonderful proposition for a naval base at Cape May. He 40 agreed with me; and I told him I was going to

Washington to see the officials there. He agreed with that. I went to Washington; I introduced myself to the Honorable Josephus Daniels, and explained to him about this harbor we had, of which he knew nothing. After considerable conference, he sent for Admirals Benson and Mayo, who were then his advisors. They asked me a great many questions regarding the depth of the harbor and its size. And after several more conferences they decided, after a meeting with Honorable Newton Baker, who was then the Secretary of War, to send a joint committee of the Navy and Army, or War Department, to make an examination and investigation of the statements that I had made regarding the harbor and its depth. This committee went to Cape May; they made their examination, made soundings as to the depth of the harbor, and they returned to Washington and made a favorable report as to Cape May's advantages in case we became involved in the war. We had a number of other conferences, and then Secretary Daniels turned me over to Captain J. S. McKean; he is now on the Pacific Coast, otherwise I would have had him here; he is in San Francisco. He, I found out, was Admiral Benson's assistant in naval operations. Mr. Daniels told me to take up the question of price and the purchase or leasing of the property with Captain McKean, which I did. I first asked \$10,000 per acre for the property they had in mind, and he would not agree to this; he stated that the committee had examined the harbor and had found that while there was sufficient water inside of the harbor, depths exceeding thirty feet, they had found a lot of shallow places at the entrance, and it would be necessary to make a channel in there so as to get their boats into this deep water; for that reason he would not agree 40

to the price. We had a number of meetings regarding this question, and finally he made an offer of \$3,000 per acre for about 57 acres, a fraction over 57; and after consulting with Mr. Elliott, I had an understanding with Captain McKean, in case the Government acquired any additional property, that they would pay \$6,000 per acre for it. Mr. Elliott advised me to accept the Government's proposition, as it meant so much to the future of the Cape May Real Estate Company. A bill was prepared through the United States Senate, presented and passed there for \$175,000. When this bill went over to the House there was a lot of objections raised. I couldn't understand where it emanated from, neither could Captain McKean, who was still actively working on this proposition. Captain McKean one day sent for me, wired me, rather, to come to Washington, which I did.

Q. Where were you living at that time? A. I was living in Philadelphia at that time. He said that they wanted to get my position on this property, and that we had been slow in fixing up the title; I told him that wasn't a fact, that we had done everything that we had been asked, except a few minor details. He then sent to the Navy—that is, the Solicitor General's office of the Navy, and had the Assistant Solicitor who attended to that, who was attending to our matter, come to his office. He said, "Why don't you get this title fixed up?" "Well," he said, "we haven't got everything arranged." He said, "We finally have got to turn this matter over to the Department of Justice. They have got, in turn, to send these papers on to the District Attorney for the district in which Cape May is located, for them to finally pass upon them." Captain McKean, who was a very frank, blunt fellow, said, "Well, my friend," he said, "if

you don't get moving, Jesus Christ will be back on earth before you get this work done. This means war; we need this property." So the Assistant Solicitor told him that I had paid the tax amounting to over \$1,700, that I had furnished a deed, and there were only some minor details to be arranged, and he saw no reason why the Government could not do as Captain McKean had suggested and take possession of the property. This they done.

Q. Now, just a minute. Did that Act which you have referred to, which was passed by the Senate, ever become a law; was it finally passed? A. I will get up to that; I am going to follow that up; this comes after that. When the bill was sent to the House, I was notified by Mr. W. J. Browning, the Congressman from the First District of New Jersey, that someone was objecting to the purchase of this property, and that they were going to appear at a hearing of the House Naval Committee, I think he said, in September, 1917. Such a meeting was held, and it is designated as Bulletin No. 4, of a meeting of the House Naval Committee, at which Mr. Graves, Mr. Nelson Z. Graves, sent a paid lobbyist and made mis-statements to the House Naval Committee.

Mr. Garrison: Of course, I object to the conclusions of this witness, and ask to have them stricken out.

This meeting is a matter of public record and a copy of it can be secured from the proper authorities in Washington at any time. That made no difference with the committee, but it did with the price of our property. The Government took advantage of this contention they found existing in the company, and started new negotiations with

me, and made an offer of \$150,000 for what they had already agreed to pay \$175,000 as you will find in my correspondence with Secretary Daniels.

10 Mr. Garrison: Again I object to this witness concluding that they had agreed on \$175,000.

A. The Act then passed on October 6th, I think the date was, 1917, for \$150,000 and approved on that date.

Q. For how many acres, approximately? A. For 57 acres, the same amount that I had sold them for \$175,000.

20 Mr. Garrison: Again I object to the conclusion of the witness which is included in the words "which I had sold for \$175,000."

Q. During all these negotiations, who paid your expenses to and at Washington? A. I did.

Q. You say you had correspondence with Secretary Daniels? A. I did.

30 Mr. Garrison: I am willing to stipulate that any alleged copies of letters that are contained in this printed matter may be offered as if they were the originals; by that I mean, I won't dispute the signature of any letter; but I desire to reserve the right to object to the materiality or relevancy of any letter so proposed.

Mr. Egner: I offer in evidence the following letters:

40 I offer in evidence letter dated April 3rd, 1917, from Peter Shields to Honorable Josephus Daniels.

I offer letter dated April 28, 1917, from Peter Shields to Honorable Josephus Daniels.

I offer letter dated June 14, 1917, from Honorable Daniels to Peter Shields.

I offer letter dated June 15, 1917, from Peter Shields to Honorable Josephus Daniels. 10

I offer letter dated June 16, 1917, from W. L. Stevens, Mayor, to Honorable Josephus Daniels.

I offer letter dated July 7, 1917, from Peter Shields to Honorable Josephus Daniels.

I also offer letter dated July 11, 1917, from Josephus Daniels to Cape May Real Estate Company. 20

I also offer letter dated July 14, 1917, from Josephus Daniels to Cape May Real Estate Company, Peter Shields, President.

Mr. Garrison: I object to the offer of the letter from Peter Shields to Secretary Daniels, dated April 3rd, 1917, upon the ground that it is immaterial and irrelevant to the issues in this case. With objection I also repeat as to the letter from Secretary Daniels to Peter Shields, dated April 28th, 30 1917; and also to the letter from Secretary Daniels to Mr. Shields, dated June 14, 1917; and to the letter from W. L. Stevens, Mayor to Secretary Daniels, dated June 16, 1917; and also the letter from Mr. Shields to Secretary Daniels, dated July 7, 1917; and the same objection is made to the letters from Secretary Daniels to Cape May Real Estate Company, dated July 11, 1917, and the letter 40

between the same parties dated July 14, 1917.

(Subject to the objections the letters were marked, respectively, Exhibits P-2 to P-9 in evidence.)

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Exhibit P-2.

Cape May Real Estate Co.
Cape May, N. J., April 3, 1917.

Hon. Josephus Daniels,
Secretary of the Navy,
Washington, D. C.

20 Dear Sir:

Replying to your letter of April 2, 1917, inclosing map which I am returning with an additional one, marked in red, indicating land at Cape May for air station site on which you wish quotations, I beg to say:

1. The area south of Pennsylvania Avenue contains 34.42 acres; north of Pennsylvania Avenue, including Delaware Avenue, 17.35 acres; total
30 51.77 acres. Delaware Avenue contains 2.89 acres.

2. We will sell this tract of 51.77 acres outright for \$156,000. We would prefer, however, not to sell Delaware Avenue unless you require it for your purposes.

You will notice from the map that it is a continuation of Beach Avenue, which is the main bounding street of the property on which lots have been sold. In case you need Delaware Avenue we
40 would then like to have a consultation between your

engineers and ours over the necessary change of layout east of the aviation tract that would be best for our mutual interests. Should you not buy Delaware Avenue, the price of the tract will be \$147,500.

3. We will lease the entire 51.77 acres, which includes Delaware Avenue, for \$9,500 per year, with privilege of the Government holding the lease for five years and purchase of the tract at any timed during period or expiration of lease. Any unexpired portion of lease price paid to be included in purchase price. The Cape May Real Estate Co. to pay all taxes and assessments during period of lease. We are willing to make this additional concession to the Government.

4. In case of lease or purchase (a) we will extend Kansas Avenue through to Cape May Avenue.

(b) The lease or purchase to include all streets and avenues in inclosed area, except Pennsylvania Avenue, and in case of purchase, Delaware Avenue as explained in paragraph 2.

(c) The Government to have the use of all open streets.

Your attention is called to the fact that the trolley road on Pennsylvania Avenue is standard gauge and is connected with both the Pennsylvania and Philadelphia & Reading Railroad, allowing freight cars to be shipped through direct from any point to the property without charge.

I will be pleased to give you any additional information, either in writing or by going to Washington to see you.

Please address me at Bryn Mawr, Pa.

Very truly yours,

PETER SHIELDS,
For the Cape May Real Estate Co.

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Exhibit P-3.

Cape May Real Estate Co.,
Cape May, N. J., April 28, 1917.

10 Hon. Josephus Daniels,
Secretary of the Navy,
Washington, D. C.

Dear Sir:

Confirming my conversation with Capt. J. S. McKean, United States Navy, on April 27th, I hereby desire to submit a new proposition covering the aviation field, submarine base and property for machine shops for repair of boats, etc. at Cape May, N. J.

20 1. We will sell the Government a tract of land commencing at the harbor front and Yale Avenue, thence along the center line of Yale Avenue 1,905 feet to Cape May Avenue; thence along Cape May Avenue 1,980 feet to the line of Kansas Avenue extended; thence along the center line of Kansas Avenue extended and Kansas Avenue 1,905 feet to the harbor front; thence along the harbor front 1,980 feet to the place of beginning; all as shown on map herewith.

30 The tract described contains 86.59 acres, the price for which will be as follows: For 57.73 acres, \$3,000 per acre, as formerly quoted you; for 28.86 acres along and adjacent to Yale Avenue, \$6,000 per acre. Yale Avenue is an improved street, containing city water pipe and has concrete walks and curbs. The building improvements consist of the Corinthian Yacht Club House, at the corner of Yale and Delaware Avenues, which cost approximately \$50,000. There are also other improve-
40 ments located along the line of this avenue. For

Exhibit P-3.

this reason the property adjoining Yale Avenue is much more valuable than the rest of the tract described. This improvement property on Yale Avenue, figured out at our actual lot selling basis on the different streets as sold in plan A, would amount to about \$486,000 or nearly \$17,000 per acre, so that our price of \$6,000 per acre is very low and reasonable. We have already refused an offer of \$100 per foot for the corner of Yale and Delaware Avenues. 10

In case you do not want the property adjoining Yale Avenue at the price quoted per acre, we will sell you an equivalent area east of Kansas Avenue at the price of \$3,000 per acre, as per our letter of March 30, 1917. The tract described does not have any city sewer, but its sewerage can be easily accomplished by the same methods in use at other nearby seaside resorts, viz, by the use of septic tanks. Our engineer is familiar with these systems. 20

2. In consideration of the Government buying this property, we will agree to dredge a channel of the same width and depth, viz, 25 to 30 feet, as dredged by the Government between the jetties from the inner end of the Government channel to deep water in the harbor and remove the two islands now in the harbor to the same depth, depositing the material on the area between Pittsburg Avenue and Sewells Point at localities to be indicated by us. All material to be deposited to the established grade. The amount of material to be dredged is estimated at about 1,000,000 or more yards and its removal is necessary to make a safe entrance to the harbor so that it will be available for the uses of submarines, the Mosquito Fleet, and other naval vessels. 30
40

3. The property is offered with the understanding that Pennsylvania Avenue has trolley tracks which can be used as auxiliary freight tracks, and that the public use of this street is not sold.

10 The city of Cape May agrees to provide light, electric power, and city water as per letter submitted by me to the department from the mayor of the city of Cape May.

4. In consideration of the Government buying the property we will agree that the purchase money is to remain in escrow, to be paid out for dredging the entrance of the harbor, as above outlined. The Cape May Real Estate Co. will either do the dredging or the Government can have it done at prices submitted by the lowest bidder.

20 We have already consulted with one of the large dredging companies who did a large part of the 21,000,000 yards of dredging already completed with reference to doing this work and contract can be entered into at once by us with this company for the work.

In case the dredging is undertaken by the Government careful provision should be made for the deposit of the material and the bringing of the fill to grade.

30 In case we do the dredging its cost can be paid as stated out of the purchase money of the property, which will remain in the hands of the Government until this work is completed. Should there not be sufficient funds in your hands to complete the dredging, we will agree to furnish any additional funds required to finish the dredging as outlined.

40 5. Should you desire to take the land offered east of Kansas Avenue, you will have the advantage of

having the harbor front already bulkheaded, for which, you note, we are making no additional charge.

6. We will also be glad to have the Navy Department use the Hotel Cape May as your summer headquarters, if you intended having one, and we will further agree to give reduced rates at the Hotel Cape May to Navy officers and their families these rates to be satisfactory to them. The Hotel Cape May is one of the largest and best equipped fireproof modern hotels on the Atlantic Coast and is within a short distance of the property, with which it is connected by trolley. 10

Inclosed herewith please find map showing the property in blue and the location of the hotel.

Kindly call on me for any further information you may require. 20

Kindly address me at Bryn Mawr, Pa.

Very truly yours,

PETER SHIELDS,
For the Cape May Real Estate Co.

Exhibit P-4.

30

June 14, 1917.

Dear Sir:

Referring to your letter of April 3 and April 28, and later conversations relative to lease or sale to this department of a tract of land at Cape May for use as a coastal air station, the department understands that you are now willing to sell the tract approximately 57.73 acres, bounded by the 40

water front and centers of Princeton Avenue, Cape May Avenue and Kansas Avenue, for \$3,000 per acre, with the proviso that Pennsylvania Avenue is to be left out for public use; and that you are willing to lease the same tract for the period of five years with the same proviso relative to Pennsylvania Avenue.

Please submit a definite proposition relative to the price of lease of this tract, subject to purchase later if authority is obtained from Congress.

The proposed lease should cover the following points:

(a) Lease to be yearly with privilege of yearly renewal at the same yearly rate during the continuance of the war.

(b) The lessor to pay all taxes.

(c) The rate at which water and electric power can be obtained.

(d) In case of purchase, the unexpired portion of any lease price to be deducted from the purchase price.

(e) In case of purchase the purchase price to remain in escrow to be paid for dredging a 30 foot channel, from inner end of Government channel to deep water in the harbor and remove two islands now in harbor as outlined in your letter of April 28.

If you can come to Washington, it will probably expedite the drawing and signing of the lease, which is considered urgent.

Very truly yours,

JOSEPHUS DANIELS.

Mr. Peter Shields,
Representing Cape May Real Estate Co.
Bryn Mawr, Pa.

June 15, 1917.

Hon. Josephus Daniels,
Secretary of the Navy,
Washington, D. C.

Dear Sir:

Replying to your letter of June 14, I beg to confirm the statement in your letter that the Cape May Real Estate Co. is willing to sell the tract of approximately 57.73 acres at Cape May, N. J. bounded by the water front and centers of Princeton Avenue, Cape May Avenue, and Kansas Avenue, for the sum of \$3,000 per acre, with the proviso that Pennsylvania Avenue is to be left open for public use; and that the Cape May Real Estate Co. is also willing to lease this tract for the period of five years with the same proviso relative to Pennsylvania Avenue in the event that the purchase price therefor can be authorized by Congress in accordance with House bill No. 4992, which has been presented.

The Cape May Real Estate Co. will charge as rent for this lease, which is understood is a temporary one and to cover the period until your department is authorized to complete the purchase, the sum of 6 per cent. per annum upon the agreed-upon purchase price amounting to \$175,000 as set forth in the bill, or the sum of \$10,500 per annum. My company will also agree that the unexpired portion of any rent after the consummation of the purchase shall be deducted from the purchase price, and if the term of the lease is of a comparatively short period before the consummation of the purchase, I am quite willing not to ask the rent upon even this unexpired portion of the term.

Answering categorically the statement of the provisions of the lease, I beg to submit the following:

10 (a) The lease to be for one year with the privilege of renewal from year to year at the same rent during the continuance of the war.

(b) The lessor to pay all taxes.

(c) I will obtain and have forwarded to you by the proper authorities of Cape May City the rates at which both water and electric power can be obtained.

(d) I have already answered above.

20 (e) It is agreed that in the case of purchase of this property, the purchase price shall remain in escrow to be paid for dredging about a 30-foot channel from inner end of Government channel to deep water in the harbor and remove two islands now in harbor, as outlined in my letter of April 28, 1917. In accordance with instructions from Capt. McKean and Commander Irwin, I have secured bids for this dredging and am negotiating with other dredging concerns.

30 At the request of your legal department, I am inclosing herewith blue prints of the tract to be leased and purchased,

Very truly yours,

PETER SHIELDS,
For Cape May Real Estate Co.

Exhibit P-6.

City of Cape May,
Cape May, N. J., June 16, 1917.

Hon. Josephus Daniels,
Secretary United States Navy,
Washington, D. C.

10

Sir:

Following the request of Mr. Peter Shields that the city of Cape May arrange to take care of your proposed aviation operation here on the new Cape May tract, covering the following items, I beg to advise that we will, upon request, continue our water main to said point as may be necessary to deliver such supply as may be required, and at our pumping station cost of 15 cents per gallon.

20

As to light and power I herewith inclose the Cape May Light & Power Co.'s schedule for same. This being a good strong concern I can fully recommend their assurance that they are prepared to deliver whatever current you may require.

In addition to the above our city will at all times and in every possible way cooperate with your department in all its operations here. Our limit in this regard will be the extent of our utmost ability.

30

Very respectfully,

W. L. STEVENS,
Mayor.

Exhibit P-7.

Cape May Real Estate Co.
Cape May, N. J., July 7, 1917.

10 Hon. Josephus Daniels,
Secretary of the Navy,
Washington, D. C.

Dear Sir:

20 Confirming our conversation in Washington yesterday, I held a meeting today with my associates and succeeded in obtaining their consent to accept your offer to purchase on behalf of the United States the tract of land lying between the center line of Princeton, the center line of Kansas, the center line of the westerly side of Cape May Avenue and the harbor front of Cape May, N. J., for the sum of \$150,000 and I have accordingly instructed that a proper deed be prepared and presented to your solicitor for approval. Further confirming our understanding, it is agreed that the purchase money shall be forthwith deposited in a banking institution to be held by it and paid to the Cape May Real Estate Co. the vendor, upon the delivery of a deed or deeds in form satisfactory to your solicitor and upon the production of searches or an abstract of title, or a policy of title insurance satisfactory to him, and upon the delivery of an agreement by the vendor to apply the purchase money to the payment of the cost of dredging in the removal of two islands in the harbor, as well as the construction of a channel to connect with the Government's channel which extends between the jetties to the Atlantic Ocean, less the necessary costs of engineering and the payment of liens, which shall not exceed the sum of \$25,000.

30

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Exhibit P-7.

It is agreed that notwithstanding the fact that this sum of \$25,000 or so much thereof as may be required for these purposes, may be so used, the vendor will expend the full sum of \$150,000 for the cost of dredging, if necessary. The payment of these sums, which has been suggested by my associates, constitutes the only modification to our verbal and written understanding, and an agreement to this modification has aided me in obtaining their consent to a reduction in the amount of the original purchase price, and an immediate settlement of the matter.

I suggest that the purchase money be deposited with the Central National Bank of Philadelphia, and agree that if this bank is selected as the depository that the United States shall not be liable for loss or misapplication of the deposit.

I have obtained a settlement certificate of the West Jersey Title & Guaranty Co. while our other negotiations were proceeding, which shows the condition of this title, and I have instructed that the deeds and other papers, including an escrow agreement, be prepared, and upon their completion will forward them to your solicitor for his approval. I am taking upon myself the preparation of these papers so as to comply with Capt. Irwin's expressed desire to get possession of the property at the earliest possible moment.

Confirming my written statement as well as the letter of the mayor of the city of Cape May to you under date of June 16, 1917, we will arrange for the extension of the water main to such point as you may desire for the proper supply of this tract. The cost will be the usual pumping cost of the city of Cape May of 15 cents per 1000 gallons. You will notice the statement of the mayor in the above letter concerning the supply by the Cape May Light & Power Co.

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The City of Cape May has also agreed to gravel the roadbed of Pennsylvania Avenue from Yale Avenue through the above tract.

The Cape May Real Estate Co. will further agree, if you so desire, to permit you to extend the city sewer along the streets owned or controlled by
10 the company.

Very truly yours,

CAPE MAY REAL ESTATE CO.,
By Peter Shields, President.

Exhibit P-8.

20

Navy Department,
Washington,
July 11, 1917.

Gentlemen:

The receipt is acknowledged of your letter of the 7th instant in which you offer to sell to the United States, in consideration of the sum of \$150,000 a certain tract of land at Cape May, Cape May County, New Jersey, together with all improvements, riparian and other rights, privileges and easements of every kind whatsoever appurtenant or appertaining thereto, which tract of land may be more definitely described as follows:
30

All that tract of land bounded on the North by the waters of Cold Spring Harbor; on the east by the center line of Kansas Avenue, prolonged; on the south by the center line of the northerly side of Cape May Avenue, and on the west by the center line of Princeton Avenue; containing in all 57.527 acres, more or less; it being understood that there
40 is to be excepted from the tract to be conveyed that

portion of Pennsylvania Avenue that extends from the east to the west.

Your offer as set forth above is hereby accepted on the part of the United States on the following terms and conditions, namely: That you are to execute a general warranty deed conveyed to the United States a valid fee simple title to the prop- 10 erty, together with all improvements, riparian and other rights, privileges and easements whatsoever appurtenant or appertaining thereto; to furnish a satisfactory abstract and such other title papers as the Attorney General may require to enable him, in accordance with the provisions of Section 355 R. S. to pass upon the validity of the title proposed to be conveyed to the United States; to satisfy all taxes, liens, and other charges or encumbrances whatsoever that may be outstanding against the 20 property up to and including the date of transfer of title to the United States; that you are further to grant to the United States an easement in and through the streets now or hereafter owned or controlled by your company outside of the tract to be conveyed to the United States, which easement is to be for the purpose of permitting the United States to construct therein a sewer or sewers for the purpose of connecting the tract to be purchased with the sewer system of Cape May as it is at present located or may hereafter be located; that you 30 are to take the necessary steps to secure an extension of the present water system of Cape May in order that a water supply be furnished to the tract to be acquired by the United States; that you are also to take the necessary steps to provide for the grading and surfacing with gravel or other similar material of the road bed of Pennsylvania Avenue from the easterly boundary of the tract to be conveyed to its intersection with Yale Avenue; and 40

that the consideration herein agreed to be paid for this tract is to be deposited by you with the Secretary of War in accordance with the provisions of Section 8 of the Act of March 4, 1913 (37 Stat. 827) as modified by the provisions contained in Section 4 of the Act of March 4, 1915 (38 Stat. 1053), such deposit to be used by the Secretary of War in doing appropriate dredging and making improvements in Cold Spring Harbor and providing for a channel to connect said harbor with the present Government channel in Cold Spring Inlet.

10

In so far as the foregoing conditions with respect to the extension of the water system and the improvement of Pennsylvania Avenue are concerned it is considered that the Department's requirements will be satisfactorily met in case there are furnished duly certified copies of the authorization by the City Council of Cape May authorizing and making the necessary appropriation for the extension of the water system and for the improvement of Pennsylvania Avenue as set forth above.

20

It is required that this paper received your prompt attention and that the appropriate title papers be forwarded to the Department on the earliest date practicable. The Department will be in a position to authorize the payment of the purchase money in accordance with the foregoing as soon as the Attorney General has passed favorably on the validity of the title proposed to be conveyed by you to the United States.

30

Very respectfully,

JOSEPHUS DANIELS,
Secretary.

Cape May Real Estate Company,
Mr. Peter Shields, President.
Racquet Club, Philadelphia, Pa.

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Exhibit P-9.

July 14, 1917.

Gentlemen:

Referring to the Department's letter to you of July 11, 1917, accepting your offer to sell to the United States, in consideration of the sum of \$150,000 a certain tract of land at Cape May, Cape May County, New Jersey, containing 57.727 acres more or less, and to the personal call on the Department this day of Mr. Shields of your company and Mr. Norris, your attorney, you are advised that that portion of the terms and conditions relating to the deposit of the consideration to be paid for this land with the Secretary of War in accordance with the provisions of the Act of March 4, 1913 (37 Stat., 827) as modified by the provisions of the Act of March 4, 1915 (38 Stat., 1053), for the purpose of doing certain harbor improvement work, is modified in accordance with the verbal understanding reached this day.

10

20

As thus modified it will be expected that at least \$125,000 of the purchase money to be paid for this property is to be expended by you in making certain improvements in the harbor. It is further understood that in case the \$125,000 is not adequate to accomplish the improvements desired you will expend towards that purpose not less than an additional \$25,000.

30

In order to secure the expenditure of this money in the manner aforesaid, it will be expected that you will enter into an appropriate agreement with the Navy Department.

Very respectfully,

JOSEPHUS DANIELS,
Secretary.

Cape May Real Estate Company,
Mr. Peter Shields, President,
Cape May, N. J.

40

Q. Now, did the Government actually take possession of those 57 acres? A. It did.

Q. When did they take possession, approximately? A. They took possession, I would say, and started work, about August, 1917.

10 Q. What did they actually do on this property?

Mr. Garrison: I object to that as immaterial what the Government did.

A. Well, they actually spent upwards of \$200,000 in building, started the erection of a hangar for dirigible purposes, and made general improvements for building some docks for their boats, made it just like they would any naval base.

20 Q. Did you attend that meeting of the Committee held on September 24, 1917? A. No, I didn't.

Q. You knew, though, that that meeting was taking place, did you, at the time? A. Yes, I was told.

Q. Do you know how much of these improvements made by the Government on the property had been completed by that time? A. Yes; that is stated in detail at that meeting.

Q. Well, do you know yourself? A. Oh, yes, certainly.

30 Q. Had they been completed, or approximately so? A. On that work they expended over \$200,000. Of course, they spent considerably more than that afterward.

Q. Now, at any of these talks that you had with Mr. Elliott with respect to the sale of the property, was anyone else present? A. No; my meetings were generally with Mr. Elliott, although before the war began there were some with Mr. Stanley Wilson, who was the Secretary of the Mutual Liquidating Company.

40 Q. How about Mr. D'Olier? A. Well, Mr. D'Olier

was at some of the meetings, but Mr. D'Olier had entered the war.

Q. Well, before he went to France did he attend any of the meetings you held with Mr. Elliott? A. Oh, yes.

Q. At which these matters were discussed? A. Oh, yes; the price of that and my contract, but not in regard to the Washington negotiations. 10

Mr. Garrison: I move to strike out the witness's conclusion about the contract.

Q. What do you mean by "my contract", Mr. Shields? A. I made an agreement with the Mutual Liquidating Company to purchase a certain interest from them that was owned by the Cape May Real Estate Company. 20

Q. And you refer to that written contract? A. I do.

Mr. Garrison: I thought when I made my objection that he meant some contract with the Government.

Q. Referring now to that contract which is in evidence, that, generally speaking, was a contract under which you undertook to purchase all of the assets formerly of Graves and then held by the Mutual Liquidating Company? A. It was. 30

Q. Including this stock of the Cape May Real Estate Company? A. Yes.

Q. By whom was that contract actually prepared, Mr. Shields? A. It was prepared in John J. Johnson's office, by Mr. Pritchard and Mr. Evans.

Q. Well, whom did Mr. Johnson represent? A. Mr. Pritchard represented the Third National Bank, of which Mr. Elliott was president, and it was prepared—Mr. Elliott himself was a lawyer, 40

and it was prepared jointly by those three gentlemen.

Q. Were you represented by any counsel at that time? A. I was not.

Q. Going back now to these talks, I want to know whether Mr. D'Olier attended any meetings
10 between you and Mr. Elliott at which the subject of the sale of the property to the Government was discussed? A. No; that was generally talked over between Mr. Elliott and myself.

Q. Were those discussions held before or after Mr. D'Olier went to war? A. I think after he went to war.

Q. At the time he went to war, did he go to France? A. He did.

Q. At that time he was president of the Cape
20 May Real Estate Company, was he not? A. Yes; and also the Mutual Liquidating Company.

Q. Do you know whether a successor was elected to Mr. D'Olier, as president of the Cape May Real Estate Company, when he went to France? A. Yes.

Q. And the Minutes will indicate that? A. The Minutes will indicate that.

Q. Now, Mr. Shields, at any of these conferences with Mr. Elliott, was anything said about your compensation? Just answer that yes or no. A.
30 Yes.

Q. Now, tell us what was said.

Mr. Garrison: I want to object, as I have heretofore; I understand my previous objection really would cover this, but for safety's sake I now renew my objection to any conversation between Mr. Elliott and this witness as not binding on the Cape May Real Estate Company.

A. As I stated, after all the trips that I made to Washington I reported back to Mr. Elliott, keeping him advised on everything that was taking place; at one of these meetings Mr. Elliott complimented me about the hard work I had had and what I had accomplished, and stated that they had not considered that the Cape May Real Estate
10 Company was worth anything as a banking feature of what they had taken over from Mr. Graves, and that I had put value into the proposition, and he said, "Your expenses and time must be considerable." "Well," I said, "They are, Mr. Elliott." I said, "I think I am entitled to a commission." He said, "What commission do you think you should receive?" I said, "Fifteen per cent." And he said, "I would be willing to give you twenty-five per cent
20 so far as I am concerned, because I think you have earned it."

Q. Now, was anything else said? A. Regarding that?

Q. Regarding commissions and compensation? A. Well, from time to time we discussed it, and he, of course, was always favorable to it.

Q. Now, at the time of these negotiations, and particularly in the month of July, 1917 and thereafter, what lawyer represented the Cape May Real Estate Company and the Mutual Liquidating Com-
30 pany? A. I met no attorneys until the preparation of the contract of agreement with the Mutual Liquidating Company, made with me; then I met Mr. Pritchard and Mr. Evans of John J. Johnson's office, and afterwards I met Mr. Norris, of Hepburn, Deschert & Norris' office in the West End Trust Building; both attorneys, so far as I know, represented the same client.

Q. Who? A. The Mutual Liquidating Company.

Q. How about the Cape May Real Estate Com-
40

pany? A. And also the Cape May Real Estate Company.

Q. Now, how often during the progress of those negotiations— A. I beg your pardon; Mr. Evans was a Director in the Cape May Real Estate Company.

10 Q. How often during the progress of those negotiations did you see Mr. Norris in connection with it? A. Well, I saw Mr. Norris considerably; when our negotiations for an attorney to go there to represent our side in some of these questions that came up regarding the release of a claim, or rather a mortgage held by the Colonial Trust Company, they were interested in it, and Mr. Norris went to Washington with me; he also went to Pittsburg to see this company, and I went to Pittsburg
20 to see them and had already arranged to have this property released, these 57 acres.

Mr. Garrison: The Colonial Trust Company was at Pittsburg, was it?

A. Yes, at Pittsburg; they were a Trustee.

Q. Did Mr. Norris go with you to Pittsburg? A. Yes.

30 Q. Did he also go with you to Washington? A. Yes, he did.

Q. And these visits were all in connection with these negotiations with the Government? A. They were.

Q. Now, Mr. Shields, I show you a book, of which a photostatic copy has been offered in evidence here as D-2, and I ask you what that book is? A. That is the Minute Book of the Cape May Real Estate Company.

40 Q. You are, of course, familiar with the books which have been offered here and marked Exhibits D-1, the large books? A. Yes.

Q. They were also the Minute Books of the Cape May Real Estate Company? A. They were also the Minute Books of the Cape May Real Estate Company.

Q. Do you know how this small book, Exhibit D-2, came to be used as a Minute Book of the Cape May Real Estate Company? A. I do. 10

Q. How was that; tell us? A. The books, as you notice there, are rather cumbersome.

Q. You had better say which books are cumbersome. A. The large Minute Books, as you notice, are very cumbersome; all the papers, with very few exceptions, of the Cape May Real Estate Company, were kept in the vaults of the Central National Bank.

Q. Of Philadelphia? A. Of Philadelphia; for instance— 20

Q. Including these large Minute Books? A. Including these large Minute Books; I only recall seeing those books at Mr. Norris' office once; if you will notice in the Minute Book they are typewritten and pasted in.

Q. In the large Minute Book? A. In the large Minute Book; and this was done by Mr. Norris to save the carting of those books up and down at every meeting. Mr. Norris took sick, I think it was about the middle of July— 30

Q. What year? A. 1917; and he went up to Maine; then the Directors, I understand, these people who were Directors in the company were employees of Mr. D'Olier and other interested that they had, and they failed to attend the meetings; I complained to Mr. Elliott and I said, "Now, I propose, with your sanction, to make changes on this Board", and he said, "Well, anything you do is agreeable to me." 40

Q. Now, you are a little ahead of the story, Mr. Shields. I want to know how you happened to use this book. A. I am getting to that, Mr. Egner. So I suggested and Mr. Elliott agreed that as some of these meetings were going to be held at Cape May, it was such a task to be carrying those large books around, that I would be given the right to get a small book, so that we could keep the Minutes in that, and he agreed to it, which accounts for this book. 10

Q. Now, Mr. Shields, calling your attention to the Minutes of a special meeting of the Directors of the company, held at Cape May, New Jersey, on September 20th, 1917, I ask you whether there was such a meeting, whether you attended it, and who else attended the meeting? A. At the special meeting held at Cape May, Mr. Elliott, Mr. Miller, myself and Mr. Schully. 20

Q. Will you look at these Minutes, Mr. Shields, and tell me in whose handwriting are those Minutes? A. C. Earl Miller, Secretary.

Q. Will you look at these Minutes and tell us whether they are according to your recollection an accurate transcript what happened at that meeting? A. It is correct.

Q. Now I notice, Mr. Shields, that the Minutes recite that you had expended the sum of \$5215.24 in payment of interest and taxes on the Two Mile Beach mortgage; had you, in fact, Mr. Shields, paid the interest and taxes referred to in that item? A. I had. 30

Q. And that Two Mile Beach was part of the property of the Cape May Real Estate Company? A. Yes, sir; that adjoined Wildwood Crest; that property had been threatened to be foreclosed by the Villa Land Company, I think that is the title 40

of the company, and they had gone so far as to place the foreclosure in their attorneys' hands.

Q. They had a mortgage on this property? A. They had a mortgage on this property and they were going to foreclose their mortgage for non-payment of interest; I was not aware that the foreclosure proceedings had been instituted when I made the contract with the liquidating Company. 10

Q. The contract offered in evidence here? A. That is right. Recognizing the value of the Two Mile Beach, I went to the owners of this mortgage and arranged to pay this \$5,000.

Q. Whatever the sum is that is mentioned in the Minutes? A. \$5,215.24; had I not done this, the company would not have been able to, or the receiver, to have sold this property for over \$400,000. 20

Mr. Garrison: I move to strike out the latter part of the answer as not proper evidence in this proceeding.

Q. At any rate, you paid the money and prevented the foreclosure? A. I paid the money and saved the Two Mile Beach.

Q. In the second item of that resolution it stated that you had advanced the sum of \$1,731.83 on account of taxes on property in Cape May City, between Princeton and Kansas Avenues, and so forth; had you, in fact, advanced that money? A. I paid that money; that is the property, the 57 acres, that I sold to the Government. 30

Mr. Garrison: I object to that conclusion in the answer and move to strike it out.

Q. You say the property included in that item was the same property which was referred to in 40

the negotiations with the Government of 57 acres?

A. That is it; that is correct.

Q. In item 4 of that resolution, Mr. Shields, there is reference to \$1,594.18 advanced by you for miscellaneous items which are referred to in detail in the resolution; will you look at those items and
10 tell us whether you had, in fact, expended the items there set forth? Will you state on the record what each of the sums were paid for, and who the parties were? A. Mr. Robinson was a carpenter, and he made some necessary repairs on the office building on Washington Street.

Q. You paid him how much? A. \$12.50.

Q. Go on with the next? A. There was some hardware necessary on the same building.

Q. That is the next item, \$1.13? A. \$1.13;
20 Harry Callahan was a tinner, there was a tin roof put on it.

Q. Take the \$150 for the charter? A. I didn't know that that charter was as far back in payment as I found it to be.

Q. Do you say that the charter of the Cape May Real Estate Company had been forfeited for non-payment of taxes? A. It had.

Q. And that is the sum you paid for the reinstatement of the company? A. Yes.

30 Q. You say civil engineer \$25? A. That was in preparing plans for these 57 acres.

Q. Who was he? A. I think that was done by Harry Bell; I am not positive but I think it was.

Q. Next is bookkeeper. A. The next is bookkeeper; that was an assistant that Mr. Miller had.

Q. What was his name? A. I will get that from Mr. Miller; right offhand I couldn't give it to you.

40 Q. Office expenses \$35.84? A. That was the Cape May office, that is different incidental expenses.

Q. Miscellaneous? A. Miscellaneous.

Q. J. S. Leaming, mortgage interest \$131.25? A. That was interest on a mortgage that Spicer Leaming had on the property.

Q. Next is 50 cents; that is plumbing in this office building I suppose? A. Yes.

Q. Next is Creft & Sullivan, insurance; what
10 was that insurance for? A. That, my recollection is, was also on this building.

Q. Eldridge, \$5 that was a lawyer, was it? A. Yes; for some law we had him look up.

Q. Some law he looked up for you and you paid him \$5? A. Yes.

Q. Have you any recollection what that was about, the law that you wanted him to look up? A. No; but I could find that out from Mr. Eldridge.
20

Q. You don't know now? A. No.

Q. Bell Telephone; where was that phone, \$21.76? A. That was Cape May. Brown & Earle, that is blue prints I had to get on this 57 acres. Noah Brown, that is cleaning the office.

Q. Secretary; who was he? A. Mr. Miller.

Q. Office expenses; what office was that? A. That was the same office.

Q. At Cape May? A. Yes, sir.

Q. For what period did you pay Mr. Miller as
30 Secretary that \$600? A. Well, when I was taken to Washington, that is, my time was taken up so, I took up the question of employing someone to get all these kinks straightened out that existed in the company, there had to be a lot of running down to Trenton about this tax that was due, and Mr. Miller had to go to Pittsburg and work out a lot of details with the Colonial Trust Company, he also had to do a lot down at Cape
40 May regarding this tax matter, regarding the Two

Mile Beach, and different other matters, and I took that question up with Mr. Elliott and told him what I was doing, and he said, "Well, you can't do all that alone," he said, "I don't see how you could do as much as you did."

10 Q. You haven't answered my question yet as to the period of time for which you compensated him when you paid him \$600 on October 1st, 1917?
A. I think that was three months; I am not positive of that, but I think either three or four months.

Q. At what rate was his salary? A. Well, I paid Mr. Miller, at the time when I employed him I didn't pay him as much as he was getting, but I paid him \$300 a month when he was Secretary of the real estate company; that is, I didn't pay
20 him, but the real estate company paid him.

Q. \$300 a month? A. That is what he received as Secretary of the Cape May Real Estate Company.

Q. Now, I call your attention to the Minutes of a meeting of the Directors in D-2 held on October 20th, 1917, and ask you whether you attended that meeting and who else attended it? A. Mr. Elliott, Mr. Miller, Mr. Scully and myself.

30 Q. Will you look at these Minutes and tell us if they correctly set forth what happened at that meeting? A. This is correct.

Q. Now, Mr. Shields, either on October 20th, 1917, or on September 20th, 1917, did the Cape May Real Estate Company have the money in its treasury to pay these items aggregating \$31,041.75?
A. No, sir.

Q. You executed, did you not, the affidavit which is part of the judgment record in connection with the judgment which is under attack in this matter?

40 A. I did.

Q. Will you look at that affidavit, of which I

show you a copy, and tell us if the matters and things therein contained are true? A. It is.

Q. Is that correct? A. That is correct.

Cross Examination by Mr. Garrison:

10 Q. Am I correct, Mr. Shields, in understanding that the various items to which you swore in this affidavit, and upon which the judgment was entered, are the same items as are contained in the list incorporated in the Minutes that you have previously identified and which I now show you?
A. Yes, sir.

Q. I note, Mr. Shields, that in the affidavit which you made and upon which the judgment was founded there are the following items sworn to as the consideration for which you received the
20 bond: "\$1176.86, with interest from June 10, 1916; \$1731.83 with interest from August 15, 1917; interest on bonds and mortgages upon the property of the company \$2703.38 with interest from June 7, 1916; \$1335 with interest from December 22, 1916; and \$131.25 with interest from January 15, 1917." Now will you please take these items in the order in which I read them and tell us what mortgages of the company or taxes, if it was taxes, it was paid on, in respect to the prop-
30 erty of the Cape May Real Estate Company? A. This, I can testify, is the amount that was paid for the taxes; it is stated here, taxes on—

Q. Which amount is that, \$1176.86? A. The first item?

Q. I want you to take them up in their order.
A. Oh, yes; the first one that you have underscored here is \$1176.86.

Q. What was that for? Maybe I can help you; was that taxes upon the Two Mile Beach prop-
40

erty for the years 1914 and 1915? A. No; that was a proceeding—I will have to keep my mind going on this thing, it is so long ago; it was interest on the mortgages and the taxes; of course I paid that; that is included in that \$5000 item.

10 Q. That is right; I want you to separate the items. A. I paid all of that, but I haven't got the receipts with me. I turned them into the Cape May Real Estate Company. You folks have got those.

Q. Without regard to us, isn't it true that the item of \$1176.86 was for taxes on the Two Mile Beach property of the Cape May Real Estate Company for the years 1914 and 1915? A. Well, that may be.

20 Q. Well, isn't it the fact? A. Well, I don't know; I haven't got the receipts; you folks have them.

Q. I can't try both sides of this case, Mr. Shields. You are making claim here that you are entitled to a certain amount of money to be repaid to you? A. Yes, sir.

30 Q. If you don't indicate it so that we can clearly know what the amount is that you say you paid, I don't see how you can expect the court to repay it. A. All the money I paid on the Two Mile Beach was for taxes and interest on mortgage.

Q. I am not disputing that; I am trying to get you to identify it; didn't you pay that \$1176.86 on the Two Mile Beach property? A. I will have to go over the receipts and separate those items, to show you; you folks have all the receipts; I haven't got them; I turned those all over, Mr. Egner, to the Cape May Real Estate Company. All I can say is, I spent the money, that is all.

40 Q. Wasn't the \$2703.38 item twelve months' interest upon mortgage held by the Ocean Villa

Land Company upon Two Mile Beach, due May 27, 1916? A. That may have been.

Q. Well, isn't it a fact? You are suing for it? A. I did pay off the interest.

10 Q. I call your attention to a Minute contained in the big Minute Book of a meeting held on the 21st day of June, 1916, at which the Minutes state there were present, Peter Shields, on page 339 of the Minute Book No. 2, Exhibit D-1A, you will observe therein the following proceedings: "Coun- 10
sel for the company presented a report from Peter Shields that he has paid twelve months' interest upon the mortgage held by the Ocean Villa Land Company upon Two Mile Beach due May 27, 1916, amounting to \$2,703.38, that Mr. Shields has also paid taxes upon the Two Mile Beach property for the years 1914 and 1915 amounting to \$1176.86," 20
those are all figures, "Also that the Cape May Real Estate Company is without funds at the present time to make these payments," and "Upon motion duly made, seconded and carried, it was resolved, that the company pay Mr. Peter Shields the foregoing sums out of the proceeds of sale of the premises at the Northeast corner of Beach and Madison Avenue, Cape May, New Jersey, which have been sold to David M. Ellis"; isn't it a fact that when that settlement was made you were paid 30
those sums? A. I don't remember that deal going through, Judge.

Q. Kindly answer my question? A. No; I don't recall it.

Q. Well, do you say you were not paid those sums? A. I don't recall.

Q. Do you say you were not paid those sums when that property was sold? A. I don't remember receiving that money from the company.

Q. You won't say you didn't receive it? A. I 40
have no recollection of receiving it.

Q. You won't say you didn't receive it? A. I don't remember ever receiving it.

Q. You won't say that you didn't receive it? A. Isn't that an answer?

Q. You; you haven't said whether you would say you didn't receive it? A. I have no recollection of having received it.

Q. I didn't ask you for your recollection; will you now swear that you didn't receive that money, those two items, aggregating— A. That is all I can say; I have no recollection of receiving that money.

Q. Does that lead you now to swear that you did not receive it? A. No, sir; it doesn't.

Q. Is Mr. Elliot alive today? A. Mr. Elliot is dead.

Q. You say that the practice of Mr. Norris, while he was in active management of the affairs and meetings of the Cape May Real Estate Company, whilst the stock of that company was held by the Mutual Liquidating Company, was to have typewritten Minutes of the meetings made and pasted in the big Minute Book; that is correct, is it not? A. That is correct.

Q. Because that was so cumbersome, you said, you obtained this little book in which the Minutes are now written? A. I did.

Q. And which you presented today? A. Yes.

Q. I understood you to say that while the Mutual Liquidating Company had the stock of the Cape May Real Estate Company, the Directors selected by the Mutual Liquidating Company to act as Directors of the Cape May Real Estate Company were employees of D'Olier or others interested in the Mutual Liquidating Company? A. I think I said largely.

Q. Well, I didn't mean to pin you down on that.

Then you said that they, or some of them, failed to attend the meetings? A. That is right.

Q. And you made some changes? A. That is right.

Q. What changes did you make? A. I elected some of the minority stockholders, men who had their money invested in the company.

Q. When did you make those changes, and how? A. At the meetings.

Q. Contained in the little book? A. Contained in both books; some changes were made at Mr. Norris' office.

Q. All of such changes, I presume, are recorded in either the big Minute Books or in this little Minute Book, are they? A. Well, sometimes mistakes are made in the records of Minutes, but as a general thing they are correct.

Q. (Last question repeated.) A. Yes.

Q. They are recorded in either the big or little books? A. So far that goes, with the qualification I made, that sometimes mistakes are made; you asked me if that is absolutely correct; I couldn't say that.

Q. I didn't ask you whether the Minutes are correct. You having said you caused changes to be made in the Board of Directors, I asked you whether or not such changes were recorded in either the big Minute book or the little Minute book? A. Oh, yes.

Q. You brought suit against the Mutual Liquidating Company in the Court of Common Pleas, No. 5, of the County of Philadelphia, at the September Term, 1917, did you not? A. I did.

Q. I am going to hand you the record in that case which is in evidence here as Exhibit D-3, and from that record, on page 2 of your statement of claim, the 4th paragraph, leaving out that

10 which I understand is immaterial, reads as follows: "On account of taxes and other obligations as provided in said Exhibit A, the sum of \$8,541.15 as he (Shields) was obliged to pay by virtue of said contract"; and I ask you whether that sum of money is not the aggregate of the other items alleged by you to be the consideration for the bond in this case other than the item for commissions?
A. Yes.

Taken and sworn to before me this
19th day of December, 1925.

Master in Chancery of New Jersey.

20 In connection with the Minutes offered in evidence, Mr. Egner objects to the printing or use of any minutes of meetings of stockholders prior to the meeting of May 15th, 1915, or subsequent to the meeting of October 25th, 1917.

30 With respect to the Minutes of meeting of Board of Directors, Mr. Egner objects to the use of any minutes of meetings held after October 24th, 1917.

With respect to the exemplified copy of the record in *Shields v. Mutual Liquidating Company*, it is agreed that the catalogue contained in the exhibit, and on pages 15 to 92, may be omitted.

40 I, Alfred B. Van Houten, a Master in Chancery of New Jersey, do certify that the foregoing depositions were taken before me, in my immediate presence and hearing, by Harry Schirmer, a sten-

ographer selected by me and by me first duly sworn to fairly and accurately take said depositions and reproduce the same in typewriting; and I believe the said depositions, taken by said stenographer, sworn as aforesaid, fairly and accurately state the testimony given.

ALFRED B. VAN HOUTEN,
Master in Chancery of New Jersey.

10

**Depositions for Plaintiffs-
Respondents.**

(Filed January 6, 1926.)

20

NEW JERSEY SUPREME COURT.

PETER SHIELDS, Plaintiff, v. CAPE MAY REAL ESTATE COMPANY, Defendant.	}	Action at Law. On Rule to Show Cause.
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Depositions taken on behalf of plaintiff in the above entitled cause before Mildred Higgins, a Notary Public, at the office of Thomas F. Gain, Esq., 1005 Morris Building, Philadelphia, Pa., on Tuesday, December 22nd, 1925, at two-thirty o'clock P. M., under Rule to Show Cause in the above entitled cause, pursuant to stipulation.

40

APPEARANCES:

Messrs. McCARTER & ENGLISH, by Arthur Egner, Esq., Attorneys for Plaintiff.

10 LINDLEY M. GARRISON, Esq., by Thomas F. Gain, Esq., of the Philadelphia Bar, and Carlyle Garrison, Esq., Attorneys for the defendant and for Frank D. Schroth, Receiver.

(It is stipulated that the foregoing depositions on the part of the plaintiff may be taken before Mildred Higgins, a Notary Public at the time and place aforesaid, and that notice and all statutory requirements with reference thereto are hereby waived, and that the signature of the witness be waived.)

20

C. EARLE MILLER, being duly sworn according to law was examined and testified as follows:

By Mr. Egner:

30 Q. Mr. Miller, you reside in Philadelphia? A. I reside in Glenside. That is a suburb of Philadelphia. My business is here in Philadelphia.

Q. You were at one time secretary of the Cape May Real Estate Company? A. Yes, sir.

Q. I show you original small Minute Book of which a photostatic copy has been offered in evidence as D-2 and ask you whether during the time covered by the minutes you were secretary of the Cape May Real Estate Company? A. Yes, sir.

Q. The contents of that book are in whose handwriting? A. Mine.

40 Q. Where the signature, "C. Earle Miller" ap-

pears, that signature is in your handwriting? A. That is my handwriting.

Q. Can you tell us how you came to use the small book as a Minute Book of the Cape May Real Estate Company? A. At the time I became secretary of the Company the minute books I understood were in charge of, I think the Central National Bank. 10

Q. Of Philadelphia? A. Of Philadelphia, yes—at least in charge of somebody down there, and they were not very accessible, and we kept this Minute book instead, and Mr. Shields took me there to see the President of the Bank.

Q. What was his name? A. William Elliott. He explained to Mr. Elliott that he was going to engage me as bookkeeper and clerk and give me charge of the accounts of the Company, and any papers or so forth I needed it would be all right to give me. He took me down there and introduced me to him. 20

Q. Was anything said at that time about having a small minute book? A. Yes, he said that the large minute books were rather cumbersome and they seemed to need them up there so much they were going to keep the small minute book, and Mr. Elliott said that that would be all right.

Q. Mr. Miller, I show you the Minutes in this book of the Special Meeting of the Board of Directors held on September, 1917. Will you look at those Minutes and tell us whether they correctly set forth what happened at that meeting (showing witness book)? A. Yes, sir, these are correct. 30

Q. I show you the Minutes in the same book of special meeting held on October 20th, 1917, and ask whether those Minutes correctly set forth what happened at that meeting? (Showing witness book). A. Yes, sir. 40

Q. I notice in the meeting of September 20th, 1917, there is included a copy of a notice of the meeting, such notice bearing date September 15th, 1917. Did you, as secretary send out a notice of which that is a copy? A. Yes.

10 Q. I notice in the meeting of October 20th, there is a copy of notice of that meeting under date of October 17th, 1917. Did you in fact send out that notice? A. Yes, I sent notice out to all the directors.

Q. Do you know how many directors were provided for under the By-laws of the Company at that time? A. I think there were seven.

Q. At the time of these meetings were there in fact seven directors in office? A. No.

20 Q. What directors were in office at the time of these two meetings?

Mr. Gain: That is objected to as I think the minutes are the best evidence as to the incumbency of the directors.

The Witness: There were five at that time. There was Mr. Scully, Mr. Lloyd, Mr. Busby, Mr. Shields and myself.

30 Q. To whom did you send the notices I have just referred to of these two meetings? A. To the gentlemen I just named.

Q. I show you a copy of the Minutes of the special meeting of the Board of Directors held on July 5th, 1917. Will you look at that copy and tell us whether you recall that meeting and whether you signed the Minutes of that Meeting as secretary? A. Yes, I did. That meeting was held at Mr. Norris' office in the West End Trust Building.

Q. In Philadelphia? A. Yes, sir.

40 Q. I call your attention to entry in these Minutes as follows:

"Upon motion duly seconded and carried Mr. Ernest W. Lloyd was duly elected as a director of the Company to serve until the next Annual Meeting or until his successor shall be chosen."

Do you know to whose place Mr. Lloyd was elected at that time? A. Yes.

10

Mr. Gain: That is objected to as the Minutes are the best evidence of the incumbency of the office of director and as to the vacancies.

By Mr. Egner:

Q. Do you know in whose place he was elected? A. Yes, sir.

Q. In whose place was he elected? A. N. Z. Graves. 20

Q. During the time you were secretary of the company can you tell us whether one F. N. Lamb was a director of the company?

Mr. Gain: That is objected to.

The Witness: No, I don't recall that he was. I never saw him at any of the meetings.

Q. Did he ever attend any meetings? A. No.

Q. As far as you know were any notices of any meetings ever sent to him? A. No, I didn't send him any. 30

Q. As far as you know, were any notices of any meetings sent to him by anybody? A. No.

Q. Does that apply to meetings held in Cape May and at the office of Mr. Norris in Philadelphia? A. Not while I was connected with the company.

Q. I am asking from your knowledge? A. No, not to my knowledge. I never knew him to be connected as a director. 40

Q. During the time you were secretary of the company did Mr. N. Z. Graves attend any meetings of the Board of Directors either in Cape May or Philadelphia? A. No, sir.

10 Q. I call your attention to the following entry in the Minutes of the meeting of September 20th 1917, in the fourth item of the resolution with respect to the repayment of sums advanced by Mr. Shields, namely, "Secretary's salary \$600,000", and ask you whether you were the secretary referred to in that item? A. Yes, sir.

Q. At what rate were you being compensated as secretary at that time? A. Well, that was not all that I was to get. That was just a part. I was supposed to get three hundred dollars a month.

20 Q. This was on account of your compensation? A. Yes, sir.

Q. But that sum of six hundred dollars was in fact paid to you by Mr. Shields? A. Yes, I got it.

Cross Examination by Mr. Gain:

30 Q. Mr. Miller, you answered a question of Mr. Egner's just a few questions back as to whether Mr. Graves attended any meetings during the time you were secretary and you said "No"? A. Yes, he was not at any meetings during the time I was secretary.

Q. Is that answer correct? A. Yes, at no time while I was secretary did he attend any meetings.

40 Q. When did you become secretary? A. Well, I have been secretary at different times. This particular time I was secretary of the company I think I was elected in July, 1917, and I was secretary I guess until my time expired.

Q. Do you know when that was? A. I acted as secretary up until October, 1917—sometime in October. I just don't recollect the time—some time between the first and the tenth of October.

Q. Prior to your election or selection in July 1917 as secretary, how long had you been away from the Cape May Real Estate Company—I mean immediately prior? A. Well, that was nearly two years—just couldn't tell you the exact time. 10

Q. Prior to that interval of two years you had been secretary of the Company for how long a period of time? A. Since 1903, I guess.

Q. And as secretary in that period you signed the Minutes that were kept of stockholders' and directors' Meetings? A. Yes.

Q. During that period of two years' absence immediately prior to July 1917, you were out of touch with the affairs of the Cape May Real Estate Company officially, were you not? A. Not exactly, because I came there in May—about the first of May, I was engaged—I think I was a director about that time in May, but I was not elected secretary until July. 20

Q. Well, then for that portion of the two years prior to May of 1917 you did not attend meetings of the Board and Stockholders of the Cape May Real Estate Company? A. No. 30

Q. Of course, you have no personal knowledge of what occurred at those meetings with respect to the attendance of directors or the election of directors? A. No, I have no knowledge.

Q. As I understand it, Mr. Miller, the notices of the meetings of September 20th, 1917, and of October 20th 1917, to which your attention was called in direct examination, were sent to the gentlemen you named, Mr. Scully, Mr. Lloyd, Mr. Busby, Mr. Shields and yourself? A. Yes. 40

Q. Did you send notice to yourself? A. I wrote a letter, yes.

Q. You didn't send notices to any persons other than those named? A. No.

Q. How do you know you sent notices to those you have named? A. Well, I am sure of it I had. 10 I know I sent them because I had reference to letters where I know. I have got a letter here where I notified Mr. Shields I had sent them. October 18th, 1917 I wrote Mr. Shields.

Q. You are referring now to a letter you sent to him? A. Yes.

Q. Is that the original letter? A. Yes, this is the original letter.

Q. May I see it?

20 (Witness hands letter to Mr. Gain.)

Q. You have no memory on the subject have you, Mr. Miller? A. Yes, I recollect distinctly sending them.

Q. Have you any such letter with reference to the meeting on September 20th, 1917? A. I don't think I have. I haven't found anything yet.

Q. Where did you get this letter which is dated October 18th, 1917, signed by you and addressed to Mr. Peter Shields? A. Some letters we had 30 among our correspondence, Mr. Shields and myself—I have a number of letters. Mr. Shields has a number of letters too.

Q. This would be among the letters Mr. Shields had if you sent it to him? A. Yes, that would be among the letters of Mr. Shields.

Q. Did he preserve the envelope? A. I don't know.

Q. Where did you get it? A. Among his letters.

Q. When did you have access to Mr. Shields's 40 letters? A. I have access to his letters right along.

Q. Right along when? A. I just gave him a lot of letters this morning that I had of his. This wasn't among them, but going over his letters we pulled out this one.

Q. Who do you mean by "we"? A. Mr. Shields.

Q. And you? A. Yes.

Q. Where did you do that? A. Here in Phila- 10 delphia.

Q. That is, when you were in conference with Mr. Shields? A. Yes.

Q. When? A. Today.

Q. Until you saw this letter did you have any memory on the subject? A. Yes.

Q. Where did you address Scully? A. Mr. Scully, at Pittsburg.

Q. Where? A. I think in the Frick Building. I think that is where he was at that time—at his 20 office, wherever it was. I know I sent it to Pittsburg.

Q. If you remember, can't you tell us where? A. You cannot remember all those things. He may have changed his office but I think it was in the Frick Building.

Q. Where did you address Lloyd? A. Addressed Lloyd in Cape May. That is where he lives.

Q. Where in Cape May? A. To his residence.

Q. Where? A. On Hughes Street. 30

Q. Where did you address Shields? A. Well, I think I addressed Shields in New York at that time.

Q. When did you send the notice for the October meeting, the Minutes of which are recorded in this small Minute Book? A. Well, shortly before the meeting—I presume about four or five days before.

Q. Where did you address them in New York? A. At his office.

Q. Where? A. I don't know where his office was. 40

Q. You don't remember that? A. No.

Q. And where did you address Busby? A. Busby was at D'Olier's office.

Q. Where was that? A. That was the Merchant & Mariner's Building.

Q. Philadelphia? A. Yes.

10 Q. Where did you send the notices to these several men for the meeting dated September 20th, 1917 which is recorded in this small Minute Book?

A. Same place. Sometimes I sent Shields two so he would be sure to get one. I sent one to his residence on Beach Avenue, Cape May.

Q. Did you with reference to these two meetings do that? A. I think I did.

Q. You think you did? A. Yes.

20 Q. Do you remember whether you did or not?
A. Not positively.

Q. Do you remember anything about the notices of those meetings until you conferred with Mr. Shields about the present case? A. Well, I was never asked about that, so I never had occasion to bring it to my memory.

Q. You looked up these letters for the purpose of seeing whether there was anything to recall it to you? A. Yes, I looked up a lot of letters.

30 Q. You looked up the correspondence you referred to? A. Yes.

Q. For the purpose of finding out if there was anything there to indicate the sending of such notices? A. Yes, to refresh my memory.

Q. Are all of the minutes recorded in this small minute book in your handwriting? A. Yes, sir.

Q. Do you remember the meeting of October 30th, 1917, that appears on pages 20 to 23 of this book, both inclusive? A. Yes, I remember that. That was held down at Cape May.

40 Q. Now look at it? A. No, but that is the

Security Trust Company—that was in Mr. Weaver's office. Yes, I remember that meeting.

Q. You were mistaken when you said that was held at Cape May, were you? A. Yes, sir. It is hard to remember all these dates they were so long ago, but when I looked at the minutes of course I know they are correct and I know I wrote them, 10 and whatever they say is so. I haven't seen this minute book until today, since I wrote it.

Q. Take that meeting of October 30th, 1917, that I asked you about. Where did you send the notices of that meeting to the several persons who attended? A. I sent the notices to their addresses at that time wherever they happened to be.

Q. Do you remember where they were? A. Ernest Lloyd was always sent to Cape May—never sent it anywhere else because he lived there the 20 year around—myself included.

Q. What do you mean by yourself included? A. The notice that I wrote myself I kept.

Q. When you said yourself included you coupled that with the remark about Cape May. Did you live at Cape May at that time? A. Yes.

Q. What do you mean by "yourself included"? Did you address that to Cape May? A. I wrote my own notice and kept it.

Q. You didn't mail it? A. No, what was the use 30 of mailing it to myself?

Q. I might ask what was the use of writing it to yourself? A. Yes, but I always did.

Q. Have you it with you if you kept it? A. No, I haven't got it with me. Like as not I destroyed it. Scully's I sent to Pittsburg; Shields' to New York; James F. Lucas, sent his to Philadelphia at the office of John Lucas & Company; William S. Shaw's went to Cape May.

Q. Does that complete the list? A. Yes, sir. 40

By Mr. Egner:

Q. That completes the list of those present. Did you send any notice to anybody who was not present? A. I sent them to all the directors.

10 By Mr. Gain:

Q. What is your memory on the subject—to whom did you send them? A. Well, in October I sent to Shields, to Scully, to Lloyd, to myself, to Lucas, to Shaw. I don't remember the others.

Q. You said October. When did you send them in October to the gentlemen you have just named? A. Shortly before the meeting. I couldn't give you the date.

20 Q. Before which meeting? A. Before the meeting you just mentioned, the October meeting, October 30th. Notice had to go out before the meeting. I couldn't say how many days or what date it was the notices were sent.

Q. I am trying to see what you recall about the sending of notices in October of 1917. Mr. Miller, do you really have any memory of sending notices to the men you have mentioned in October, 1917? A. I certainly do.

30 Q. How many notices did you send to Mr. Shields, say in October 1917? A. I may have sent two. I generally sent one to his—let me see, in October I would likely have sent one because in October he would have left Cape May I think.

40 Q. Aren't you trying to accommodate me by reasoning it out? A. I am trying to reason it out because you know it is a long ways back and you cannot tell just exactly the day and time that you sent the notices, but I know there never was a meeting held without a notice went out.

Q. Even in that statement you are concluding that from the regularity of your business practices I suppose? A. Yes.

Q. And not from any actual memory on the sending of notices for any particular meeting. Isn't that true? A. Well, I cannot say that because I recollect sitting down and writing notices out. 10

Q. You have a memory of the fact or the practice of sending notices, is that what you mean to say, Mr. Miller? A. Yes.

Q. But you do not profess at this time, eight years after the event, to remember actually the sending of notices for a particular meeting, do you? A. Well, I wouldn't like to say that I don't.

Q. Would you swear that you do? A. I would swear that I am under oath now, that I recollect sending out notices to these meetings. 20

Q. Do you swear now that you have a memory of sending notices to these several gentlemen whose names you have mentioned to attend directors' meetings in October 1917? A. Yes, I do, sure.

Q. I want to ask you how many notices did you send Mr. Shields in the month of October, 1917? A. That I couldn't tell—either one or two notices.

Q. How many notices did you send Mr. Lloyd? A. One. 30

By Mr. Egner:

Q. You mean for each meeting?

Mr. Gain: That is not fair, I am testing his memory.

The Witness: One for every meeting.

Mr. Shields is the only person—the only director I would send two notices to because he was traveling to and fro a good bit of the 40

time between Cape May and Washington, Philadelphia and New York, and sometimes I would have to send two notices to be sure to catch him at one of the places.

10 Q. I understand that. I am asking these questions to ascertain whether you remember what you did in October 1917. You understand that? A. Yes.

Q. Now, I am asking you again, in view of your amendment to your answer, after Mr. Egner's comment, do you remember how many notices you sent Mr. Shields in October, 1917? A. No, I don't.

Q. Do you remember how many notices you sent Mr. Scully in October, 1917? A. Sent him one.

20 Q. Do you remember how many notices you sent Mr. Lloyd in October 1917? A. One.

Q. Do you remember how many notices you sent Mr. Lucas? A. One.

Q. And Mr. Shaw? A. One.

Q. Both of those questions referring to October 1917? A. Yes.

Q. Now, you are positive you sent one notice to each of those gentlemen with the possible exception of Mr. Shields for the month of October, 1917? A. Yes.

30 Q. Can you tell us when it was in that month you sent those notices? A. No, sir.

Q. Mr. Miller, have you any recollection now independently of your reference to the minutes as to whom you sent notices to for the various meetings recorded in this book? A. I only know I sent notices to all the directors.

40 Q. When you say that— A. I am positive I never called a meeting but what I sent notices to. I am positive of that. You cannot hold a meeting unless you send notices out.

Q. I ask you again if in saying that are you not drawing that inference from your business practice and not from an actual memory of the subject? A. Partly so and partly not. I recollect sitting down and typewriting these notices myself.

Q. Can you tell us when and where you sat down? A. I could not any more than I could ask 10 you what time you got up in the morning on such and such a date.

Q. I would tell you I don't remember. I want to know if you will tell me that or— A. I remember sitting down writing notices and writing them out on the typewriter and mailing them. I couldn't tell you what date or what time or how long before the meeting it was.

Q. Or to whom the notices were sent? A. Yes, I can tell pretty well to whom notices were sent. 20

Q. You can tell pretty well to whom notices were sent in reference to each of these meetings recorded? A. I know they were all sent to the directors.

Q. Tell us, if that is not a matter of inference or conclusion on your part, but a matter of memory—tell me to whom you sent notices for the first meeting recorded in this book which is dated July 16th, 1917. A. Well, I think that the first notice I sent—I can recollect pretty positively because I 30 had—

Q. Just tell me to whom they were, you don't have to reason it out. If you remember state to whom you sent notices for that meeting. A. I sent them to Busby, Scully, Shields, to myself and to Lloyd.

Q. Anybody else? A. There were five of that date, that is all. If I mentioned five there that is all.

Q. Those you have named are all to whom you 40 sent notices? A. Yes.

Q. Take the meeting of September 20th, 1917. To whom did you send notices for that meeting?

A. That was—well, in September I think at that time Shaw and Lucas were directors.

Q. Just tell me please to whom you sent notices to attend the directors' meeting called for September 20th, 1917. A. I know I sent one to Shields and I know I sent one to Lloyd and Scully.

Q. Did you send any others? A. Yes, I sent some others, I think Shaw and Lucas.

Q. Do you remember? A. Don't remember positively.

Q. That is what I want to find out whether you remember or are concluding from your recent examination of this minute book and as a result of your conference with Mr. Shields. Is it the latter or is it memory Mr. Miller? A. Partly both.

Q. Did Mr. Shields say anything to you at your conference on this subject as to whom you sent notices? A. No.

Q. When you told us that you thought you sent them to Lucas and Shaw do you claim now you remember you sent them notice of the meeting of September 20th, 1917? A. No, I couldn't say that I remember it.

Q. How do you remember sending them to Lloyd and Scully if you cannot remember definitely to whom you sent the remainder of the notices? A. I couldn't tell you.

Q. With reference to the meeting of October 20th, 1917, to whom did you send notices? A. I don't know, whoever is there, whoever is quoted in the meeting, whoever were present at the meeting, and who were the directors at that time they got notices.

Q. Do you remember who they were? A. Don't remember, no.

Q. Then you cannot tell from any actual memory of the fact to whom it was you sent notices for that meeting? A. No, only in a general way I know I sent notices.

Q. Is that true with reference to the meeting of October 20th and the meeting of October 30th that you remember only in a general way that you sent notices? A. Yes.

Q. But you are not undertaking to say to whom you sent notices with reference to those two meetings? A. I can remember the directors—the list of directors at that time. Whoever the directors are I sent the notices to them.

Q. I am asking as to your memory. I want to know whether you are simply giving us a general inference or conclusion from your practice or whether you have an actual memory as to the names of the gentlemen to whom you sent notices on each of these meetings in October 1917. A. I couldn't answer that any better than I answered it before.

Q. That is your answer? A. Yes.

Q. Mr. Egner asked you about the item of \$600? A. Yes.

Q. What period did that \$600 cover? A. Well, I guess that was more on account of the entire time I was down there.

Q. Have you any recollection about it? A. No, just don't know what period it did cover. I couldn't tell you. I know I got it.

By Mr. Egner:

Q. Mr. Miller, have you any recollection of any meeting of the Board of Directors for which you failed to send out a previous notice?

Mr. Gain: That is objected to.

The Witness: No. I can tell you this I never sent out—I never called a meeting unless I sent notices for it.

10 Q. Do you recall how many meetings of the Board of Directors there were during the month of October 1917? A. No.

Mr. Egner: I offer in evidence this letter of October 18th.

Copy of letter referred to is as follows:

Hotel Cape May,
Cape May City, N. J.
Oct. 18, 1917.

20 Mr. Peter Shields,
1631 Walnut St.,
Philadelphia, Pa.

Dear Mr. Shields:

Have sent notices out to
C. D. Scully
Ernest W. Lloyd
Peter Shields
C. Earle Miller
C. L. Busby.

30 There are seven authorized Directors, Graves was one but he declined to serve. No one was elected in his place.

We have been counting Mr. D'Olier as a Director but he resigned at a meeting before he went away. Mr. Evans and Mr. Baer also resigned.

40 I don't find where Lamb resigned. I got no time to check up these minutes as all my time was spent in copying, but if there is any way to get at this it should be done.

We had better have Mr. Busby come down here. He is with Franklin D'Olier & Co., Mariner & Merchants Building.

Yours very truly,

(Signed) C. Earle Miller.

(In lead pencil)
copy attached.

Capt May, N. J. Oct. 17, 1917.
Notice.

A Special Meeting of the Board of Directors of the Cape May Real Estate Company will be held at the office of the Company No. 426 Washington St. Cape May, N. J. on Saturday, October 20th, 1917 at 11 o'clock A. M., for the purpose of transacting general business of the company, and any business that may properly come before the meeting.

Respectfully,

C. Earle Miller,
Secretary.

By Mr. Egner:

30 Q. Mr. Miller, when was this letter that has just been marked in evidence as defendant's exhibit actually written by you? A. On the date that it says, October 18th.

Q. 1917? A. Yes.

Q. You mailed that letter— A. I cannot answer that from memory but I know by the date of the letter.

40 Q. And the letter was sent by you to Mr. Shields at what place? A. 1631 Walnut Street, Philadelphia.

Q. When after having sent that letter did you again for the first time see it? A. This? (Referring to letter.)

Q. Yes. A. This morning.

Q. This letter was shown to you this morning for the first time? A. Yes.

10 Q. By whom? A. Mr. Shields.

Q. So that from the time you wrote this letter until this morning you did not in fact see this letter again? A. No, I never saw it since I wrote it.

Q. Reading that letter and having refreshed your recollection of it can you tell us now have you any memory as to who in fact you sent notices of the meeting of October 20th, 1917, to? A. It was sent to those directors here Scully, Lloyd, Shields, Miller and Busby.

20 Q. Have you an actual recollection of the fact now that you did send the notices to those gentlemen? A. I haven't an actual recollection of it but if they were directors at that time I certainly must have sent this notice.

By Mr. Gain:

30 Q. Mr. Miller, in lead pencil on your letter of October 18th, 1917, addressed to Mr. Shields appears the notation "copy attached". The carbon copy of a notice which you hold in your hand was the paper which was attached to that paper? A. Yes, sir.

Q. Have you any other copies of any other originals of the notices sent for that meeting or any other meeting that has been the subject of your examination today? A. Not that I know of. I wouldn't say that I haven't. I haven't looked thoroughly but I don't think so.

40

Mr. Egner: It is stipulated and agreed that the United States Government took possession, under a lease, reserving a nominal rental, of an area of approximately 300 acres, which included the 57 acres for the sale of which Mr. Shields claims commission; and that the 57 acres in question are included in the property referred to in the President's Proclamation in evidence in this cause; that an award in the condemnation was made for the property taken under the President's Proclamation, including these 57 acres, and that proceedings at the instance of the receiver of the Cape May Real Estate Company to review that award are now pending in the Court of Claims.

10

20

Exhibit D-1.

EXTRACTS FROM BY-LAWS
OF THE
CAPE MAY REAL ESTATE COMPANY.
(Page 15 of Minute book No. 1.)

I.

30

STOCK-HOLDERS MEETINGS.

1. A majority of the stock issued and outstanding shall be necessary to constitute a quorum.

2. The annual meeting of the stockholders, after the year 1903, shall be held on the second Tuesday of April of each year, at twelve o'clock noon, at which time shall be elected, by a plurality vote, by ballot, the board of directors as constituted by

40

these by-laws, to serve for one year and until their successors are elected, each stockholder being entitled to one vote in person or by proxy for each share of stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

10 A notice of the annual meeting shall be mailed to each stockholder at his or her address, as the same appears upon the records of the company, at least thirty days prior to the meeting.

At such meeting shall be presented reports of all the business done by the corporation during the preceding year, the condition of its finances, the amounts of its receipts and expenditures and obligations and profits.

20 3. Special stockholders meetings shall, at the request of any director or any two stockholders, be called by the secretary by mailing a notice to each stockholder in the same manner as for the annual meeting, at least five days prior to the meeting.

II.

DIRECTORS.

30 1. The directors shall be five in number, shall be chosen from the stockholders, and shall hold office for one year and until others are elected and qualified in their stead.

“1. The directors shall be nine in number, shall be chosen from the stockholders, and shall hold office one year and until others are elected and qualified in their stead.”

40 (Amended February 3, 1905. Page 74,
Vol. 1. Amended May 14, 1907. Page
269, Vol. 1.)

“1. The directors shall be eleven in number, shall be chosen from the stockholders, and shall hold office one year, and until others are elected and qualified in their stead.”

“1. The directors shall be seven in number, shall be chosen from the stockholders, and shall hold office one year, and until others are elected and qualified in their stead.” 10

(Amended April 11, 1911. Page 269, Vol. 2.)

2. The Board of Directors shall have the management of the business of the company, and in addition to the powers by these by-laws specially conferred upon them, may exercise all such powers and do all such things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of law, the charter and these by-laws. 20

3. Any directors or officer may resign his office at any time. The acceptance of a resignation shall not be required to make it valid.

III.

MEETINGS OF DIRECTORS.

1. A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business, except to adjourn. 30

2. Meetings of the board may be called within or without the State of New Jersey, by the president, or by any two directors, on one day's notice to each director, mailed to his post office address or personally served.

3. The directors may hold their meetings and have an office and keep the books of the company 40

(except the stock and transfer books) outside of the State of New Jersey and in the said City of Philadelphia, or such other place or places as they may from time to time fix upon.

10 (See additional Article 4. April 11, 1911, page 270, Vol. 2.)

20 "4. Any member of the Board of Directors may serve as an officer and employee of this company, and shall receive such compensation as shall be fixed by the Board of Directors for his services while acting as such officer, and his acting as director shall not incapacitate him from acting as such officer and receiving the compensation fixed by the board, provided the majority of the whole board of directors without the vote of such director shall fix and determine his compensation."

V.

DUTIES OF OFFICERS.

30 1. The president shall be the chief executive officer and head of the company, and in the recess of the Board of Directors shall have the general management and control of its business and affairs.

VI.

VACANCIES.

40 All vacancies in the Board of Directors or in any office caused by death, resignation, disqualification or otherwise, shall be filled by the directors or remaining directors, although less than a quorum, by a majority vote thereof; the person or

persons so selected shall hold office for the unexpired term.

VII.

MISCELLANEOUS.

10 9. No expenditure shall be made or obligation incurred, in excess of five thousand dollars, without the sanction and approval of the president and treasurer.

(Extracts of Certificate of Incorporation, page 3, Minute Book No. 1.)

20 CERTIFICATE OF INCORPORATION
OF THE
CAPE MAY REAL ESTATE COMPANY.

30 This is to certify that the undersigned do hereby associate themselves into a corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several acts supplementary thereto and amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names. And further the said subscribers certify as follows:

First: The name of the corporation is "Cape May Real Estate Company."

* * * * *

40 Fourth: The total authorized capital stock of this corporation is seven hundred and fifty thousand dollars, divided into seven thousand five hun-

dred shares of the par value of one hundred dollars each.

* * * * *

10 Sixth: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors are expressly authorized:

To hold their meetings and have one or more offices and to keep the books of the company within or without the State of New Jersey, at such places as may from time to time be designated by them; but the company shall always keep at its registered office in New Jersey, the transfer book in which the transfer of stock can be made, entered and registered and also a book containing the names and addresses of the stockholders and the number of shares held by them respectively, which said books shall be at all times during business hours open to the inspection of the stockholders in person.

20 To make, order, amend and rescind the by-laws of this company, and to fix the amount to be reserved as working capital, provided always, that a majority of the whole board concur therein.

30 With the consent in writing and pursuant also to the affirmative vote of the holders of a majority of the shares issued and outstanding, irrespective of class, at a stockholders meeting duly called for that purpose, to sell, assign, transfer or otherwise dispose of the property of the company as an entirety, provided always, that a majority of the whole board concur therein.

* * * * *

Seventh: The period of existence of this corporation is to be unlimited.

Exhibit D-1a.

Extracts from Minutes of Meetings of Stockholders of Cape May Real Estate Company.

(Annual meeting of stockholders, April 11, 1911, pp. 268-271, Minute Book No. 2.)

ANNUAL MEETING—STOCKHOLDERS.

10

The annual meeting of stockholders of Cape May Real Estate Company was held at the principal office of the company, 426 Washington Street, Cape May, N. J., on Tuesday, April 11, 1911, at 12 o'clock noon.

The meeting was called to order and Mr. Nelson Z. Graves presided. Mr. C. Earle Miller was appointed secretary of the meeting. * * * The undersigned Inspectors of election report that having taken an oath to impartially conduct the election of directors of the above named company, we did receive the votes of the stockholders by ballot and find that the following persons received the number of votes set opposite their respective names, to wit:

20

Nelson Z. Graves	24720	votes	
Peter Shields	24720	"	
Nelson Z. Graves	24720	"	
Ferdinand J. Graves	24720	"	30
V. F. Graves	24720	"	
Henry W. Hayden	24720	"	
C. Earle Miller	24720	"	

April 11th, 1911.

EDWARD H. HEILMAN,
JOHN P. DOYLE,
Inspectors.

(Annual meeting of stockholders April 9th, 1912, pages 290-291 Minute Book No. 2.)

ANNUAL MEETING OF STOCKHOLDERS.

10 The annual meeting of the stockholders of Cape May Real Estate Company was held at the principal office of the company, 426 Washington Street, Cape May N. J. on Tuesday April 9th, 1912 at 12 o'clock noon.

On motion duly made and seconded Mr. Nelson Z. Graves was elected to fill the chair and preside at the meeting and Mr. C. Earle Miller was appointed secretary of the meeting. * * * The polls having remained open an hour, were then closed and the inspectors presented their report in writing showing that the following gentlemen had received the greatest number of votes and were elected directors of the company.

	Name	No. of Votes.
	Nelson Z. Graves	21344 3/4
	Ferd. J. Graves	21344 3/4
	Nelson Z. Graves Jr.	21344 3/4
	C. Earle Miller	21344 3/4
	Henry W. Hayden	21344 3/4
30	Eugene S. Reilly	21244 3/4
	William S. Casselman	21344 3/4

The chairman read the report of the inspectors announcing that the above named gentlemen had been elected directors of the company to serve until the next annual meeting or until their successors were elected and qualified.

(Annual meeting of stockholders April 8th, 1913, pages 297-302, Minute Book No. 2.)

ANNUAL MEETING OF STOCKHOLDERS.

The annual meeting of the stockholders of Cape May Real Estate Company was held at the principal office of the company, 426 Washington Street, Cape May N. J. on Tuesday April 8th, 1913, at 12 o'clock noon. 10

The meeting was called to order by the president, Mr. Nelson Z. Graves who was elected to preside at the meeting, and C. Earle Miller was appointed secretary.

The secretary read the call for the meeting.

On motion by Mr. Shields and duly seconded the reading of the minutes of the previous stockholders meeting was proceeded with. 20

* * * * *

REPORT OF INSPECTORS.

The undersigned inspectors of election report that having impartially conducted the election of directors of the Cape May Real Estate Company, we did receive the votes of the stockholders by ballot and find that the following persons received the number of votes set opposite their respective names, to wit:— 30

Nelson Z. Graves	18455 1/2 votes
Ferdinand J. Graves	18455 1/2 "
Nelson Z. Graves Jr.	18455 1/2 "
Henry W. Hayden	18455 1/2 "
William S. Casselman	18455 1/2 "
C. Earle Miller	18455 1/2 "
Eugene S. Reilly	18455 1/2 "
April 8, 1913.	

Signed O. M. HAYDEN,
D. W. HAGANS,
Inspectors. 40

The chairman then announced that the above named gentlemen were duly elected directors of the company.

On motion duly made and seconded the meeting adjourned.

10

C. EARLE MILLER,
Secretary.

(Annual meeting of stockholders, April 14th, 1914, pages 311-314, Minute Book No. 2.)

ANNUAL MEETING OF STOCKHOLDERS.

20 The annual meeting of the stockholders of Cape May Real Estate Company was held at the principal office of the company, 426 Washington Street, Cape May, N. J. on April 14, 1914 at 12 o'clock M.

Mr. Nelson Z. Graves was appointed chairman, and C. Earle Miller, secretary of the meeting.

* * * * *

The report of the inspectors was then read as follows:—

30

April 14 1914.

The undersigned inspectors of election, report that having impartially conducted the election of directors of the Cape May Real Estate Company, held on the fourteenth day of April, 1914, we did receive the vote of the stockholders by a ballot, and the following persons received the number of votes set opposite their respective names, to wit:—

40

For Directors	Number of Votes
Nelson Z. Graves	19865 1/2 shares
Ferdinand J. Graves	19865 1/2 "
Nelson Z. Graves Jr.	19865 1/2 "
Henry W. Hayden	19865 1/2 "
Eugene S. Reilly	19865 1/2 "
William S. Casselman	19865 1/2 "
Charles A. Farnum	19865 1/2 "

10

Signed HARRY W. BELL,
O. M. HAYDEN.

The chairman then announced that the above named persons were duly elected to serve as directors of the company for the ensuing year.

There being no further business, on motion duly made and seconded the meeting adjourned.

20

C. EARLE MILLER,
Secretary.

(Annual meeting of stockholders, Minute Book No. 2, page 326.)

ANNUAL MEETING OF STOCKHOLDERS.

30

The annual meeting of the stockholders of the Cape May Real Estate Company was held at the principal office of the company, No. 426 Washington Street, Cape May, N. J., on Saturday, May 15th, 1915, at 11 o'clock A. M.

The meeting was called to order by Mr. Nelson Z. Graves Jr., who was chosen chairman of the meeting.

Those persons were:

40

Mr. Peter Shields,
Mr. C. E. Miller,
Mr. Tindle,
Mr. Cornelius D. Scully,
Mr. N. Z. Graves, Jr.

10 The notice of the meeting was read and there being no quorum present on motion by Mr. Scully and seconded by Mr. Miller, the meeting adjourned to meet on Saturday, May 15th, 1915, at 11 o'clock A. M.

NELSON Z. GRAVES, Jr.,
Chairman & Secty. Pro. Tem.

20 (Adjourned annual meeting of stockholders, May 15th, 1915, pages 327-334, Minute Book, No. 2.)

ADJOURNED ANNUAL MEETING OF STOCKHOLDERS.

The adjourned annual meeting of stockholders of Cape May Real Estate Company was held at principal office of the company, No. 426 Washington Street, Cape May, N. J., on Saturday, May 15th, 1915, at 11 o'clock A. M.

30 * * * * *

The polls having remained open an hour were closed and the inspectors presented their report in writing as follows:—

REPORT.

40 The undersigned inspectors of election report that having impartially conducted the election of directors of the Cape May Real Estate Com-

pany, held on the 15th day of May, 1915, we did receive the vote of the stockholders by ballot and the following persons received the number of votes set opposite their respective names:

Nelson Z. Graves	16248	1/2	shares	
F. M. Lamb	16248	1/2	"	10
Edward H. Heilman	16248	1/2	"	
William S. Casselman	16248	1/2	"	
Nelson Z. Graves, Jr.	16248	1/2	"	
George Magowan	16248	1/2	"	
Ferdinand J. Graves	16248	1/2	"	

THOMAS J. DUNCAN,
HARRY W. BELL,
Inspectors.

20 The chairman then announced the above named gentlemen directors of the company for the ensuing year.

There being no further business before the meeting, the meeting adjourned.

EDWARD H. HEILMAN,
Secretary.

30 (Special meeting of stockholders, October 25, 1917, page 344, Minute Book No. 2.)

Minutes of a special meeting of the stockholders of the Cape May Real Estate Company, held at the principal office of the company, Washington and Decatur Streets, Cape May City, New Jersey, on Thursday, October 25th, 1917, at 11:30 A. M.

The meeting was called to order by Mr. Harvey F. Carr.

40 Mr. Nelson Z. Graves was selected as chairman of the meeting and Mr. Carr as secretary.

The following stockholders were represented by proxy:

Name—Mutual Liquidating Company.

Name of proxy—Harvey F. Carr and Nelson Z. Graves.

10 Number of shares—16044 1/2, being a majority in interest of all the stockholders of the company.

The proxy was ordered to be filed with the secretary of the meeting.

A copy of the notice of the meeting was produced, together with proof of the due mailing thereof, to each stockholder of the company, at least five days before the meeting, as required by the by-laws.

20 The transfer book and the stock book of the company, together with a full, true and complete list in alphabetical order of all the stockholders entitled to vote at the ensuing election, with the residence of each and the number of shares held by each, were produced, and remained during the election open to inspection.

30 Upon motion, duly made and seconded, Messrs. Samuel J. Edwards and Frank Voight (neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

Upon motion, duly seconded, the meeting proceeded to the election of six directors, by ballot, in accordance with the by-laws, and the polls were opened at 11:30 A. M., and the stockholders prepared their ballots and delivered them to the inspectors.

Upon motion, duly made and seconded, a recess of one hour was taken.

40 The polls having remained open an hour were closed, and the inspectors presented their report

in writing, showing that the following gentlemen (stockholders of the company) had received the number of votes appearing opposite their names, and had received the greatest number of votes.

Nelson Z. Graves	16044 1/2	
G. E. Matthies	16044 1/2	10
Harvey F. Carr	16044 1/2	
Ferdinand Graves	16044 1/2	
Joseph T. Sullivan	16044 1/2	
John O. Wilson	16044 1/2	

The chairman thereupon declared the above-named gentlemen elected directors of the company to hold office until the next annual election, and until their successors are elected and qualify.

20 The secretary was directed to insert in the minute book, for the purpose of reference, a copy of each of the following papers:

Notice of meeting and proof of service thereof.

Form of proxy.

Inspectors' oath and report.

Upon motion, duly seconded, the meeting adjourned.

HARVEY F. CARR,
Secretary of Meeting.

30

State of New Jersey, }
County of Camden, } ss.:

Samuel J. Edwards, being duly sworn, deposes and says, that at the direction of Harvey F. Carr, secretary of the Mutual Liquidating Company, the owner of a majority of the stock of the Cape May Real Estate Company a corporation of New Jersey, that on the nineteenth day of October, 40

1917, he caused a notice of the special meeting of the stockholders of said company, a copy of which is hereto annexed, to be mailed, in a sealed wrapper, postage prepaid, addressed to each stockholder of record of said company, at his address as the same appeared on the books of the company.

10

SAMUEL J. EDWARDS.

Sworn and subscribed to before me,
this 25th day of October, 1917.

WALTER R. CARROLL,
M. C. C. of N. J.

20 Notice to stockholders of Cape May Real Estate Company:

TAKE NOTICE that a special meeting of the stockholders of the Cape May Real Estate Co. will be held at the office of the company at Cape May, New Jersey, on Thursday, October 25, A. D. 1917, at eleven-thirty A. M., for the purpose of electing directors of the company, and for such other business as may come before the meeting, no annual meeting of the stockholders having been held at the time fixed by the by-laws.

30

Dated, October 19, 1917.

NELSON Z. GRAVES,
A member of the Board of Directors.

MUTUAL LIQUIDATING COMPANY,
Owner of 60% of the Stock.

40

HARVEY F. CARR,
Secretary.

KNOW ALL MEN BY THESE PRESENTS, that the Mutual Liquidating Company, being the owner of 16044 1/2 shares of the capital stock of the Cape May Real Estate Company, does hereby constitute and appoint Nelson Z. Graves and Harvey F. Carr, or either of them, its true and lawful attorney, in its name, place and stead, to vote upon the stock owned by it or standing in its name, as its proxy, at the special meeting of the stockholders of the said company, to be held at the company's principal office at Cape May, New Jersey, on the twenty-fifth day of October, 1917, and on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes it is now or may then be entitled to cast, hereby granting the said attorneys full power and authority to act for it and its name at the said meeting or meetings, in voting for directors of the said company or otherwise, and in the transaction of such other business as may properly come before the meeting, as fully as it could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that its said attorneys or substitute may do in its place, name and stead.

10

20

IN WITNESS WHEREOF, the Mutual Liquidating Company has hereunto affixed its corporate seal, attested by its proper officers, this twenty-fourth day of October, 1917.

30

MUTUAL LIQUIDATING COMPANY,
By NELSON GRAVES,
President.

Attest:

Harvey F. Carr,
Secretary.

(Corporate seal attached: Mutual Liquidating Company, 1916.)

40

State of New Jersey, } ss.:
County of

10 Samuel J. Edwards and Frank Voigt, being severally sworn, upon their respective oaths, do depose and say that they will faithfully, honestly and impartially perform the duties of inspectors of election at the election to be held this Thursday for directors of the Cape May Real Estate Company, and a true report make of the same.

SAMUEL J. EDWARDS,
FRANK VOIGT.

Sworn and subscribed to before me
this 25th day of October, 1917,

20 HARVEY F. CARR,
M. C. C. of N. J.

The undersigned, inspectors of election, report that having taken an oath impartially to conduct the election of directors of the Cape May Real Estate Company, we did receive the votes of the stockholders by ballot, and that the following persons received the number of votes set opposite their respective names, to wit:

30	For Directors	Number of Votes
	Nelson Z. Graves	16044 1/2
	G. E. Matthies	16044 1/2
	Harvey F. Carr	16044 1/2
	Ferdinand Graves	16044 1/2
	Joseph T. Sullivan	16044 1/2
	John O. Wilson	16044 1/2

Dated, October 25, 1917.

40 SAMUEL J. EDWARDS,
FRANK VOIGT,
Inspectors.

(Annual meeting of stockholders, April 9th, 1918, page 347, Minute Book No. 2.)

December 16, 1921,
New Jersey Corporation Guarantee
& Trust Company,
Camden, New Jersey. 10

THE CAPE MAY REAL ESTATE COMPANY.

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS.

The annual meeting of stockholders was held at the office of the company, No. 417-419 Market Stret, Camden, N. J., on the 9th day of April, 1918, at M.

The meeting was called to order by Mr. Joseph T. Sullivan who, upon motion, was unanimously chosen chairman, and Mr. F. S. Jerome was appointed secretary of the meeting. 20

The secretary then read the roll of the stockholders entitled to vote at this meeting with the following result:

The following stockholders were present in person:

Name	Number of shares
Peter Shields	5,171
C. D. Scully	25
C. Earl Miller	10
John W. Painter	215
Joseph T. Sullivan	1
Franklin S. Jerome	1
	<hr/> 5,423

M. A. M. of S. 1.

The following stockholders were present by proxy: 40

Name	Name of proxy	No. of shares
Mary E. Pollard	John W. Painter	286 1/4
Harman Yerkes	F. S. Jerome	10
Phila. Trust Co. Trustee	"	10
Greater Cape May, Inc.	"	16,038 1/2
G. E. Matthies	"	1
10 W. W. Vilsack	"	155
A. A. Vilsack	"	102
Joseph G. Vilsack	"	156
Eugene S. Reilly	"	108
		16,866 3/4

being a majority in interest of all the stockholders of the company.

20 The proxies presented were ordered to be filed with the secretary of the meeting.

The secretary presented and read a copy of the notice of the meeting, and stated that such notice had been duly given to each stockholder of the company as required by the by-laws.

The transfer book and the stock book of the company, and alphabetical list of stockholders entitled to vote at this election were produced, and remained during the election open to inspection.

30 Upon motion, duly made and seconded, the reading of the minutes of the last preceding meeting was waived.

Upon motion, duly seconded, Messrs. John A. MacPeak and I. C. Clow were appointed inspectors of election and duly sworn (neither of them being a candidate for the office of director).

Upon motion, duly seconded, the meeting proceeded to the election of five directors by ballot, in accordance with the by-laws and the polls were

declared open and the stockholders prepared their ballots and delivered them to the inspectors.

M. A. M. of S. 2.

The polls having remained open an hour were closed, and the inspectors presented their report in writing, showing that the following gentlemen (stockholders of the company) have received the 10 greatest number of votes:

For Directors	Number of votes
Nelson Z. Graves	16,582 1/2
Ferdinand J. Graves	16,582 1/2
Franklin S. Jerome	16,582 1/2
George E. Matthies	16,582 1/2
Joseph T. Sullivan	16,582 1/2

The chairman thereupon declared the above 20 named gentlemen duly elected directors of the company, to hold office until the next annual election and until their successors are elected and qualify.

The secretary was directed to insert in the minute book, for the purpose of reference, a copy of each of the following papers:

(2) Form of proxy.

(4) Inspector's oath and report.

No further business coming before the meeting, 30 upon motion, duly seconded, the same adjourned.

F. S. JEROME,
Secretary of the Meeting.

M. A. M. of S. 3.

New Jersey Corporation Guarantee
& Trust Company,
Camden, New Jersey.

THE CAPE MAY REAL ESTATE COMPANY.

INSPECTOR'S CERTIFICATE MEETING OF STOCK-
HOLDERS.

10 State of New Jersey, }
County of Camden, }ss.:

John A. MacPeak and I. C. Clow, being severally sworn upon their respective oaths, do promise and swear that they will faithfully, honestly and impartially perform the duties of Inspectors of Election, and will to the best of their skill and ability conduct the election to be held this day for directors of the corporation above named, and a true report make of the same.

20 JOHN A. MACPEAK,
I. C. CLOW.

Subscribed and sworn to before me at the City of Camden, this 9th day of April, 1918.

ESTHER T. VENNEL,
Notary Public.

30 [Seal attached: Esther T. Vennel, Notary
Public, Camden, N. J.]

WE, the subscribers, inspectors of election, appointed by the stockholders of the company above named at their meeting held this 9th day of April, A. D. 1918, do report that having taken an oath impartially to conduct the election, we did receive the votes of the stockholders by ballot.

40 We report the 16,582 1/2 votes were cast, and that the following persons received the number

of votes set opposite their respective names, to wit:

For Directors	Number of votes	
Nelson Z. Graves	16,582 1/2	
Ferdinand J. Graves	16,582 1/2	
Franklin S. Jerome	16,582 1/2	
George E. Matthies	16,582 1/2	10
Joseph T. Sullivan	16,582 1/2	

All of which is respectfully submitted this 9th day of April, 1918, at the City of Camden, N. J.

JOHN A. MACPEAK,
I. C. CLOW,
Inspectors.

CAPE MAY REAL ESTATE COMPANY 20

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS.
(April 9, 1918.)

March 28, 1918.

To the Stockholders:

Notice is hereby given that the annual meeting of the stockholders of Cape May Real Estate Company will be held at the principal office of the company, in the office of the New Jersey Corporation Guarantee and Trust Company, Nos. 417 and 419 Market Street, Camden, N. J., on Tuesday, April 9, 1918, at 12 o'clock noon, for the purpose of electing directors for the ensuing year, and such other business as may properly come before the meeting. 30

Yours respectfully,

FRANKLIN S. JEROME, 40
Secretary.

NOTE.—No business can be transacted at the annual meeting without a quorum. In order that the company may be certain of a quorum, you are requested to execute and return the enclosed proxy at once. The required revenue stamp will be affixed and canceled in your behalf without expense to you.

CAPE MAY REAL ESTATE COMPANY

PROXY: STOCKHOLDERS' ANNUAL MEETING
(April 9, 1918.)

No. Shares

20 KNOW ALL MEN BY THESE PRESENTS, that the undersigned stockholder of Cape May Real Estate Company does hereby constitute and appoint

30 Nelson Z. Graves, George E. Matthies and Franklin S. Jerome, or any of them, the true and lawful attorneys or attorney, to vote in the name of the undersigned upon the stock owned or standing in the name of the undersigned, at the annual meeting of the stockholders of Cape May Real Estate Company, to be held at the principal office of the company in the office of the New Jersey Corporation Guarantee and Trust Company, Nos. 417 and 419 Market Street, Camden, N. J., on the 9th day of April, 1918, and on such other days as the meeting may thereafter be held by adjournment or otherwise, according to the number of votes the undersigned is now or may then be entitled to cast, hereby granting the said attorneys and any of them full power and authority to act for the

40

undersigned and in the name of the undersigned at the said meeting or meetings in voting for directors of the said company, and in the transaction of such other business as may lawfully come before such meetings, as fully as the undersigned could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorneys or any of them, or any substitute, may do in the name of the undersigned in the premises.

10

IN WITNESS WHEREOF, hereunto is set the hand and seal of the undersigned, this day of April, 1918.

[L.S.]

[Stockholder signs here.] 20

Witness:

(The aforesaid annual meeting of stockholders, April 9th, 1918, is the last Minutes of Meetings of Stockholders that appears in said Minute Book No. 2.)

EXTRACTS FROM MINUTES OF MEETINGS OF BOARD
OF DIRECTORS OF CAPE MAY REAL ESTATE
COMPANY. 30

(Minutes of Special Meeting of Board of Directors, August 24th, 1915, pages 335-336, Minute Book No. 2.)

Phila., Pa., August 24, 1915.

SPECIAL MEETING OF DIRECTORS.

A special meeting of the Board of Directors of Cape May Real Estate Company was held at No. 40

22 South 3rd Street, Philadelphia, Pa., on Tuesday, August 24, 1915, at 10:30 o'clock A. M.

Present: Messrs. N. Z. Graves, N. Z. Graves, Jr., F. J. Graves, Geo. Magowan, W. S. Casselman and Edward H. Heilman.

10 The meeting was called to order by the president, who read the call for the meeting as follows:

Phila., Pa., August 18, 1915.

20 A special meeting of the Board of Directors of Cape May Real Estate Company will be held at No. 22 So. 3d St., Phila., Pa., on Tuesday, August 24, 1915, at 10:30 o'clock A. M., for the purpose of filling vacancies on the Board and transacting such other business as may properly come before the meeting.

(Signed) EDWARD H. HEILMAN.

Reading of the minutes of last meeting was dispensed with.

30 The president then presented the resignation of Mr. Nelson Z. Graves, Jr., as director and vice-president, which upon motion duly seconded was accepted.

Mr. W. A. Law was, upon motion duly made and seconded, elected a director to fill the vacancy caused by Mr. N. Z. Graves, Jr.'s, resignation. Mr. Law appeared and took his seat.

The president then presented the resignation of Mr. F. J. Graves as director and vice-president, which upon motion duly made and seconded was accepted.

40 Mr. Franklin D'Olier was, upon motion duly made and seconded, elected a director to fill the

vacancy caused by Mr. F. J. Graves' resignation. Mr. D'Olier then appeared and took his seat.

The president then presented the resignation of Mr. Edward H. Heilman as director, secretary and treasurer, which upon motion duly seconded was accepted.

10 Mr. Henry T. Dechert was, upon motion duly seconded, elected a director to fill the vacancy caused by Mr. Heilman's resignation. Mr. Dechert appeared and took his seat.

The president then presented the resignation of Mr. Geo. Magowan as director which, upon motion duly seconded, was accepted.

20 Mr. Ralph B. Evans, was upon motion duly seconded, elected a director to fill the vacancy caused by Mr. Magowan's resignation. Mr. Evans appeared and took his seat.

On motion duly made and seconded Mr. Edward H. Heilman was elected secretary.

The resignation of Mr. Nelson Z. Graves as president was presented, and upon motion duly made and seconded, it was accepted.

Mr. Franklin D'Olier was, upon motion made and seconded, elected president and treasurer. Adjourned.

EDWARD H. HEILMAN,
Secretary. 30

(Minutes of special meeting of Board of Directors, April 28, 1916, page 338, Minute Book No. 2.)

Minutes of special meeting of Board of Directors of Cape May Real Estate Company held at 315 Chestnut Street, Philadelphia, April 28, 1916, at 1 o'clock P. M. 40

There were present Messrs. William A. Law, Franklin D'Olier, Ralph B. Evans and William S. Casselman.

The reading of the minutes of the last meeting was upon motion dispensed with.

10 Upon motion duly seconded and carried Charles C. Norris, Jr., was elected secretary of the meeting.

The resignation of Edward H. Heilman as secretary was presented and upon motion duly accepted.

The resignation of Franklin D'Olier as president and treasurer was presented and upon motion duly accepted.

20 Upon motion duly seconded and carried C. F. Limroth was duly elected as a director to fill the vacancy caused by the death of Henry T. Dechert. Mr. Limroth appeared and took his seat.

The resignation of William S. Casselman as director was present and upon motion duly accepted.

Upon motion duly seconded and carried C. L. Buzby was duly elected as a director to fill the vacancy caused by the resignation of William S. Casselman. Mr. Buzby appeared and took his seat.

30 The resignation of William A. Law as director was presented and upon motion duly accepted.

Upon motion duly seconded and carried E. S. Baer was duly elected as a director to fill the vacancy caused by the resignation of William A. Law. Mr. Baer appeared and took his seat.

The resignation of Franklin D'Olier as director was presented and upon motion duly accepted.

Upon motion duly seconded and carried Mr. Peter Shields was duly elected as a director.

40 Upon motion duly seconded and carried C. D. Scully was duly elected as a director.

The resignation of Ralph B. Evans as director was presented and upon motion duly accepted.

Upon motion duly seconded and carried C. F. Limroth was elected as president in the place and stead of Franklin D'Olier, whose resignation from that office was accepted.

10 Upon motion duly seconded and carried C. F. Limroth was duly elected as treasurer in the place and stead of Franklin D'Olier, whose resignation was presented and accepted.

Upon motion duly seconded and carried E. S. Baer was duly elected as secretary in the place and stead of Mr. Heilman, whose resignation was presented and accepted.

There being no further business the meeting adjourned.

E. S. BAER, 20
Secretary.

Philadelphia, April 26, 1916.

Dear Sir:

There will be a special meeting of the Board of Directors of Cape May Real Estate Company, at 315 Chestnut Street, Philadelphia, Pa., on Friday, April 28, 1916, at 3 P. M. for the purpose 30 of filling such vacancies in the Board of Directors and offices of the company.

FRANKLIN D'OLIER,
President.

The above notice was sent to the following:

N. Z. Graves, 22 South 3rd Street.
William S. Casselman, 3rd & Market Streets, 40
Camden, N. J.

Franklin D'Olier, 22 South 3rd Street.
Ralph B. Evans, 1335 Land Title Bldg.
William A. Law, 315 Chestnut Street.
T. M. Lamb (Note: Crossed out in pencil).

10 April , 1916.

The undersigned hereby waives notice of a special meeting of the Board of Directors of Cape May Real Estate Company to be held at 315 Chestnut Street, Philadelphia, on Friday, April 28, 1916, at 3 o'clock P. M. for the purpose of filling vacancies among the directors and offices of the company.

FRANKLIN D'OLIER.

20 I hereby tender my resignation as president of Cape May Real Estate Company.

FRANKLIN D'OLIER.

I hereby tender my resignation as director of Cape May Real Estate Company.

FRANKLIN D'OLIER.

30 (Minutes of special meeting of Board of Directors, June 21, 1916, page 339, Minute Book No. 2.)

Minutes of special meeting of Board of Directors of Cape May Real Estate Company was held at No. 803 West End Trust Building, Philadelphia, on June 21, 1916, at 12 o'clock.

40 Present: Messrs. Peter Shields, C. F. Limroth, E. S. Baer and C. L. Buzby.

Upon motion duly seconded and carried the reading of the minutes of the last meeting was directed to be dispensed with.

Mr. Shields presented a certificate of the Secretary of the State of New Jersey certifying that the corporation had been reinstated and is empowered to transact business in the State of New Jersey. 10

Counsel for the company presented a report that Mr. Peter Shields has paid twelve months' interest upon the mortgage held by the Ocean Villa Land Company upon Two Mile Beach, due May 27, 1916, amounting to \$2,703.38; that Mr. Shields has also paid taxes upon the Two Mile Beach property for the years 1914 and 1915, amounting to \$1,176.86, and also that the Cape May Real Estate Company is without funds at the present time to make those payments and threat of foreclosure proceedings upon the mortgage has been made by the holder. 20

Upon motion duly seconded and carried it was RESOLVED that the company pay to Mr. Peter Shields the foregoing sums out of the proceeds of the sale of premises at the northeast corner of Beach and Madison Avenues, Cape May, New Jersey, which has been sold to David M. Ellis.

Mr. Shields presented a form of agreement between Cape May Real Estate Company and Ralph W. Johnson and Samuel A. Buck of Wildwood, Cape May County, State of New Jersey, relative to the leasing the fishing wharf as Schellenger's Landing in Lower Township, County of Cape May and State of New Jersey, for the sum of Two hundred and fifty dollars (\$250), one-half of which is payable at the present time and the remaining one-half on August 15, 1916. 30

Upon motion duly seconded and carried the secretary was ordered and directed to execute and 40

deliver on behalf of the Cape May Real Estate Company a lease or leases for the above purpose.

There being no further business the meeting adjourned.

E. S. BAER,
Secretary.

10

Dear Sir:

There will be a meeting of the Board of Directors of Cape May Real Estate Company at No. 803 West End Trust Building, Philadelphia, on Wednesday, June 21, 1916, at 12 o'clock, for the purpose of arranging for the payment of interest upon mortgage on Two Mile Beach.

20

E. S. BAER,
Secretary.

The foregoing notice was mailed to the following:

N. Z. Graves, 22 South 3rd Street (Note:—
Crossed out in pencil).

30

C. F. Limroth, 22 South 3rd Street (Note:—
Crossed out in pencil).

C. L. Buzby, 605 Mariner (Note: Address 605
Mariner is in pencil).

E. S. Baer, 605 Mariner.

Peter Shields, Bryn Mawr, Penna.

C. D. Scully, 1014 Frick Bldg., Pittsburgh, Pa.

C. Earl Miller, Cape May, N. J. (Note: Name
and address in pencil).

40

(Minutes of special meeting of Board of Directors, January 9th, 1917, page 340, Minute Book No. 2.)

A special meeting of the Board of Directors of Cape May Real Estate Company was held on January 9, 1917, at 11 o'clock A. M. pursuant to a notice, a copy of which is as follows:

10

“A special meeting of the Board of Directors of the Cape May Real Estate Company will be held at No. 803 West End Trust Building, Philadelphia, on Tuesday, January 9, 1917, at 11 o'clock A. M., for the purpose of filling of vacancies in the Board of Directors, the adoption of means to pay interest upon mortgages and such other business as may come before the meeting.”

20

There were present Messrs. Limroth, Buzby and Baer.

Upon motion duly seconded and carried the proper officers of the company were directed to execute and deliver to Peter Shields a check for the sum of Two hundred and fifty dollars (\$250) to reimburse him for moneys advanced by him on account of the interest upon the mortgage and taxes upon Two Mile Beach.

30

Upon motion duly seconded and carried it was resolved that the mortgage of Joseph A. Wilson to the Cape May Real Company to secure the payment of the sum of Seven thousand five hundred dollars (\$7500) be placed in the hands of Peter Shields to be sold by him at such price as to him may seem most advantageous.

Mr. C. F. Limroth presented his resignation as president, which upon motion was duly accepted.

40

Upon motion duly seconded and carried C. L. Buzby was nominated for the office of president. Upon motion duly seconded and carried, the secretary was directed to cast a ballot for Mr. Buzby as president. The secretary announced that in accordance with the foregoing motion he so cast
10 a ballot and the chairman announced the election of Mr. C. L. Buzby as president.

Mr. C. F. Limroth presented his resignation as director of the company, which upon motion was duly accepted.

Upon motion duly seconded and carried Mr. William Fassnacht was duly elected as a director of the company.

Mr. C. F. Limroth presented his resignation as treasurer of the company and upon motion duly
20 seconded and carried Mr. E. S. Baer was duly elected as treasurer of the company.

There being no further business the meeting adjourned.

E. S. BAER,
Secretary.

30 CAPE MAY REAL ESTATE COMPANY

January 6, 1917.

Dear Sir:

A special meeting of the Board of Directors of the Cape May Real Estate Company will be held at No. 803 West End Trust Building, Philadelphia, on Tuesday, January 9, 1917, at 11 o'clock A. M., for the purpose of filling of vacancies in the Board
40 of Directors, the adoption of means to pay interest

upon mortgages and such other business as may come before the meeting.

Very truly yours,

C. F. LIMROTH,
Secretary. 10

Sent to:

N. Z. Graves
C. F. Limroth
C. L. Buzby
E. S. Baer
Peter Shields
C. D. Scully

(Minutes of special meeting of Board of Directors, May 28, 1917, page 341, Minute Book No. 2.) 20

A special meeting of the Board of Directors of Cape May Real Estate Company was held at No. 803 West End Trust Building, Philadelphia, on May 28, 1917, at 2 o'clock P. M., pursuant to the following notice:

"A special meeting of the Board of Directors of the Cape May Real Estate Company will be held at No. 803 West End Trust Building, Philadelphia, Pennsylvania, on Monday, May 28, 1917, at 2 o'clock P. M. for the purpose of filling vacancies on the board the election of a new registered agent, and such other business as may properly come before the meeting. 30

"E. S. BAER,
"Secretary." 40

There were present Messrs. C. L. Buzby, E. S. Baer, Peter Shields and C. D. Scully.

Mr. Buzby occupied the chair.

The chairman announced the resignation of Mr. William A. Fassnacht as a director, which resignation, upon motion, duly seconded and carried, was
10 duly accepted.

Upon motion of Mr. Shields, duly seconded and carried, Mr. C. Earl Miller was duly elected as a director of the company to serve until the next annual meeting or until his successor shall be chosen. Thereupon Mr. Miller appeared and took his seat as a director.

Upon motion of Mr. Shields, duly seconded and carried, Mr. C. Earl Miller was designated as registered agent of the company in the State of
20 New Jersey.

* * * * *

There being no further business, the meeting adjourned.

E. S. BAER,
Secretary.

Philadelphia, May 23, 1917.

30 A special meeting of the Board of Directors of the Cape May Real Estate Company will be held at No. 803 West End Trust Building, Philadelphia, Pennsylvania, on Monday, May 28, 1917, at 2 o'clock P. M. for the purpose of filling vacancies on the board, the election of a new registered agent, and such other business as may properly come before the meeting.

40 E. S. BAER,
Secretary.

N. Z. Graves, 22 South 3rd Street, Philadelphia.
C. L. Buzby, 605 Mariner & Merchant Bldg., Phila.

E. S. Baer, 605 Mariner & Merchant Bldg., Phila.
Peter Shields, Bryn Mawr, Pa.

William A. Frasnacht, 22 South 3rd Street, Phila.
(Note: Name and address crossed out in pencil.) 10
C. D. Scully, 1014 Frick Bldg., Pittsburgh, Pa.

(Minute of special meeting of Board of Directors, July 5, 1917, page 342, Minute Book No. 2.)

Special meeting of the Board of Directors of Cape May Real Estate Company held pursuant to notice on July 5, 1917, at 803 West End Trust Building, Philadelphia, at 12 o'clock noon. 20

There were present Messrs. Peter Shields, C. L. Buzby, E. S. Baer and C. Earl Miller.

Mr. Buzby occupied the chair.

The notice of the meeting was read and ordered spread upon the minutes as follows:

“A special meeting of the Board of Directors of the Cape May Real Estate Company to be held at 803 West End Trust Building, Philadelphia, on Thursday, July 5, 1917, at twelve o'clock, for the purpose of electing a director and secretary. 30

“C. EARL MILLER,
“Secretary.”

Upon motion duly seconded and carried Mr. Ernest W. Lloyd was duly elected as a director of the company to serve until the next annual meeting or until his successor shall be chosen. 40

The resignation of Mr. E. S. Baer as secretary and treasurer was presented and upon his request was accepted.

10 Upon motion duly seconded and carried Mr. C. Earl Miller was duly elected as secretary and treasurer to serve until the next annual meeting or until his successor shall be chosen.

Mr. C. L. Buzby presented his resignation as president and upon his request it was duly accepted.

Upon motion duly seconded and carried Mr. Peter Shields was elected as president to serve until the next annual meeting or until his successor shall be chosen.

The resignation of Mr. E. S. Baer as a director was presented and upon his request was accepted.

20 RESOLVED that the president and secretary be and they hereby are authorized to execute and deliver a deed or deeds to the County Board of Freeholders of Cape May County, granting a right of way eighty feet in width over Two Mile Beach, extending from Wildwood Crest to about one thousand feet east of the East Jetty.

There being no further business, the meeting adjourned.

30 C. EARL MILLER,
Secretary.

A special meeting of the Board of Directors of the Cape May Real Estate Company to be held at 803 West End Trust Building, Philadelphia, on Thursday, July 5, 1917, at twelve o'clock, for the purpose of electing a director and secretary.

40 C. EARL MILLER,
Secretary.

The above notice was sent to the following:

- C. L. Buzby. (Note.—Crossed out in pencil.)
- E. S. Baer.
- Peter Shields.
- C. D. Scully.
- C. Earl Miller.

10

(Minutes of special meeting of Board of Directors, July 16th, 1917, page 343.)

A special meeting of the Board of Directors of Cape May Real Estate Company was held at 803 West End Trust Building, on July 16, 1917, at 10 o'clock A. M., in pursuance to a call as follows:

* * * * * 20

(The following notice is attached to the minutes of the foregoing meeting, the minutes are signed by C. Earle Miller as secretary.)

A special meeting of the Board of Directors of the Cape May Real Estate Company will be held at No. 803 West End Trust Building, Philadelphia, Pennsylvania, on Monday, July 16, 1917, at 10 o'clock A. M., for the purpose of approving schedule of selling price of lots and approving sale of tract of fifty-seven acres.

30

C. EARL MILLER,
Secretary.

- Peter Shields, Cape May, N. J.
- C. Earl Miller, Cape May, N. J.
- C. L. Buzby, 605 Mariner & Merchant Bld., Phila.
- C. D. Scully, 1014 Frick Bldg., Pittsburgh, Pa.
- Ernest W. Doyd, Cape May, N. J.

(Note: Lloyd's name and address in ink—others typewritten.)

40

(Special meeting of Board of Directors, October 31st, 1917, page 344, Minute Book No. 2.)

Minutes of a special meeting of the Board of Directors of the Cape May Real Estate Company, held at 22 South Third Street, Philadelphia, Pennsylvania, on October 31st, 1917, at three P. M., pursuant to the following notice:

"Camden, N. J., October 29, 1917.

"To

"A special meeting of the Board of Directors of the Cape May Real Estate Co. will be held at No. 22 South Third Street, Philadelphia, Pennsylvania, on Wednesday, October 31st, 1917, at three P. M., for the purpose of electing officers, and for such other business as may be brought before the meeting.

HARVEY F. CARR,
Secretary."

Present: Nelson Z. Graves, presiding; Harvey F. Carr, Joseph T. Sullivan and John O. Wilson.

On motion, duly made and seconded, Nelson Z. Graves was duly elected president to serve until the next annual meeting, or until his successor is elected and qualifies.

On motion, duly made and seconded, G. E. Mathies was elected vice-president to serve until the next annual meeting, or until his successor is elected and qualifies.

On motion, duly made and seconded, Harvey F. Carr was elected secretary and treasurer to serve until the next annual meeting, or until his successor is elected and qualifies.

On motion, duly made and seconded, it was resolved that this company consent to the sale in bulk

of its property at Cape May at tax sale as one parcel, and that the executive officers of the company be and they are hereby authorized and empowered to execute such releases, agreement or other papers necessary to give effect to this resolution, the purpose and object thereof being to minimize the expenses incident to such tax sale.

On motion, duly made and seconded, the meeting adjourned.

HARVEY F. CARR,
Secretary.

(Special meeting of directors, January 22, 1918, page 345, Minute Book No. 2.)

CAPE MAY REAL ESTATE COMPANY.

Philadelphia, Penn., January 17, 1918.

To the Directors:

By order of the president, notice is given that a special meeting of the Board of Directors, of the Cape May Real Estate Company, will be held at the office of N. Z. Graves, Inc., 22 South 3rd Street, Philadelphia, Penn., on Tuesday, January 22, 1918, at 2:15 P. M., to consider and act upon the following matters:

1. The resignation of Mr. John O. Wilson as a director.

2. The resignation of Mr. Harvey F. Carr as a director.

3. The resignation of Mr. Harvey F. Carr as secretary and treasurer.

4. The election of directors and officers to fill any and all vacancies.

5. A change in location of the office of the company within the State of New Jersey.

6. To consider and act upon such other business as may properly come before the meeting.

Yours truly,

10

HARVEY F. CARR,
Secretary.

CAPE MAY REAL ESTATE COMPANY DIRECTORS'
MEETING.

20 A special meeting of the Board of Directors of the Cape May Real Estate Company was held at the office of N. Z. Graves, Inc., Nos. 22-24 South Third Street, Philadelphia, Penn., on Tuesday, January 22, 1918, at 2:15 o'clock P. M., pursuant to notice mailed to all directors, a copy of which is spread upon these minutes as follows:

(Take in Notice of Meeting.)

Present: Nelson Z. Graves, G. E. Matthies, Ferdinand J. Graves and Joseph T. Sullivan.

Absent: John O. Wilson and Harvey F. Carr.

30 Mr. Nelson Z. Graves, Jr., and Mr. Franklin S. Jerome were also present by request of the president.

The president, Mr. Nelson Z. Graves, acted as chairman.

Mr. Joseph T. Sullivan was appointed and acted as secretary of the meeting.

The records of the directors' meeting held October 31, 1917, were read and approved.

40 The chairman presented the written resignation of Mr. John O. Wilson as a director, which was

Upon motion, duly made and seconded, accepted.

Upon motion, duly made and seconded, Mr. Nelson Z. Graves, Jr., was nominated and, upon a ballot, was unanimously elected a director to fill the vacancy in the board, and thereupon took his seat with the board.

The written resignation of Mr. Harvey F. Carr 10 as a director was then presented, and upon motion duly made and seconded, was accepted.

Upon motion, duly made and seconded, Mr. Franklin S. Jerome was nominated and, upon a ballot, was unanimously elected a director to fill the vacancy in the board, and thereupon took his seat with the board.

The written resignation of Mr. Harvey F. Carr as secretary and treasurer, was then presented and, upon motion, duly made and seconded, was accepted. 20

Upon motion, duly made and seconded, Mr. G. E. Matthies was nominated for treasurer, and upon a ballot was unanimously elected.

Upon motion, duly made and seconded, Mr. Franklin S. Jerome was nominated for secretary and, upon a ballot, was unanimously elected.

Upon motion of J. T. Sullivan, duly seconded by F. S. Jerome, the following resolution was unanimously adopted: 30

RESOLVED, that the location of the principal office of this corporation within the State of New Jersey be and the same is hereby changed from the City of Cape May, in the County of Cape May, to Nos. 417 and 419 Market Street, in the City of Camden, County of Camden, and that the agent therein and in charge thereof, upon whom process against this corporation may be served, is the New Jersey Corporation Guarantee and Trust Company. 40

There being no further business, the meeting was, upon motion dnly adopted, adjourned.

Attest:

JOSEPH T. SULLIVAN,
Secretary.

10

Camden, New Jersey,
January 11th, 1918.

I hereby tender my resignation as director of the Cape May Real Estate Company, to take effect immediately.

JNO. O. WILSON.

20

Camden, New Jersey,
January 11th, 1918.

I hereby tender my resignation as director of the Cape May Real Estate Company, to take effect immediately.

HARVEY F. CARR.

30

Camden, New Jersey,
January 11th, 1918.

I hereby tender my resignation as secretary and treasurer of the Cape May Real Estate Company, to take effect immediately.

HARVEY F. CARR.

40

(Special meeting of directors, March 26, 1918, page 346, Minute Book No. 2.)

CAPE MAY REAL ESTATE COMPANY DIRECTORS'
MEETING.

* * * * *

10

A special meeting of the Board of Directors of the Cape May Real Estate Company was held at the office of N. Z. Graves, Inc., Nos. 22-24 South Third Street, Philadelphia, Pennsylvania, on Tuesday, March 26, 1918, at 2:00 o'clock P. M., pursuant to notice mailed to all directors, a copy of which is spread upon these minutes as follows:

“Cape May Real Estate Company,
Seymour, Connecticut, March 21, 1918.

20

To the Directors:

“By order of the president, notice is given that a special meeting of the Board of Directors of the Cape May Real Estate Company will be held at the office of N. Z. Graves, Inc., 22 and 24 South Third Street, Philadelphia, Pennsylvania, on Tuesday, March 26, 1918, at two o'clock P. M., to consider and act upon the following matters:

To consider and act upon a lease of property to The United States of America; 30

To consider and act upon any and all matters that may be brought before the board.

Yours truly,

(Signed) F. S. JEROME,
Secretary.”

Present: Nelson Z. Graves, Ferdinand J. Graves, Franklin S. Jerome and Joseph T. Sullivan. 40

Absent: G. E. Matthies and Nelson Z. Graves, Jr.

The president, Mr. Nelson Z. Graves, acted as chairman.

Mr. F. S. Jerome, secretary, acted as secretary.

10 The records of the directors' meeting held January 22, 1918, were read and approved.

The chairman then stated that he had negotiated a lease with The United States of America covering certain property in the City of Cape May, New Jersey, at a rental of One Dollar per year.

The chairman further stated that he had signed the lease, in triplicate, under date of March 25, 1918, and desired to have his acts in the matter approved and confirmed, whereupon,

20 Upon motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the act of the president of this corporation in executing a lease with The United States of America, dated March 25, 1918, covering property in the City of Cape May, New Jersey, as described therein, at a rental of One Dollar per year, be and the same is hereby ratified and confirmed as the act and deed of this corporation.

30 Upon motion of F. S. Jerome, duly seconded by J. T. Sullivan, the following was unanimously adopted:

"ORDERED,

40 "(1) That in compliance with the laws of the State of New Jersey, this corporation have and continuously maintain a principal office and place of business within the State of New Jersey and have an agent at all times in charge thereof, and upon which agent process against this corporation may be served, and therein keep the stock and transfer books for the in-

specification of all who are authorized to see the same and for the transfer of stock. That the books in which the transfers of stock shall be registered and the books containing the names of the shareholders shall be at all times during the usual hours of business open to the examination of every stockholder at said principal office. 10

"That the name of this corporation be at all times conspicuously displayed at the entrance of its principal office in this State.

"AND BE IT FURTHER ORDERED, until this resolution be revoked by the stockholders,

"(2) That such office and place of business be in and at the office of the said New Jersey Corporation Guarantee and Trust Company, 417 and 419 Market Street, Camden, New Jersey, and that this company be registered with said trust company. 20

"(3) That the New Jersey Corporation Guarantee & Trust Company, being by its charter expressly authorized to act in New Jersey as the agent of corporations, domestic and foreign, to the same extent as a natural person, a resident of the State of New Jersey be and hereby is appointed the agent of this corporation for all of the aforesaid purposes and the agent of this company upon whom legal process against this corporation may be served within the State of New Jersey, and also the transfer agent of the stock of this Company. 30

"There being no further business, the meeting was, on motion duly adopted, adjourned.

"Attest:

"F. S. JEROME,
"Secretary." 40

(Special meeting of directors, April 9th, 1918,
page 347, Minute Book No. 2.)

CAPE MAY REAL ESTATE COMPANY DIRECTORS'
MEETING.

10 A regular meeting of the Board of Directors of
the Cape May Real Estate Company was held at
the office of N. Z. Graves, Inc., Nos. 22-24 South
Third Street, Philadelphia, Pennsylvania, on Tues-
day, April 9, 1918, at 2:00 o'clock P. M., following
the annual meeting of stockholders in Camden,
N. J., this date.

Present: Nelson Z. Graves, Franklin S. Jerome
and Joseph T. Sullivan.

20 Absent: G. E. Matthies and Ferdinand J.
Graves.

The president, Mr. Nelson Z. Graves, acted as
chairman.

Mr. F. S. Jerome, secretary, acted as secretary.

The records of the directors meeting held March
26, 1918, were read and approved.

Upon motion, duly made, seconded and unani-
mously adopted, it was

30 VOTED to proceed to the election of officers in ac-
cordance with the by-laws and that the secretary
act as teller.

Mr. Nelson Z. Graves was duly nominated for
president, and upon a ballot was unanimously
elected.

Mr. G. E. Matthies was duly nominated for
treasurer, and upon a ballot was unanimously
elected.

40 Mr. G. E. Matthies was duly nominated for Vice-
President, and upon a ballot was unanimously
elected.

Mr. F. S. Jerome was duly nominated for secre-
tary, and upon a ballot was unanimously elected.

Accordingly the chairman announced that the
following officers had been unanimously elected by
the affirmative vote of all the directors present:

President, Nelson Z. Graves;

Vice-President, G. E. Matthies;

Treasurer, G. E. Matthies;

Secretary, F. S. Jerome.

There being no further business the meeting was,
upon motion duly adopted, adjourned.

Attest:

F. S. JEROME,
Secretary.

(The aforesaid special meeting of directors, held
on April 9th, 1918, is the last Minutes of Meetings
of Directors that appears in said Minute Book No.
2.)

Exhibit D-2.

MINUTE BOOK OF THE CAPE MAY REAL ESTATE
COMPANY.

SPECIAL MEETING OF DIRECTORS.

A special meeting of the Board of Directors of
Cape May Real Estate Company was held at 803
West End Trust Building, Philadelphia, Pa., on
July 16, 1917, at 10 o'clock A. M., in pursuance to
a call as follows: Call,

A special meeting of the board of directors
of Cape May Real Estate Company will be held
at 802 West End Trust Building, Philadelphia.

Pennsylvania, on Monday, July 16, 1917, at 10 o'clock A. M., for the purpose of approving a schedule of the selling price of lots and approving sale of tract of fifty-seven acres.

C. EARLE MILLER,
Secretary.

10

There were present Messrs. Peter Schields, C. Miller, Buzby and Lloyd.

Mr. Shields presided:

The Secretary presented a plan of a tract comprising the sale heretofore authorized by the Company to the United States Government, bounded by the center line of Princeton Avenue, the center line of the northernmost section of Cape May Avenue, the center line of Kansas Avenue and the Harbor line, and explained that a portion of this tract is subject to a lien of a mortgage of \$3,500,000 held by the Colonial Trust Company Trustee of Pittsburgh, Pa.

20

Upon motion duly seconded and carried it was RESOLVED that there be laid out and plotted a plan of a certain lot of land of Cape May Real Estate Company bounded on the west by the center line of Princeton Avenue, on the south by the center line of the northernmost portion of Cape May Avenue (50 feet wide), on the east by the center line of Kansas Avenue and on the north by a line parallel with the northerly line of Pennsylvania Avenue and distant in a northerly direction 125 feet therefrom.

30

AND RESOLVED that the schedule price for the sale of the said lot of land shall be the sum of \$50,000.

AND RESOLVED that a certified copy of this resolution be lodged with the Colonial Trust Company of Pittsburgh, Trustee.

40

Upon motion duly seconded and carried it was

RESOLVED that the President and Secretary be and they hereby are authorized and directed to execute and deliver to Colonial Trust Company of Pittsburgh, Trustee, a request that the tract of land ordered to be plotted and laid out by a resolution at this meeting and bounded on the West by the center line of Princeton Avenue, on the south by the center line of the northernmost portion of Cape May Avenue (50 feet wide), on the east by the center line of Kansas Avenue, and on the north by a line parallel with the northerly line of Pennsylvania Avenue and distant in a northerly direction 125 feet therefrom, be released from the lien of the mortgage given and executed by Cape May Real Estate Company to Colonial Trust Company of Pittsburgh, Trustee, dated July 1, 1907, and recorded July 26, 1907, in the Office of the Clerk of Cape May County in Book No. 80, page 207, to secure the payment of bonds aggregating the sum of \$3,500,000 upon the delivery for cancellation of bonds of the Cape May Real Estate Company, which at their par value, together with accrued interest thereon from July 1, 1907, shall amount to 50% of the said schedule price, to wit, \$25,000, in accordance with the terms set forth in Article 9 of the said mortgage.

10

20

30

Upon motion duly seconded and carried it was

RESOLVED that the President and Secretary be and they hereby are authorized and directed to execute an agreement in writing with the United States Government, in such form as shall be approved by the President of the Company, agreeing to do certain dredging consisting of the removal of 2 islands in Cold Spring Harbor and certain dredging at the entrance of Cold Spring Harbor as may be desired and required by the United States

40

Government or any branch thereof, and also to execute and deliver such agreement as may be approved by the President of the Company with such person or corporation as he may select to do said dredging.

10 Upon motion duly made, seconded and carried the meeting adjourned.

C. EARLE MILLER,
Secretary.

SPECIAL MEETING OF DIRECTORS.

20 A special meeting of the Board of Directors of the Cape May Real Estate Company was held at the office of the company at No. 426 Washington Street, Cape May, N. J. on September 20th, 1917 at 11:30 o'clock A. M.

The following directors were present

Ernest W. Lloyd
C. Earle Miller
Peter Shields
C. D. Scully.

30 The meeting was called to order by the president Mr. Peter Shields.

The secretary read the call for the meeting which was in the following form

NOTICE.

Cape May, N. J.,
September 15, 1917.

40 A special meeting of the Board of Directors of Cape May Real Estate Company will be held at the office of the company, No. 426 Washington St., Cape May, N. J. on Thursday, September 19, 1917,

at 11:30 o'clock A. M. for the purpose of transacting such business as may be brought before the meeting.

Respectfully,

C. EARLE MILLER,
Secretary.

10

On motion made and seconded the reading of the minutes of the previous meetings were dispensed with.

Mr. C. D. Scully presented the following resolution and moved same be passed, seconded by Mr. Ernest W. Lloyd.

Resolved on this 20th day of September, 1917, that the president of this company, Mr. Peter Shields, is authorized to lease to the United States government, for the consideration of One Dollar, for the period of the duration of the present war, all the land from the East side of Yale Avenue, Cape May County, Cape May, N. J., extending from Cape May Harbor to the Atlantic Ocean, excepting such lots as may have been sold, and be it further

20

Resolved, that any action heretofore taken by the said president, Peter Shields, and any contract or lease heretofore made or executed between him, as president of said company, and the United States Government, or any agent thereof, is hereby ratified and confirmed.

30

After a full discussion, the question was called on the motion and unanimously passed. The secretary was asked to call the roll on this resolution, and same was called with the following result—

Ernest W. Lloyd	Yes
C. Earle Miller	Yes
Peter Shields	Yes
C. D. Scully	Yes.

40

The president thereupon declared the resolution unanimously passed.

10 The president stated of the \$150,000 appropriated by the United States Government for the purchase of an aviation ground or costal air station, between Princeton Avenue, and Kansas Avenue, the Harbor and Cape May Avenue, \$125,000 was to be used for dredging the Harbor and it would be necessary to enter into a contract to have the dredging work done with all possible speed.

Mr. C. D. Scully thereupon introduced the following resolution and moved same be passed, seconded by Mr. Ernest W. Lloyd.

20 Resolved, that the president of this company be and hereby is authorized to take all the necessary steps including the making of a contract on the best terms possible, to have done the dredging work which this company is required to do in the sale contract with the United States of America, and

30 Be it further resolved, that in view of its great importance to the Federal Government, the president be and is hereby authorized and instructed to consummate the sale contract at the earliest possible moment and that he have full power in the premises.

After a full discussion the question was called on the motion and unanimously passed.

The secretary having been asked to call the roll—the same was done, with the following result:—

Ernest W. Lloyd	Yes
C. Earle Miller	Yes
C. D. Scully	Yes.

40 The president thereupon declared the resolution unanimously passed.

Mr. Lloyd stated that various amounts had been advanced by Mr. Shields from time to time for the payment of interest and taxes on the company's property, salaries, office expenses, etc., and that a commission was due Mr. Shields on account of the sale of land to the United States.

Mr. Scully thereupon introduced the following resolution and moved same be passed, seconded by Mr. Lloyd.

Resolved, that the treasurer be authorized to expend the following amounts, and to draw vouchers therefore, payable as soon as the funds are available:

First: For \$5,215.24 to reimburse Mr. Peter Shields for interest and taxes paid on the Two Mile Beach Mortgage with interest at 6% per annum from date of advancement.

Second: For \$1,731.83 advanced by Mr. Peter Shields on account of taxes on property in Cape May City between Princeton and Kansas Avenues and the Harbor and Cape May Avenue, with interest at 6% per annum from date of advancement.

Third: For \$22,500 commission on \$150,000 at 15% on the sale of property to the United States of America consummated prior to Mr. Shields election as president of the company.

Fourth: For \$1594.68, advanced by Mr. Peter Shields on account of salaries, interest, office expenses, fire insurance, etc. as follows:

April 12, 1916, Russell Robinson, carpenter, \$12.50.

May 1, 1916, M. H. Ware, hardware, \$1.13.

August 22, 1916, Harry Callaghan repairs, \$2.73.

October 10, 1916, Cape May Light & Power Co., light, \$8.46.
August 1, 1916, paid to reinstate charter of company, \$150.00.
Civil Engineer, a/c salary \$25.00.
December 16, 1916, bookkeeper, a/c salary, 10 \$400.00; office expense \$35.84.
January 15, 1917, J. S. Leaming mtg. int., \$131.25.
G. W. Reeves, plumbing \$.50.
July 16, 1917, Creth & Sullivan, insurance, \$79.15.
September 1, 1917, S. F. Eldredge fee—, \$5.00.
October 1, 1917, Bell Telephone Co. phone \$21.76.
20 Williams Brown Earle blue prints, \$1.15.
Noah H. Bryan, cleaning, \$11.25.
Secretary, salary \$600.00.
Office expense \$108.96.
Expense as shown above amounting to \$1,594.68.
Total \$31,041.75 with interest at 6% per annum from date of advancement.

30 After a full discussion, Mr. Shields taking no part in same, the question was called on the motion and the resolution was unanimously passed; Mr. Shields not voting, or participating in the passage of the resolution.

The secretary was requested to call the roll on the above resolution, which was done, with the following result.

For the resolution—

40 Ernest W. Lloyd
C. Earle Miller
Cornelius D. Scully.

Against the resolution—

None.

The resolution was thereupon declared passed.

The president stated the City of Cape May was insisting upon the payment of the Taxes on the company's property and something would have to be done. 10

On motion duly made and seconded by Mr. Ernest W. Lloyd, the following resolution was unanimously passed.

Resolved—that the president of this company, Mr. Peter Shields, is hereby authorized to take up the matter of the unpaid taxes with the City of Cape May and try and secure a postponement or adjournment, or try and secure funds to pay the same. 20

There being no further business, on motion made by Mr. Scully and seconded by Mr. Lloyd, the meeting adjourned.

C. EARL MILLER,
Secretary.

SPECIAL MEETING OF DIRECTORS.

30 A special meeting of the Board of Directors of Cape May Real Estate Company was held at the office of the company, No. 426 Washington Street, Cape May, N. J. on Saturday, October 20th, 1917 at 11 o'clock A. M.

The following directors were present—

Ernest W. Lloyd
C. Earle Miller
Peter Shields
Cornelius D. Scully. 40

The meeting was called to order by the president, Mr. Peter Shields, who took the chair. The secretary read the call for the meeting which was in the following form:

Cape May, N. J.,
October 17, 1917.

10

NOTICE.

A special meeting of the Board of Directors of Cape May Real Estate Company will be held at the office of the company, No. 426 Washington Street, Cape May, N. J., on Saturday, October 20th, 1917 at 11 o'clock A. M., for the purpose of transacting general business of the company and such other business as may come before the meeting.

20

C. EARLE MILLER,
Secretary.

On motion made by Mr. C. D. Scully, the reading of the minutes of the previous meetings was waived. The president stated one of the questions that should be taken up was that of giving the president or proper officers of the company authority to commence litigation to quiet certain fraudulent mortgages placed on this company's property by Nelson Z. Graves, when he formerly owned the controlling stock of the company. These mortgages were placed there for work he never done, and the work he did do was not done according to his contract with the company, and I think it is now in order and very important that the proper offers to be instructed on behalf of the Cape May Real Estate Company and the stockholders to contest these mortgages and try to have them set aside.

40

After a full discussion, Mr. C. D. Scully offered the following resolution and moved its adoption:

Whereas, the Board of Directors of this company is advised that an effort will be made by Nelson Z. Graves or his assigns to exercise his rights of foreclosure under certain mortgages made at his direction and for his benefit to himself, under which the property of the company may be taken from it.

10

And Whereas, it appears that the said mortgages are illegal and void and made without consideration, therefore be it

Resolved, that the proper officers of the company be and they are hereby authorized and directed to employ counsel and initiate litigation without delay to the end that said mortgages may be declared void and of no effect and a decree entered satisfying them upon the records.

The chairman asked if there were any remarks on this resolution.

20

Mr. Scully said he would like to state as a representative minority stockholder of this company he found himself at the last meeting of stockholders at which Mr. Graves was represented, insulted and his rights disregarded, and he was convinced from Mr. Graves attitude at that meeting that Graves then intended and has intended to use his stock control of the company to the serious injury of the minority stockholders.

30

There being no further remarks the question was called on the above resolution, and same being duly seconded was passed upon the following roll call.

For the resolution—

Ernest W. Lloyd
C. Earle Miller
Peter Shields
C. D. Scully.

40

Against the resolution—

None.

Resolution declared carried.

10 The president filed a report showing he had been to Washington lately upon several occasions in connection with the operations of the War and Navy department regarding various business transactions on behalf of this company.

The following resolution was presented by Mr. Ernest W. Lloyd who moved its adoption, seconded by Mr. Miller.

20 WHEREAS, at a meeting of the Board of Directors of this company, held at the office of the company at No. 426 Washington St., Cape May, N. J., on September 20, 1917, a resolution was passed authorizing the treasurer to expend certain amounts and to draw vouchers therefor, amounting to \$31,941.75/100 to reimburse Mr. Peter Shields for money expended by him in behalf of this company and for commission earned on the sale of certain property to the United States of America.

30 And whereas the sums specified in the said resolution were due and owing to the said Peter Shields by his company and that no defence could be entered should a suit be brought upon them,

40 Now therefore be it RESOLVED, that the proper officers of this company be and they are hereby authorized and directed to execute and deliver to the said Peter Shields the corporate bond of the company for the said sum of \$31,941 75/100 as specified in said

resolution, bearing date the 20th day of September, 1917, payable on demand, together with a warrant executed by the proper Officers of this Company to confess judgment upon the said bond.

Upon a vote being taken on the above resolution 10 the same was passed with the following vote.

For the resolution—

Ernest W. Lloyd
C. Earle Miller

Against the resolution

Mr. Shields not voting on the passage of the resolution.

Resolution carried. 20

There being no further business, on motion duly made and seconded the meeting adjourned.

C. EARLE MILLER,
Secty.

SPECIAL MEETING BOARD OF DIRECTORS. 30

A Special meeting of the Board of Directors of Cape May Real Estate Co. was held at the office of Wescott & Weaver—Security Trust Building, Camden, N. J. on Tuesday, October 30, 1917 at ten o'clock A. M.

The following Directors were present

Ernest W. Lloyd
C. Earle Miller

40

Cornelius D. Scully
Peter Shields
James F. Lucas and William S. Shaw.

The meeting was called to order by the President, Mr. Peter Shields.

10 The Secretary read the call for the meeting which was in the following form

NOTICE

20 A Special Meeting of the Board of Directors of Cape May Real Estate Co. will be held at the office of Wescott & Weaver, Security Trust Building, 3rd & Market Sts., Camden, N. J. at ten o'clock A. M. for the purpose of filling vacancies on the Board, the ratification and approval of certain resolutions passed at a meeting of the Board of Directors held on the 20th day of October 1917, authorizing the payments of various amounts of money and execution of a Bond and Warrant to Mr. Peter Shields, and for such other business as may come before the meeting.

C. EARLE MILLER,
Secretary.

30 On motion duly made and seconded the reading of the minutes of previous meetings was waived.

The President declared there were three vacancies on the Board to be filled. Mr. Ernest W. Lloyd thereupon nominated the following named gentlemen, stockholders of the Company, for Directors to serve until the next election and until their successors were elected and qualified.

40 James F. Lucas
William S. Shaw
James R. Tindle.

There being no further nominations, on motion duly made and seconded the nominations were closed on the above named gentlemen for Directors of the Company.

On motion made by Mr. Lloyd and duly seconded Mr. James F. Lucas was unanimously elected a Director of the Company. Mr. Lucas then appeared and took his seat. 10

On motion of Mr. Lloyd, duly seconded Mr. William S. Shaw was unanimously elected a Director of the Company. Mr. Shaw then appeared and took his seat.

On motion of Mr. Lloyd, duly seconded, Mr. James R. Tindle was unanimously elected a Director of the Company.

Mr. Lloyd explained the details of the resolutions passed at the meetings of the Board of Directors held on Sept. 20, 1917 and Oct. 20, 1917, and after full discussion, on motion made by Mr. Lloyd and seconded by Mr. Shaw, the following resolution was unanimously passed, Mr. Shields not voting— 20

Resolved, that the resolutions passed by the Board of Directors at the meeting held on September and October 20th, 1917, be and they are hereby ratified and approved. 30

There being no further business, on motion duly made and seconded the meeting adjourned.

C. EARLE MILLER,
Secretary.

SPECIAL MEETING BOARD OF DIRECTORS.

10 A Special Meeting of the Board of Directors of Cape May Real Estate Co. was held in the office of Wescott and Weaver, Security Trust Building, 3rd and Market Sts., Camden, N. J. on Monday, December 3rd, 1917 at 10 o'clock A. M.

The following Directors of the Company were present

Ernest W. Lloyd
James F. Lucas
C. Earle Miller
Peter Shields
William S. Shaw
Cornelius D. Scully.

20 The meeting was called to order by Mr. Peter Shields the President of the Company. The Secretary read the Call for the meeting which was in the following form.

NOTICE.

30 A Special Meeting of the Board of Directors of Cape May Real Estate Co. will be held at the office of Wescott & Weaver, Security Trust Co. Building, 3rd & Market Sts., Camden, N. J. on Monday, December 3rd, 1917 at 10 o'clock A. M. for the purpose of electing a Vice-President of the Company and for the transaction of such other business as may come before the meeting.

C. EARLE MILLER,
Secretary.

40 On motion made by Mr. James F. Lucas the reading of the minutes of the previous meetings were waived.

On motion made by Mr. Lucas seconded by Mr. Wm. S. Shaw, Mr. Ernest W. Lloyd was nominated for Vice-President of the Company to serve until next election and until his successor was elected and qualified.

There being no further nominations, the nomination was closed on Mr. Ernest W. Lloyd for Vice-President of the company. 10

On motion made by Mr. Lucas and seconded by Mr. Shaw, Mr. Ernest W. Lloyd was unanimously elected Vice-President of the Company.

The Board instructed Mr. Lloyd to keep in touch with the situation in Cape May regarding the Taxes, the property of the company having been sold at a Tax sale and purchased by the N. Z. Graves interests.

Mr. Weaver, the attorney for the Company was instructed not to turn over any of the Company's papers to N. Z. Graves or any of his representatives. 20

There being no further business on motion duly made and seconded the meeting adjourned.

C. EARLE MILLER,
Secretary.

Exhibit D-3.

EXEMPLIFICATION

State of Pennsylvania, } ss.:
Philadelphia County, }

Sct.

Among the Records and Proceedings of the Court of Common Pleas No. 5 for the County of Philadelphia, State of Pennsylvania, the following may be found as matter of File and of Record at No. 3627 September Term, 1917, to wit: 40

DOCKET ENTRIES

J. W. Wescott—3627
Wm. Findlay Brown.
10-30-17.

10 Peter Shields
vs.
Mutual Liquidating Co. a corp.

Apr. 23, 1918 Statement & Notice to file afft of
defence filed.
May 9, 1918 Afft of defence filed.
Sums Assp't.
Exit Oct. 15, 1917.
Ret. 4 Mon. Oct. 1917.
20 Served Oct. 22, 1917.
May 25, 1923 Jury sworn.
EoDie Verdict for Deft by direction of the
Court.
May 31, 1923 Jury fee paid.
EoDie Judgment.

30 PETER SHIELDS
vs.
MUTUAL LIQUIDATING COMPANY a
Corporation.
C. P. No. 5.
September
Term, 1917.
No. 3627

To the Prothonotary C. C. P.

Sir:

40 Issue Summons in Assumpsit in the above en-

titled case returnable to the Fourth Monday in
October, A. D. 1917.

JOHN W. WESCOTT,
Attorney for Plaintiff.

County of Philadelphia, ss.: 10

THE COMMONWEALTH OF PENNSYLVANIA

To the Sheriff of the County of Philadelphia,

Greeting:

We command You
that you summon Mutual Liquidating Company,
a corporation, late of your County, so that it be
and appear before our Judges, at Philadelphia, 20
at our Court of Common Pleas, No. 5, of the
County of Philadelphia, to be holden at Philadel-
phia, in and for the said County, on the Fourth
Monday of October next, there to answer Peter
Shields of a plea of Assumpsit And to have you
then and there this writ.

Witness the Honorable J. Willis Martin
President of our said Court, at Philadelphia, 30
the 15th day of October in the year of our Lord,
one thousand nine hundred and seventeen (1917).

HENRY F. WALTON,
Prothonotary.
By J. U. G. Hunter.

[Seal.]

40

10	PETER SHIELDS <i>vs.</i> MUTUAL LIQUIDATING COMPANY a Corporation.	}	C. P. No. 5. September Term, 1917. No. 3627
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To the Prothonotary C. P.

Enter my appearance for Defendant in the above entitled action.

20	WM. FINDLAY BROWN, Attorney for Defendant, 807 Pennsylvania Bldg., Phila. October 29th, 1917.
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No. 3627. September Term, 1917.

IN THE
 COURT OF COMMON PLEAS NO. 5
 For the County of Philadelphia.

30	PETER SHIELDS <i>vs.</i> MUTUAL LIQUIDATING COMPANY PLAINTIFF'S STATEMENT OF CLAIM.
----	--

To Mutual Liquidating Company.

40	You are required to file an Affidavit of Defense to the within statement within fifteen days from
----	---

the service hereof; otherwise Judgment may be entered against you.

JOHN W. WESCOTT,
Attorney for Plaintiff.

10	Filed April 23, 1918, Sommer Pro Prothy.
----	--

JOHN W. WESCOTT,
 Attorney for Plaintiff,
 1100 Penn Square Building.

Rec'r April 23, 1918.

20	LAW OFFICE OF WM. FINDLAY BROWN CHARLES R. DOWNS	20
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Return to
 Law office of
 Wm. Findley Brown
 Charles B. Downs
 26 S. 15th St. Trans. Bldg.
 Philadelphia.

30	PETER SHIELDS <i>vs.</i> MUTUAL LIQUIDATING COMPANY.	}	C. P. No. 5. September Term, 1917. No. 3627.	30
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40	Nelson Z. Graves, being duly sworn, deposes and says that he is the President of the Mutual Liquidating Company, the defendant above named, and
----	---

that said Defendant has just, full, true and complete defence against the whole of the Plaintiff's claim of the following nature and character:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Defendant admits that on May 29, 1917, a preliminary injunction or restraining order was issued out of Court of Common Pleas No. 5 of Philadelphia County to March Term, 1917, No. 5470, whereby the defendant was enjoined from assigning, transferring, selling, conveying or in any way disposing of any property theretofore purchased by or for defendant and remaining unsold, but defendant denies that said injunction prevented defendant from carrying out said agreement of sale with Plaintiff, dated April 1, 1916, copy whereof is attached to Plaintiff's Statement of Claim, Marked "Exhibit A", but defendant avers that no hearing was ever held or further order of Court made in said proceedings and that said preliminary injunction was dissolved at the end of five days after May 29, 1917, and that defendant was at all times able and willing to carry out said agreement of sale with Plaintiff.

Defendant avers that by the terms of the Extension Agreement between Plaintiff and Defendant, dated April 28, 1917, copy of which is attached to Plaintiff's Statement of Claim, marked "Exhibit C" the time for the payment of the balance of the purchase price by plaintiff under said agreement of sale was extended to July 31, 1917, time being expressly made of the essence of said contract, and

that Plaintiff wholly failed to pay said balance to defendant or to tender payment thereof or any part of same or in any way whatsoever to indicate to defendant his intention and ability to perform said contract before the expiration of said time limit on July 31, 1917.

Defendant denies that in obedience to said injunction it assigned, transferred and sold the property included in said agreement of sale, "Exhibit A" attached to Plaintiff's Statement, to Nelson Z. Graves or his nominee for a sum in excess of the sum agreed to be paid for same by plaintiff, and further denies that it sustained no loss, but defendant avers that it has not sold and conveyed said property but still continues to be the owner thereof.

6. Defendant admits that it retained the sums of \$35,000 and \$8,541.15, which had been paid to it by plaintiff under said agreement of sale, and avers that by the express terms and conditions of said agreement and the subsequent agreements extending the time for the performance thereof; it was provided that if the balance of the purchase price was not paid by plaintiff to defendant within the time limit as therein provided, time being expressly made of the essence of the contract, that then all payments made by plaintiff under said agreement were to be retained by defendant and to remain the property of the defendant as liquidated damages, that plaintiff wholly failed to pay said balance as aforesaid, by reason whereof defendant is entitled to retain said moneys, as its own property and that plaintiff has no lawful claim or right thereto whatsoever.

7. Defendant denies that it is indebted to plaintiff in the sum of \$43,541.15, with interest, or any other sum whatsoever.

All of which defendant avers to be true and expects to be able to prove same at the trial of this cause.

NELSON Z. GRAVES.

10 Sworn to and subscribed before me
the 8th day of May A. D. 1918.

ROYAL W. URIE,
Notary Public,
Commission expires March 20, 1921.
[Seal.]

No. 3627

Sept. Term, 1917

20

C. P. No. 5.

Peter Shields
vs.

Mutual Liquidating Co.

5-31, 23.

Prothonotary C. P.

30 Enter judgment on the verdict in the above case,
and I hereby certify that the precise residence address of the Judgment creditor is 400 Chestnut Street, Phila.

Filed May 31, 1923.

J. ORR, Pro Prothy.
WM. FINDLEY BROWN
per THOMAS F. GAIN,
Attorney.

40

JUDGMENT ROLL.

Whereupon it was considered by our said Court before our said Judges that Mutual Liquidating Company, a Corp., the defendant herein, recover of Peter Shields, the plaintiff herein, the sum of
dollars lawful money for 10
their judgment, and also the further sum of Thirteen and 75/100 dollars like money for their costs and charges by them about their suit in that behalf expended, whereof the aforesaid plaintiff is convict, as appears of record, &c.

And the plaintiff in mercy, &c.

JUDGMENT INDEX.

20

Plaintiff Peter Shields
Defendant Mutual Liquidating Co. a Corp.
Court C. P. No. 5.
Term Sept. 1917.
No. 3627.
Attorney Brown.
Date May 31, 1923.
Amount

30

No. 210. Foreign Certificate

County of Philadelphia,
The Commonwealth of Pennsylvania, } ss.:

I, John M. Scott, Esquire, Prothonotary of the Courts of Common Pleas of the County of Philadelphia, DO CERTIFY, that the foregoing is a true copy of the whole record:

40

Peter Shields, Plaintiff, and Mutual Liquidating Company, a corp., Defendant, of September Term, 1917, Number 3627, as full, entire and complete as the same remains on file in Court of Common Pleas No. 5 of the County of Philadelphia aforesaid, in the case above stated.

10 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 18th day of December, in the year of our Lord one thousand nine hundred and twenty-five (1925).

(Seal) JOHN M. SCOTT,
Prothonotary.

20 County of Philadelphia, ss.:

I, J. Willis Martin, Presiding Judge of the Court of Common Pleas No. 5 for the County of Philadelphia, DO CERTIFY that the foregoing Record, Certificate and Attestation made by John M. Scott, Esquire, Prothonotary of the said Court, whose name is thereunto subscribed, and the seal of the said Court affixed, are in due form and made by the proper officers.

30 IN TESTIMONY WHEREOF, I have hereunto set my hand this 18th day of December, in the year of our Lord one thousand nine hundred twenty-five (1925).

CHARLES Y. AUDENRIED,
President Judge, Court of
Common Pleas No. 4.

40

County of Philadelphia, ss.:

I, John M. Scott, Esquire, Prothonotary of the Courts of Common Pleas of the County of Philadelphia, DO CERTIFY that the Honorable Charles Y. Audenried, by whom the foregoing Certificate and Attestation were made, and whose name is thereto subscribed, was at the time of making thereof and still is, Presiding Judge of the Court of Common Pleas No. 4 of the County of Philadelphia duly commissioned and sworn; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts, this 18th day of December in the year of our Lord one thousand nine hundred twenty-five (1925). 20

(Seal) JOHN M. SCOTT,
Prothonotary.

IN THE
COURT OF COMMON PLEAS No. 5
OF THE COUNTY OF PHILADELPHIA.
September Term, 1917. No. 3627.

PETER SHIELDS 30
vs.
MUTUAL LIQUIDATING COMPANY.

Plaintiff's Statement of Claim.

County of Philadelphia, ss.:

Peter Shields, the above named plaintiff, brings this action of assumpsit to recover from the defendant, above named, the several sums of money, as 40

hereinafter set forth, which belong to him and are retained by the defendant, upon a cause of action whereof the following is a statement:

10 1. On the first day of April, 1916, the plaintiff and defendant entered into a contract in writing, under seal, a copy of which is attached hereto and marked "Exhibit A" and made a part hereof, wherein the defendant agreed to sell, assign, deliver and convey to the plaintiff, for and in consideration of the sum of \$250,000—and the plaintiff agreed to purchase and pay for all the defendant's right, title and interest in and to all property, real and personal, set forth in "Exhibit A" of this statement.

20 2. By the terms of said agreement it was provided that settlement should be made and the purchase price paid in full by various instalments, as therein set forth, on or before eight months from the date of the execution thereof, to wit, the first day of April, 1916.

30 3. Within said eight months, and while the said agreement was in full force and effect, the plaintiff and defendant entered into divers contracts under seal, wherein the term of said agreement and the time for payment and settlement thereunder was extended to July 31st, 1917, copies of said agreements to extend the term of the agreement of April 1st, A. D. 1916, are attached hereto, made parts hereof and marked "Exhibits B and C" respectively.

40 4. The plaintiff, prior to July 31st, 1917, paid to the defendant the sum of \$35,000 in cash and also paid, for and on account of taxes and other

obligations as provided in said "Exhibit A" the sum of \$8,541.15 as he was obliged to do, by virtue of said contract.

5. Prior to July 31st, 1917, to wit, May 29th, 1917, an injunction was issued out of the Court of Common Pleas No. 5 of Philadelphia County to March Term, 1917, No. 5470, enjoining, *inter alia*, the defendant herein from assigning, transferring, selling or in any way disposing of any of the property set forth in "Exhibit A" to any person other than Nelson Z. Graves, upon a bill praying that the defendant herein, *inter alia*, be decreed to transfer the property set forth in "Exhibit A" to the said Nelson Z. Graves; thereby preventing the defendant herein from carrying out its agreement with the plaintiff. Subsequently defendant, in obedience to the said injunction, assigned, transferred and sold the property set forth in "Exhibit A" to the said Nelson Z. Graves, or his nominee, for a sum in excess of the sum agreed to be paid for the same, by the plaintiff herein. Thereby the defendant sustained no loss.

6. Defendant, however, retained and still retains the sum of \$35,000 paid to it by plaintiff, as well as the sum of \$8,541.15 paid for defendant's account by the plaintiff as aforesaid, and refused and still refuses against equity and good conscience, to return the same or any part thereof to the plaintiff.

7. Plaintiff claims the sum of \$43,541.15 with interest from September 13, 1917.

JOHN W. WESTCOTT,
Attorney for Plaintiff.

State of Pennsylvania, }
County of Philadelphia, } ss.:

Peter Shields, the above named plaintiff, being
duly sworn according to law, deposes and says that
the facts set forth in the foregoing Statement of
10 Claim are correct and true.

PETER SHIELDS.

Sworn to and subscribed before me
this 23rd day of April, A. D. 1918.

ALBERT T. HANBY,
Notary Public.

(Seal.)

20 My commission expires Feb. 21st, 1919.

Exhibit "A."

Agreement made this first day of April, 1916, be-
tween Mutual Liquidating Company, a corporation
of Pennsylvania, hereinafter called Company, and
Peter Shields of Cape May, New Jersey, herein-
after called Shields, WITNESSETH:

30 FIRST.—Company agrees to sell and Shields
agrees to buy all Company's right, title and inter-
est in the following personal property as described
in annexed catalogue of Samuel T. Freeman & Com-
pany of Receivers' Peremptory Sale of The Per-
sonal Holdings of N. Z. Graves on July 27, 1915,
and also the following real property as described
in annexed catalogue of Samuel T. Freeman & Com-
pany of Receivers' Peremptory Sale of The Cape
40 May Real Estate of N. Z. Graves on August 14,
1915, viz.:

PERSONAL PROPERTY.

995 shares Realty Corporation of Cape May. Par
\$100.

4,372 shares Cape May Hotel Company Common.
Par \$100.

2,915 shares Cape May Hotel Company Pre- 10
ferred. Par \$100.

16,044½ shares Cape May Real Estate Company.
Par \$100.

\$395,000 Cape May Real Estate Company First
Mortgage Gold 5 per cent. Registered Bonds, In-
terest January and July. Due 1917.

\$292,000 Cape May Hotel Company First Mort-
gage Five per cent. Registered Bonds. Interest
March and September. Due September, 1911.

\$800 Bond and Mortgage, Edw. H. Wood to R. 20
A. Campbell, secured upon lots 684 and 702 on
Plan A, Cape May Real Estate Company, Cape
May, N. J. Dated April 28, 1909, for 3 yrs. Rec.
Cape May County, Book 89 of Mortgages, page 431.

\$30,000 Bond and Mortgage Cape May Real Es-
tate Co. to N. Z. Graves secured upon 2 mile beach
front property, Cape May, N. J., Rec. at Cape May,
Book 97 of Mortgages, page 366.

\$250,000 Bond and Mortgage, Cape May Real
Estate Company to N. Z. Graves. Secured upon 30
Harbor Front Property of about 107-4/10 acres
on Plan B, Cape May Real Estate Co. Rec. Cape
May, Book 106 of Mortgages, page 143.

\$75,000 Bond and Mortgage, Cape May Real Es-
tate Co. to N. Z. Graves. Secured upon Riparian
Rights Beach Front, Cape May, N. J. Dated Jan-
uary 8, 1913, for 1 year at 6 per cent. Recorded
Cape May County Clerk's Office, Book 112 of Mort-
gages, page 320.

\$30,000 Bond and Mortgage, Cape May Real Es- 40

tate Co. to N. Z. Graves. Secured upon about 502 9/10 acres Filled Land, Plan B, Cape May Real Estate Co., Cape May, N. J. Dated November 4, 1913, for 1 year at 6 per cent. Recorded Cape May County Clerk's Office, Book 120 of Mortgages, page 73.

- 10 \$25,000 Bond and Mortgage, Cape May Real Estate Co. to N. Z. Graves. Plan B, Cape May Real Estate Co., Cape May, N. J., dated February 14, 1914, for 1 year at 6 per cent. Recorded Cape May County Clerk's Office, Book 122 of Mortgages, page 472.

- 20 \$15,000 Bond and Mortgage. John Wiley to N. Z. Graves, secured upon Nos. 4639 and 4640 Beach Avenue, Cape May, N. J. Dated December 17, 1912. Due \$5,000 first year, \$5,000 second year, \$5,000 third year, at 6 per cent. Recorded Cape May County Clerk's Office, Book 113 of Mortgages, page 369.

\$5,277.67 (about 5/7 equity in Bond and Mortgage, Cape May Hotel Co. to William Flinn, Trustee, secured upon premises, Nos. 2666 and 2667 New Jersey Avenue, Cape May, N. J., dated September 7, 1910, for 3 months, at 6 per cent. Recorded at Cape May County Clerk's Office, Book 92 of Mortgages, page 366.

- 30 A 5/7 Equity in Judgment vs. Cape May Real Estate Co. in favor of Colonial Trust Co. of Pittsburg, Trustee, approximately 5/7 interest of Nelson Z. Graves and the Receivers of N. Z. Graves Co. in a certain Judgment, obtained by the Colonial Trust Co., Trustee, of Pittsburg, Pa., in the New Jersey Supreme Court, December 29, 1910, against the Cape May Real Estate Co. for an amount stated to be \$357,987.59. Judgment entered in Book, Vol. 5 page 174. No execution ever issued.

- 40 Proportionate Equity of Nelson Z. Graves and

the Receivers of N. Z. Graves Co. in a certain Judgment, obtained by the Colonial Trust Company, Trustee, of Pittsburg, Pa. in the New Jersey Supreme Court, October 14, 1910, against the Cape May Hotel Co. for an amount stated to be \$88,746.00, Docket 26, page 416. Execution was issued and a levy made by the Sheriff of Cape May County on the personal property in the Cape May Hotel. 10

A 5/7 Equity in Beach Front Property, William Flinn to N. Z. Graves, secured upon 1000 feet Beach Front Property, Cape May, N. J.

\$2,085 Assignment of debt, due by Cape May Real Estate Co. to Ocean Villa Land Co.

Lease, between N. Z. Graves and Cape May Hotel Company, Cape May, N. J., for Help Quarters, Annual Lease, \$1,500. Beginning June 19, 1912. 20

REAL ESTATE.

No. 679 in said Catalogue of real estate being 75 lots Beach and New Jersey Avenue, Cape May, as therein described.

No. 680 in said Catalogue of real estate being 36 lots Beach and New Jersey Avenue, Cape May, N. J., as therein described.

No. 681 in said Catalogue of real estate being 53 lots Beach and New Jersey Avenue, Cape May, as therein described, except 1/2 of lot 1056 and the whole of lot 1057 on Beach Ave. 30

No. 682 in said Catalogue of real estate being 179 lots New York, Maryland, Idaho and Cape May Avenues, Cape May, N. J., as therein described.

No. 683 in said Catalogue of real estate being 132 lots Ohio, Illinois, Missouri, Wisconsin, Massachusetts and Michigan Avenues, Cape May, N. J. as therein described. 40

No. 685 in said Catalogue of real estate being three story frame cottage, Northwest corner Beach and Brooklyn Avenues, Cape May, N. J., as therein described.

10 No. 686 in said Catalogue of real estate, being three story frame Cottage furnished, Beach Avenue, Cape May, N. J., as therein described.

No. 687 in said Catalogue of real estate being three story frame Cottage, furnished, Beach Avenue, adjoining above, Cape May, N. J., as therein described.

No. 688 in said Catalogue of real estate being three story frame Cottage Beach Avenue, adjoining above, Cape May, N. J., as therein described.

20 No. 690 in said Catalogue of real estate known as Cape May Casino Northeast corner Madison and Beach Avenues, Cape May, N. J., as therein described.

No. 703 in said Catalogue of real estate being a 3 story Frame Office and store, South corner of Washington and Decatur Streets, as therein described. Subject to a mortgage of \$5,000 as therein mentioned.

30 No. 708 in said Catalogue of real estate being four story frame building (Help's Quarters of the Cape May Hotel, New Jersey Ave. N. E. of Pittsburg Avenue, Cape May, N. J., as therein described.

SECOND: Shields agrees to pay Company the sum of Two hundred and fifty thousand dollars for said property as follows:

\$15,000 cash on execution of agreement.

\$10,000 within sixty days from the date of this agreement.

40 \$25,000 within six months from the date of this agreement.

Balance \$200,000 within eight months from the date of this agreement. All the above deferred payments shall bear interest at the rate of six per cent per annum from the date of this agreement to date of actual payment, but Shields shall have the right to anticipate any and all of such payments.

10

THIRD: The title to said properties and the custody of the title papers, certificates and evidences of ownership shall remain in and with Company until the full payment of the purchase money and interest as aforesaid, subject to the provisions of the Fifth paragraph hereof.

FOURTH: Time is of the essence of this contract. In case of default in the payment of any of the foregoing instalments of purchase money with interest as aforesaid, within the time limited for the same, the interest of Shields under this agreement shall cease and the instalments of purchase money theretofore paid shall remain the property of Company as liquidated damages.

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FIFTH: If while this agreement is in force and before any default in the deferred payments thereunder Shields shall desire a conveyance and transfer to him of certain items of the property included in this agreement, Company will convey the same to him on the following terms:

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a. The stocks and bonds of the Cape May Hotel Company and equity in judgment against the Cape May Hotel Company, as described in the annexed catalogue of personal property, and the property described as 708, Help Quarters of the Cape May Ho-

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tel in the annexed catalogue of real estate and assignment of all leases thereof upon payment to Company by Shields on account of the deferred payment of \$200,000 with interest of the sum of one hundred thousand dollars and interest to date of payment.

10 b. Any one or more of the four Beach Avenue Properties Nos. 685, 686, 687 and 688 in the annexed catalogue of Real Estate upon the payment on account of the deferred payment of \$200,000 and interest of the sum of Eight thousand dollars and interest to date of payment for each of said cottages so conveyed.

20 c. The Cape May Casino Property No. 690 in the real estate catalogue hereto annexed upon the payment on account of the deferred payment of \$200,000 and interest of Twenty thousand dollars with interest to date of payment.

30 d. The stocks and bonds of the Cape May Rear Estate Company included in this agreement as described in the catalogue of personal property hereto annexed including all the bonds and mortgages of said company hereinbefore set out, upon payment on account of the deferred payment of \$200,000 and interest of the sum of Fifty thousand dollars and interest thereon to date of payment.

40 e. All or any of the Beach Avenue Front lots included in this agreement (other than the four properties mentioned in sub-section b. of this paragraph) upon the payment on account of the deferred payment of \$200,000 and interest of a sum equal to fifty dollars per front foot of each lot so conveyed together with interest to the date of payment.

f. All or any of the New Jersey Avenue front lots other than the property described as No. 708 Helps Quarters of Cape May Hotel mentioned in sub-section "a" of this paragraph, included in this agreement, upon the payment on account of the deferred payment of \$200,000 with interest of a sum equal to 10 Thirty dollars per front foot of each lot so conveyed with interest to the date of payment.

g. All or any of the other lots of ground included in this agreement as described in the real estate catalogue hereto annexed upon payment on account of the deferred payment of \$200,000 with interest of a sum equal to one-half of the purchase price received on an actual bona fide sale of such 20 lots respectively by Shields.

SIXTH: The title to the property included in this agreement is all derived by Company through the Receivers' sales mentioned in the annexed catalogues. Some of the securities are deposited with the Commonwealth Trust Company of Pittsburg or others. Company does not warrant the title, nor guarantee the accuracy of the descriptions, nor the obtaining of actual possession. It obligates 30 itself to convey and transfer to Shields in accordance with the terms of this agreement all its right; title and interest in said property, but subject to any rights or claims of any other persons if any such rights or claims existed at the date of said Receivers' Sales and were not extinguished thereby.

SEVENTH: Shields will accept the real and personal property covered by this agreement subject to all existing mortgages, judgments and other in- 40

10 cumbrances, interest on the same, franchise or other taxes against the corporations issuing the stocks or bonds, taxes upon real estate or personal property therein, leases to other persons, municipal charges and liens and generally all charges of every kind or which may be due on account of said property or which may accrue up to the time of final payment and delivery of the deeds with the exceptions of certain unpaid debts due by the Cape May Hotel Company for supplies purchased during the season of 1915, which amount approximately to between \$12,000 and \$13,000, and with the exception also of the mortgage of \$3,000,000 which was given by N. Z. Graves to the Receivers which is to be satisfied or releases given for the properties included herein as Shields becomes entitled to conveyances therefor under the terms of this agreement.

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EIGHTH: Since the date of the said Receivers' Sales, there have been sold to actual purchasers a number of lots and cottages. All such property actually sold or under contract of sale before the date of this agreement are excepted out of the same, and are not included in the property sold, although included in the descriptions in the annexed catalogues. (A schedule of such sales is hereto annexed.) Namely house and lot No. 689 known as Spanish Bungalow.

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NINTH: Shields agrees to pay the cost of all transfer taxes or revenue stamps required by law upon the transfer or conveyance hereunder of any of the property included herein.

TENTH: Shields agrees to pay within 180 days from the date of this agreement all taxes now in

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arrear on any of the property included herein, and all franchise or other taxes now in arrear upon the corporations whose stocks and bonds are included herein and will in the meantime indemnify and save harmless Company from any consequences of failure to pay said taxes within said period, and further agrees to assume all taxes and other charges which may accrue against the property included herein until final payment of the purchase money with interest as aforesaid.

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ELEVENTH: This agreement shall not be recorded in any public office until the final payment of all the purchase money to be paid hereunder.

TWELFTH: Default in the performance of the stipulations of the Tenth and Eleventh clauses herein shall have the same effect as to the termination of this agreement and retention of liquidated damages as default in the prompt payment of the deferred payments of purchase money.

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THIRTEENTH: When all the purchase money and taxes to be paid under this agreement shall have been paid to Company it shall execute to Shields a conveyance and transfer of the property included herein or so much thereof as shall not already have been conveyed to Shields.

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FOURTEENTH: As part of this agreement and in consideration thereof, Shields releases and surrenders to Company all claims which he may have against or interest in the property herein sold to him, except the rights given to him by this agreement.

FIFTEENTH: This agreement shall be binding upon and enure to the benefit of the successors,

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heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF the Mutual Liquidating Company has affixed its corporate seal and Peter Shields has affixed his hand and seal the day and
10 year above written.

MUTUAL LIQUIDATING Co.,
By Franklin D'Olier, Prest.
(Seal.)

Attest:
Stanley Wilson,
Secretary.
PETER SHIELDS.
(Seal.)

20 Sealed and Delivered
in the presence of:
Wm. G. Elliott.
Wm. Y. Conrad.

30 The number 686 being changed to 688 in the 23rd line 4th page. The word "all" being changed to "as" in the 8th line 6th page, and the word "between" being interlined in the 10th line, 8th page before signing.

The following corrections being first made before signing:

The words "Real Estate" on 1st page 17th line written over an erasure.

The words "March", "Sept.", "Sept. 1911", 1st page, 21 line, written over erasures.

The word "and" 1st page 23rd line written over an erasure.

40 The words "with interest as aforesaid" 5th page 26th line interlined.

The words "and interest" 7th page 4th line and the words "other than the property described as No. 708 Helps Quarters of Cape May Hotel mentioned in sub-section 'a' of this paragraph" same page 7th line all interlined.

The letters "e" 8th page 3rd line and the letter "o" same page fifth line written over erasures. 10

The words "with interest as aforesaid" 9th page 3rd line inserted, and the words "namely House and lot (No. 689 catalogue) known as Spanish Bungalow" on eighth page between 20th and 21st lines inserted.

MUTUAL LIQUIDATING Co.
By Franklin D'Olier,
Prest.
(Seal)

PETER SHIELDS. 20

"EXHIBIT B."

WHEREAS there has been paid on account of the payments which were to have been made by Peter Shields under the agreement with Mutual Liquidating Company, dated April 1, 1916, the amount of the first two instalments one of \$15,000 and one of \$10,000 and Peter Shields has also taken conveyance of three of the four Beach Avenue Properties mentioned in clause b of paragraph fifth of said agreement and has paid the sum of Twenty-four thousand dollars thereon in accordance with said clause b of paragraph fifth. 30

AND WHEREAS, Peter Shields desires an extension of time for the payment of the balance of the money to be paid by Peter Shields under said agreement. 40

NOW IT IS MUTUALLY AGREED as follows:

10 First. The time for making the remaining payments of \$25,000 and \$176,000 (balance of the \$200,000) with interest in accordance with said agreement is extended for ninety days from December 18, 1916. Interest at the rate fixed by the agreement to be paid to date of payment.

Second. In all other respects the terms and conditions of the agreement are to remain unchanged.

IN WITNESS WHEREOF the said Peter Shields has affixed his hand and seal and Mutual Liquidating Company has affixed its corporate seal this Eighteenth day of December, A. D. 1916.

20 PETER SHIELDS. (Seal)
MUTUAL LIQUIDATING CO.,
By Franklin D'Olier,
Pres.

Attest:
STANLEY E. WILSON,
Secretary.

WITNESSES:
Charles J. McDermott,
W. T. Elliott.

30

“EXHIBIT C.”

In consideration of the sum of Ten thousand dollars (\$10,000) paid by Peter Shields to the Mutual Liquidating Company, the receipt whereof is hereby acknowledged, it is agreed between the Mutual Liquidating Company and Peter Shields:

40 1. That the time for payment of the balance of the purchase price under a certain agreement

between the Mutual Liquidating Company and Peter Shields, dated the First day of April, 1916, is hereby extended to July 31, 1917, inclusive.

2. If the balance of the purchase price is paid within the time limit as hereby extended, the said sum of Ten thousand dollars (\$10,000) is to be credited on account thereof, but otherwise the said sum of Ten thousand dollars (\$10,000), and likewise all other payments made by Peter Shields under said agreement are to be retained and to remain the property of the Mutual Liquidating Company as liquidated damages, it being expressly understood and agreed that time is of the essence of the contract. 10

IN WITNESS WHEREOF the Mutual Liquidating Company has hereto affixed its corporate seal, and Peter Shields has set his hand and seal this 28th day of April, 1917. 20

MUTUAL LIQUIDATING COMPANY,
By Franklin D'Olier,
President.

Attest:
A. H. ASHBY,
Secretary.

PETER SHIELDS. [SEAL]

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EXHIBIT “A”

(Title to and Possession of Land for Naval Purposes.)

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS, the Act of Congress approved October 6, 1917 (Public No. 62-65th Congress) as amended 40

by the Act of July 1, 1918 (Public No. 182-65th Congress) to authorize the Secretary of the Navy to provide for the acquisition of an Air Station site for the United States Navy, provides as follows:

10 "That the Secretary of the Navy, be and he is hereby authorized to acquire; by purchase or condemnation, including all easements; riparian and other rights appurtenant thereto, for use for naval purposes, the tract of land situate at Cape May, New Jersey, lying between Princeton and Kansas Avenues, and the water front and Cape May Avenue, comprising, exclusive of Pennsylvania Avenue, which intersects the tract and is to remain a public thoroughfare, approximately fifty-seven and seventy-three one hundredth acres, or such enlarged area for which he may be able to contract within the appropriation, and there is hereby appropriated, to be paid out of any money in the treasury, not otherwise appropriated, for the acquisition of said property and of all easements, riparian and other rights, appurtenant thereto, the sum of \$150,000; Provided, That the Secretary of the Navy shall authorize the payment of no part of this sum, except for perfecting the title and dredging Cold Spring Harbor and the entrance thereto, in order to make it more available for naval purposes; And provided further, That the Secretary of the Navy, be and he is hereby empowered in his discretion to acquire, if possible, additional acreage without increased cost and within the appropriation herein authorized, and to exact guarantees for the maintenance of the electric railway now running through the above-described land; and power is hereby conferred upon the Secretary of the

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Navy to condemn the said tract of land for naval, aviation, and kindred purposes on the New Jersey Coast adjacent to Cold Spring Harbor; and the Secretary of the Navy is hereby directed, in conducting his negotiations with the Cape May Real Estate Company, to maintain intact the obligation existing between the United States and the Cape May Real Estate Company, executed by the said company June twenty-fifth, nineteen hundred and seven; and that this contract shall not be regarded as a waiver of either the obligation of the company or the rights of the United States. And provided further, that in the event the Secretary of the Navy is unable satisfactorily to consummate the negotiations for the purchase thereof under the provisions of said Act approved October sixth, nineteen hundred and seventeen, the president is hereby authorized and empowered to take over for and in behalf of the United States the immediate possession of and title to such land, including all easements, rights of way, riparian and other rights appurtenant or appertaining thereto deemed by him to be necessary for the purposes aforesaid, and to make compensation therefor under the terms and provisions of the legislation contained in this Act; and the appropriation of \$150,000 appropriated in said Act, approved October sixth, nineteen hundred and seventeen, or so much thereof as may be necessary, is hereby made available for the payment of compensation for said property so taken over by the president."

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And WHEREAS, the Secretary of the Navy has been unable satisfactorily to consummate the ne-

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gotiations for the purchase of the site needed for the Naval Aviation Station, at Cape May, New Jersey, and

10 WHEREAS, it is necessary in the public interests for the United States to take possession of the tract of land needed for the purposes aforesaid, together with all easements, rights of way, riparian and other rights and privileges appurtenant or appertaining thereto.

20 NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, Woodrow Wilson, President of the United States by virtue of the power and authority vested in me by said act of Congress approved July 1, 1918, do hereby on behalf of the United States take title to and possession of all that portion of the following described tract of land not now owned by the United States:

30 Beginning for the same at the point of intersection of the westerly line of Yale Avenue if extended in a northerly direction, with the high water line of Cold Spring Harbor, which said Avenue is shown on a certain plan of lots of the Cape May Real Estate Company, which said plan is called "Plan A" and is duly recorded in the office of the Clerk of the County of Cape May, New Jersey, in Plan Book No. 1, pages 31 and 32; thence in a general easterly, then southerly and then westerly direction following the high water line of Cold Spring Harbor, Cold Spring Inlet and the Atlantic Ocean, to its point of intersection with the westerly line of said Yale Avenue extended in a southerly direction; thence in a line of said Yale Avenue to the point of
40 beginning. Containing in all three hundred

and forty-nine acres more or less together with all improvements on said tract of land not now owned by the United States, and together with all riparian rights, privileges, easements and other rights, whatsoever, appurtenant or appertaining in any way to said above described tract of land, including all privately owned rights in the under water lands lying between the high water line of said above described tract of land and the pier head or bulk-head lines as such lines are now or may be hereafter established. Said tract or land is more definitely shown on a certain blueprint on file in the office of the solicitor, Department of the Navy, said blue-print being marked "Exhibit No. 2" and being attached to a certain report of a Board of Investigation convened at Section Base, Cape May, New Jersey, October 9, 1918, to inquire into the proposed acquisition of property at Cape May, New Jersey.

The above described parcel of land, together with all the aforesaid rights and privileges appurtenant or appertaining thereto are hereby declared to be and the same are set aside for the Naval purposes aforesaid and are placed under the exclusive control of the Secretary of the Navy, who is authorized and directed to take immediate possession thereof in accordance with the terms of the acts aforesaid on behalf of the United States of America.

The Secretary of the Navy is further authorized and directed to take such steps as may in his judgment be necessary for the purpose of conducting negotiations with the owners of property or rights whatsoever therein within the said above-described tract of land for the purpose of ascertaining the just compensation

10 to which said owners are entitled in order that the compensation therefor may be made in accordance with the provisions of the Acts aforesaid. All owners of land and improvements, title and possession of which are taken hereunder in accordance with the provisions of the Acts aforesaid and all persons having claims or liens in respect thereto are hereby notified to appear before the board to be appointed by the Secretary of the Navy and present their Claims for compensation for consideration by the said Board in accordance with the provisions of the Acts aforesaid.

20 All persons residing within the said above-described tract of land or owning movable property situate thereon are hereby notified to vacate the said tract of land and to remove therefrom all movable property on or before the first day of January, 1919.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

30 Done in the District of Columbia this second day of December, in the year of our Lord, one thousand nine hundred and eighteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL]

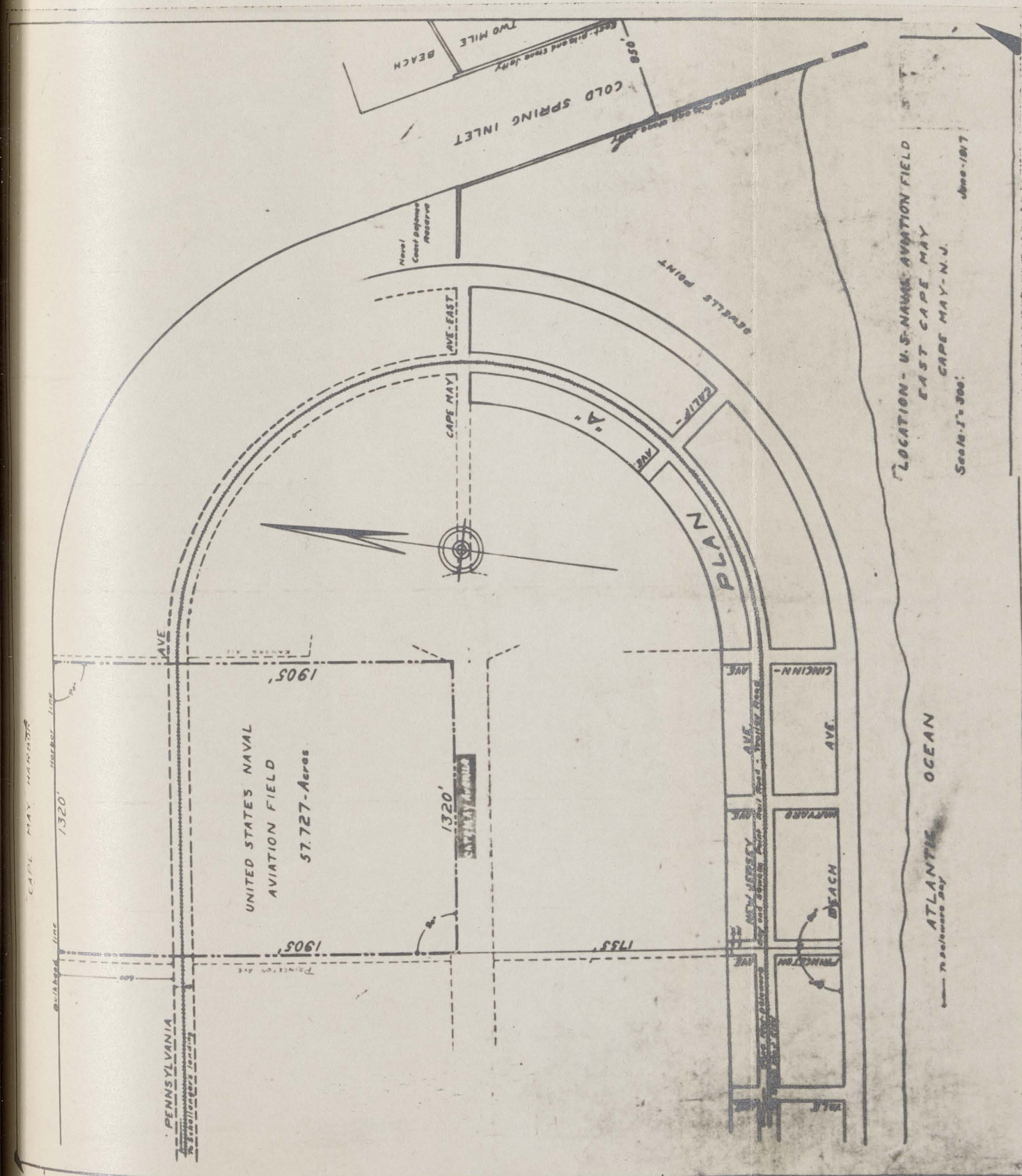
WOODROW WILSON.

By the President:

FRANK L. POLK,
Acting Secretary of State.

40 (No. 1504.)

Exhibit D-4.

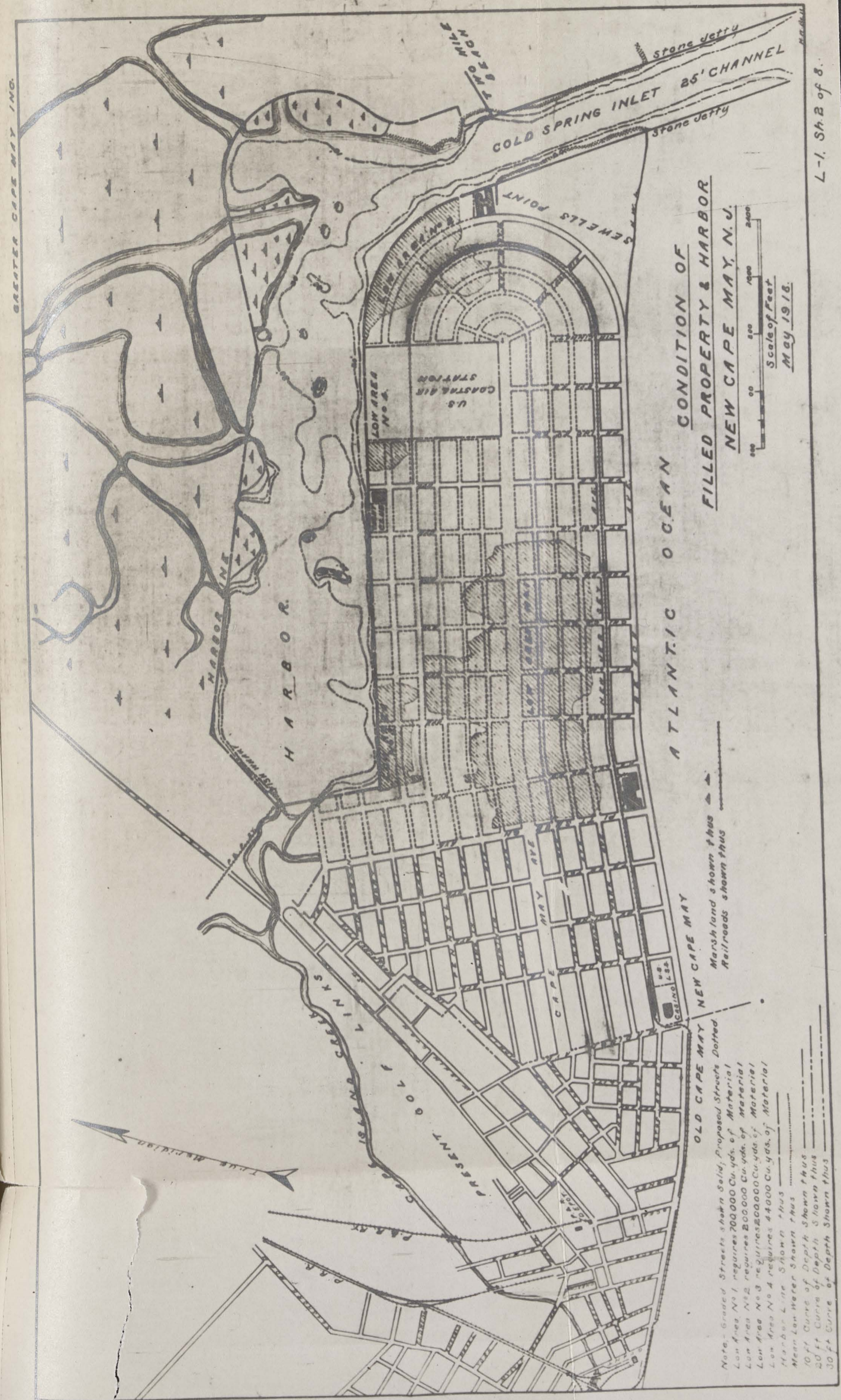


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Rule Discharging Rule to Show Cause.

(Filed January 20, 1926.)

NEW JERSEY SUPREME COURT,
No. 414 MAY TERM, 1926.

PETER SHIELDS (Harry Darlington, Jr., Assignee), Plaintiff, v. CAPE MAY REAL ESTATE COMPANY (Frank D. Schroth, Receiver, substituted), Defendant.	}	On Rule to Show Cause. Order Dismissing Rule.
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On Rule to Show Cause.

Order Dismissing Rule.

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This matter having come on for argument at the May Term, 1926, upon the return of an order to show cause made in this cause on the 28th day of June, 1920, and argument of counsel having been considered, and the court being of opinion that the said rule to show cause should be discharged.

It is, on this 20th day of January, 1927, ORDERED that said rule to show cause allowed in this matter on the 28th day of June, 1920, be and the same hereby is discharged with costs.

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Rule actually entered this 20th day of January, 1927.

On motion of

MCCARTER & ENGLISH,
Attorneys of Plaintiff.

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Opinion.

(Filed January 18, 1927.)

NEW JERSEY SUPREME COURT,
MAY TERM, 1926.10 PETER SHIELDS (Harry Darling-
ton, Jr., Assignee),
Plaintiff,

v.

CAPE MAY REAL ESTATE COM-
PANY (Frank D. Schroth, Re-
ceiver, substituted),
Defendant.

20 Submitted May 14, 1926.

Decided December, 1926.

On rule to open judgment.

For the rule: LINDLEY M. GARRISON.
Contra: McCARTER & ENGLISH.Before.—Justices KALISCH, KATZENBACH and
LLOYD.

30 Per CURIAM:

This is an application to the court to open and declare void a judgment in favor of Peter Shields (now assigned to Harry Darlington, Jr.), against the Cape May Real Estate Company. The judgment was entered October 24, 1917, on a bond and warrant dated October 20, 1917, in the penal sum of \$62,083.50 conditioned for the payment of \$31,041.75. The bond itself was executed on behalf of the company by Peter Shields, its president,

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Opinion.

upon the authorization of a majority of the Board of Directors present at a meeting held October 20, 1917, and this action was afterward ratified by the entire board.

The rule to show cause is dated October 28, 1920, and was obtained by the defendant itself. It was not pressed at the time it was granted, but at a later date, a receiver being appointed, the latter's counsel, substituted as attorney for the defendant, prosecuted the rule.

The attack on the judgment is based upon several grounds of highly technical character, none of which in our opinion successfully impeach its validity or the meritorious basis on which it rested. It was given by the corporation for moneys expended by Shields for its benefit and for services rendered in effecting an advantageous sale of a portion of its property.

While it was confessed by Shields as president he acted by authority of the Board of Directors. Such a judgment it is claimed, is voidable at the instance of the corporation itself, but this is only true if the action to annul is taken within a reasonable time. *Stewart v. Lehigh Valley Railroad Co.*, 38 N. J. L., 505. The record shows that a number of meetings, annual and special, of the stockholders were held subsequently; that at none of them was there objection to the giving of the judgment or repudiation of the action of the directors or officers of the corporation in thus securing Shields' claim. After the granting of the rule it was permitted to lie dormant until the fall of 1925 when depositions were taken under it.

Such a record exhibits laches in the extreme and is not a repudiation within the reasonable time contemplated by the decisions of our court of last resort.

The rule to show cause is discharged.

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New Jersey Court of Errors and Appeals

PETER SHIELDS (Harry Darlington, Jr., Assignee),
Plaintiffs-Appellees,

v.

CAPE MAY REAL ESTATE COMPANY (Frank D. Schroth, Receiver, substituted),
Defendant-Appellant.

Action at Law.

On Appeal
From Supreme
Court.

BRIEF FOR APPELLANT.

This is an appeal by Frank D. Schroth, Receiver of Cape May Real Estate Company, from a rule dated January 20th, 1927, made by the Supreme Court, discharging a rule to show cause why judgment of \$62,083.50 entered in said court in favor of Peter Shields against said Cape May Real Estate Company upon bond and warrant of attorney, should not be opened, set aside and declared null and void, and said bond delivered up for cancellation.

Statement of the Case.

On October 24th, 1917, judgment was entered in the Supreme Court against said Cape May Real Estate Company in favor of said Peter Shields upon bond and warrant of attorney dated October 20th, 1917, payable on demand, signed "*Cape May Real Estate Company, by Peter Shields, President,*" in the sum of \$62,083.50 (actual amount

\$31,041.75) (Record, pp. 5, 10, 11). The power of attorney authorized Francis D. Weaver or any attorney of any court of law of New Jersey or elsewhere, to confess the judgment in question (Record, p. 11).

On August 5th, 1918, said Peter Shields assigned said judgment to Harry Darlington, Jr. (Record, p. 15).

On June 28th, 1920, Nelson Z. Graves, having acquired control of the majority of the capital stock of Cape May Real Estate Company caused said Cape May Real Estate Company to file its petition verified by him in the above action praying that said judgment be opened, set aside and declared null and void, and said bond be delivered up for cancellation (Joseph H. Gaskill, Esquire, was the attorney of record of the petitioner, Cape May Real Estate Company) (Record, pp. 5, 26, 29, l. 28). Said verified petition alleged, among other things, that "* * * the present officers of your petitioner Company had no knowledge of said bond and warrant of attorney and the entry of said judgment until very recently, to wit, April 22nd, 1920, and at once took steps to investigate the same" (Record, p. 5), and "That your petitioner is not now, and was not at the time of the execution of said bond and warrant of attorney, indebted to said Peter Shields in any sum whatever, and said bond and warrant of attorney was given without any consideration" (Record, p. 6, l. 1).

No answer to said petition was filed. The rule to show cause upon said petition was returnable November Term, 1920, and Westcott & Weaver acknowledged service thereof on behalf of the plaintiff, Peter Shields, and Harry Darlington, Jr., Assignee (Record, p. 9).

On July 17th, 1920, Frank D. Schroth was ap-

pointed Receiver of said Cape May Real Estate Company in a suit in which said Peter Shields was complainant and the said Cape May Real Estate Company defendant, upon advice of Vice Chancellor Backes (Record, p. 23, l. 12).

On September 1st, 1920, a stipulation was entered in the instant action by Francis D. Weaver, attorney of plaintiff, and Joseph H. Gaskill, attorney of defendant, as follows:

"Owing to the appointment of Receiver for the defendant and certain complications growing out of the same; it is hereby stipulated and agreed, between the counsel for the respective parties, that this matter may be continued without prejudice until such time as formal notice is given to the attorney of the plaintiff by the attorney of the defendant" (Record, p. 18).

No formal notice was given by the attorney of the plaintiff to the attorney of the defendant pursuant to the terms of the foregoing stipulation.

On December 25th, 1922, an order was entered on motion of Joseph H. Gaskill, attorney of defendant, upon consent of Westcott & Weaver, attorneys of plaintiff, that Frank D. Schroth, Receiver of Cape May Real Estate Company be substituted party defendant and petitioner in the above matter (Record, p. 19).

On November 9th, 1923, an order was entered on motion of Joseph H. Gaskill, attorney of defendant, upon consent of McCarter & English, attorneys of plaintiff, that stipulation of facts filed be withdrawn and the parties have leave to take testimony in accordance with the rules and practice of said court (Record, p. 20).

On November 20th, 1923, an order was entered on consent of Joseph H. Gaskill in the above action that Lindley M. Garrison, Esquire, be substituted as attorney of the defendant in the place and stead of Joseph H. Gaskill (Record, p. 21).

On October 1, 1925, depositions were taken by Lindley M. Garrison, as attorney for defendant, under the foregoing rule to show cause pursuant to notice (Record, p. 22).

On December 19th, 1925, depositions were taken by McCarter & English on behalf of the plaintiff pursuant to agreement of counsel (Record, p. 52); and on December 22nd, 1925, further depositions were taken by McCarter & English on behalf of the plaintiff in Philadelphia (Record, p. 95).

On January 20th, 1927, the rule discharging the rule to show cause was entered on motion of McCarter & English, attorneys of plaintiff (Record, p. 213).

The affidavit of Peter Shields sets forth that the true consideration of the bond upon which judgment was about to be entered was and is as follows:

(1) \$22,500 "justly and honestly due and owing from said Cape May Real Estate Company to deponent, for his services and expenses in connection with the sale to the United States of America of a certain portion of the property of the Company prior to July 1st, 1917, with interest from said date."

(2) \$8,541.75 "money advanced by deponent for the benefit of the said Cape May Real Estate Company, between the 1st day of April, 1916, and the 1st day of October, 1917."

(Said sums of \$22,500 and \$8,541.75 aggregate the sum of \$31,041.75, the actual amount

for which said judgment was entered.) (Record, p. 12.)

The depositions and proofs taken by both parties show that the said bond and warrant were executed and delivered to the plaintiff, Peter Shields, President of the defendant, Cape May Real Estate Company, and judgment entered thereon under the following circumstances:

A Creditors' Protective Committee had been formed in respect to the affairs of Nelson Z. Graves and Nelson Z. Graves, Inc. (p. 25) and transferred the assets they had purchased at a receiver's sale to a corporation they formed called Mutual Liquidating Company (name later changed to Greater Cape May, Inc.). The affairs of the Mutual Liquidating Company were actively handled by Chas. C. Norris, a member of the Pennsylvania bar, office, 809 West End Trust Building, Philadelphia, Pa., from the fall of 1915 until Oct. 12th, 1917. The Creditors' Protective Committee possessed 16,000 shares of the capital stock of the defendant, Cape May Real Estate Company, which was a majority of the outstanding stock and a controlling interest in the company (p. 23). The said committee, after it became possessed of the controlling interest, appointed its representatives as directors of the Cape May Real Estate Company, and all the minutes were prepared by Mr. Norris.

The Minute books (D-1, pp. 27, 115 and D-1a, pp. 27, 121) of the Cape May Real Estate Company were in Norris's possession from the Fall of 1915 to October 12, 1917 (p. 27).

The Mutual Liquidating Company made an agreement with the plaintiff, Peter Shields, dated April 1, 1916. This agreement (pp. 31, 192) provided in substance that if Shields was able to find

a purchaser for some of the property which the Mutual Liquidating Company therein agreed to sell to Shields, the company would then release the property so it could be sold to Shields's purchaser, and credit him with the amount of money he got as if it were paid by Shields under said contract; Shields was to receive a certain portion of the purchase price of each property which he sold, which was to be applied against his obligation under said contract (p. 28, and "Exhibit A," p. 192).

Shields paid under this contract to the Mutual Liquidating Company, \$15,000, \$10,000 and made certain other payments (p. 28), but failed to comply with the terms of the agreement and the assets were therefore not transferred to him (p. 29).

The assets (including the said 16,000 shares of stock of the defendant, Cape May Real Estate Company) were sold and transferred to Nelson Z. Graves, on October 12, 1917, pursuant to the terms of an agreement between him and that company, dated about September 13, 1917 (p. 29).

Peter Shields, prior to September, 1917, had been continued by the Mutual Liquidating Company as a director of the defendant, Cape May Real Estate Company, being formally elected director at the meeting held April 28, 1916 (p. 142). He continued as director until the election of a new board at the stockholders' meeting held October 25, 1917 (p. 130). Mutual Liquidating Company had also caused his designation as president of the Cape May Real Estate Company and his formal election to that office at the meeting held July 5, 1917 (p. 151).

After the sale of the assets by the Mutual Liquidating Company to Nelson Z. Graves (September, 1917), Norris had a conversation with Shields in

which he told him that the Creditors' Protective Committee had undertaken to turn over and transfer the stock (including the 16,000 shares of stock of the Cape May Real Estate Company) to said N. Z. Graves, the purchaser, and the resignations of all such persons whom it had appointed or elected to the Board of Directors of the Cape May Real Estate Company, and asked Mr. Shields to give him (Norris) his resignation. Shields said he would later on, but he was not prepared to do so at that time (p. 30). Norris had subsequent conversations with Shields on the same subject (the first conversations were probably three or four days after September 12, 1917; one conversation just prior to October 12, 1917 and another shortly after October 12, 1917, in each of which he requested Shields to give him (Norris) his resignation, so he could deliver it to Graves, the purchaser, and in each case he (Shields) replied that he would give it in due time, but that he was not prepared to give it at those times (p. 30). Norris told Shields a day or two after the contract of sale to Graves, September 13, 1917, that the assets had been sold to Graves and that the company wanted to deliver the resignation of all directors (p. 31). The assets sold included the 16,000 shares of the Cape May Real Estate Company, the controlling interest therein (pp. 28-29).

The said agreement of April 1, 1916 between the Mutual Liquidating Company and Shields ("Exhibit A", p. 192, D-3) was extended and the last extension expired July 31, 1917 (p. 32).

Mr. Norris was shown Exhibit D-2 (p. 32) which purports to be a minute book of the Cape May Real Estate Company obtained by Frank D. Schroth, Receiver, from Messrs. Wescott & Weaver, attorneys of Camden, New Jersey, and purports to contain minutes of special meetings of the Board of

Directors of the defendant corporation of July 16, 1917, September 20, 1917, October 20, 1917, October 30, 1917, December 3, 1917 and purports to authorize the officers to execute and deliver to plaintiff, Shields, the bond and warrant in question (p. 32). Mr. Norris stated that the books of account of the company between the dates that he had active charge of the Mutual Liquidating Company were always in his office in Philadelphia and that he had all the books and records of the company, and that there was no other depository of books and records of the Cape May Real Estate Company other than his office, during that period, and that he had no knowledge of a purported meeting of the Board of Directors of the Cape May Real Estate Company on September 20, 1917 held at Cape May until after October 12, 1917, when Mr. Shields, at a time Mr. Norris asked him for his resignation, told him that he had conducted a meeting elsewhere than in Mr. Norris's office, but did not tell him what business was transacted (p. 32); that he had no knowledge of a purported meeting of the Board of Directors of the Cape May Real Estate Company held on October 20, 1917 at Cape May, or on October 30, 1917 at the office of Wescott & Weaver, in Camden (p. 33).

Nelson Z. Graves who, in 1917, owned the majority of the outstanding stock of the defendant, Cape May Real Estate Company, had been a director of that company for many years and was a director to and including October 30, 1917. Thyele M. Lamb was a director to and including October 30, 1917 and for many years prior thereto. *Neither Graves nor Lamb received any notice of the purported meetings of September 20, 1917, October 20, 1917, or of that of October 30, 1917, above mentioned.*

The plaintiff, Shields, carried on some negotiations with the United States War Department for the sale of a tract of 57.725 acres, situate on the property of defendant, Cape May Real Estate Company, shown on Exhibit D-4 (p. 211). The price talked about was \$150,000. The sale was never consummated, so far as Mr. Norris's knowledge extends, October 12th, 1917; no corporate action was ever taken thereon between the fall of October, 1915 and October 12, 1917 according to Mr. Norris's testimony. Mr. Norris testified that no corporate action was taken with reference to Shields's commissions on such sale and no agreement was made between the defendant, Cape May Real Estate Company and Shields in respect to the payment to be made to Shields for the sale of this property (p. 34).

The pretended corporate action at the so-called special meetings of September 20, 1917 (D-2, p. 20, 163), October 20, 1917 (p. 171) and October 30, 1917 (p. 175) will be discussed under Point IV of this brief.

The item of \$8,541.75 in Shields's affidavit, on which the judgment was entered, contains a number of small items, and when Mr. Norris was questioned with reference to the same (p. 35) he stated that the payments therein claimed to have been made by Shields for taxes, should have been made by Shields under his contract with the Mutual Liquidating Company and that the item of \$400 for the bookkeeper was never appropriately made because there was no reason for it, because the books were all kept in his (Norris's) office by his clerks, and that if Shields paid the same, it was done without warrant; that the interest on the J. S. Leaming mortgage was a payment which Shields likewise was obligated to make under the terms of

his contract with the Mutual Liquidating Company (p. 192).

In this connection, plaintiff, Shields, on cross-examination (p. 89) stated that the item of \$1,176.86 in his said affidavit was for taxes on the Two Mile Beach property of the Cape May Real Estate Company for 1915 and that the item of \$2,703.38 in the same affidavit, was interest on mortgage held by the Ocean Villa Land Company upon Two Mile Beach, due May 27, 1916.

The minutes in the regular minute book of the Cape May Real Estate Company at a meeting of directors held June 21, 1916, state that there were present among others, Peter Shields, and on page 339 of Minute Book No. 2 (Exhibit D-1a, p. 145) appears the following:

"Counsel for the company presented a report from Peter Shields that he has paid twelve months' interest upon the mortgage held by the Ocean Villa Land Company upon Two Mile Beach, due May 27, 1916, amounting to \$2,703.38, and that Mr. Shields has also paid taxes upon the Two Mile Beach property for the years 1914 and 1915, amounting to \$1,176.86."

Also, that the Cape May Real Estate Company is without funds at the present time to make these payments and

"Upon motion duly made, seconded and carried, it was resolved that the company pay Peter Shields the foregoing sums out of the proceeds of sale of the premises at the Northeast corner of Beach and Madison Avenues, Cape May, N. J., which have been sold to David M. Ellis."

Mr. Shields, although repeatedly questioned as to whether he had received payment of these items, refused to affirm or deny that they had been paid to him (pp. 89-92).

The affidavit of Peter Shields upon which the judgment was entered states there is due him \$8,541.15. The said plaintiff, Peter Shields, admitted on cross examination (p. 93) that he had instituted a suit against the Mutual Liquidating Company in the Court of Common Pleas, No. 5, County of Philadelphia, September Term, 1917, in which the following appears (p. 190):

"4. The plaintiff (Shields), prior to July 31st, 1917, paid to the defendant (Mutual Liquidating Company) the sum of \$35,000 in cash and also paid, for and on account of taxes and other obligations as provided for in said 'Exhibit A' the sum of \$8,541.15 as he was obligated to do, by virtue of said contract."

The contract referred to is that of April 1, 1916, between the above parties (p. 199).

The aforesaid contract contains this provision (p. 202):

"SEVENTH: Shields will accept the real and personal property covered by this agreement subject to all existing mortgages, judgments and other incumbrances, interest on the same, franchise or other taxes against the corporations issuing the stocks or bonds, taxes upon real estate or personal property therein, leases to other persons, municipal charges and liens and generally all charges of every kind or which may be due on account of said property or which may accrue up to the time of final

payment and delivery of the deeds with the exceptions of certain unpaid debts due by the Cape May Hotel Company for supplies purchased during the season of 1915, which amount approximately to between \$12,000 and \$13,000, and with the exception also of the mortgage of \$3,000,000 which was given to N. Z. Graves to the Receivers which is to be satisfied or releases given for the properties included herein as Shields becomes entitled to conveyances therefor under the terms of this agreement."

That contract further provides (p. 200):

"TENTH: Shields agrees to pay within 180 days from the date of this agreement all taxes now in arrear on any of the property included herein, and all franchise or other taxes now in arrear upon the corporations whose stocks and bonds are included herein and will in the meantime indemnify and save harmless Company from any consequences of failure to pay said taxes within said period, and further agrees to assume all taxes and other charges which may accrue against the property included herein until final payment of the purchase money with interest as aforesaid."

Among the property above mentioned are 16,044½ shares of the defendant, Cape May Real Estate Company, par \$100, the controlling interest of the company (p. 193).

On December 2, 1918, the President of the United States issued a proclamation, taking possession of some of the lands of the defendant, Cape May Real Estate Company, being about 300 acres, which in-

cluded the 57.725 acres that Shields had been negotiating to sell to the government (p. 205). The government instituted condemnation proceedings which included the 57.725 acres concerning which Shields was negotiating with the government, which condemnation proceedings are still pending and no moneys have been received on account of this 57.725 acres or any other lands in the condemnation proceedings (p. 51).

The proclamation of the President (p. 205), after reciting the act of Congress approved Oct. 6, 1917, as amended by the Act of July 1, 1918, authorizes the Secretary of the Navy to acquire, by purchase or condemnation, the tract of land at Cape May for naval purposes, comprising 57.73 acres, or such enlarged area, for which he may be able to contract within the appropriation, further recites (p. 207):

"And Whereas, the Secretary of the Navy has been unable satisfactorily to consummate the negotiations for the purchase of the site needed for the Naval Aviation Station, at Cape May, New Jersey— Now, Therefore, Know All Men By These Presents, that I, Woodrow Wilson, President of the United States by virtue of the power and authority vested in me by said Act of Congress approved July 1, 1918, do hereby on behalf of the United States take title to and possession of all that portion of the following described tract of land not now owned by the United States."

The description of the property taken under the President's proclamation appears in the record (pp. 205-210).

It is stipulated in this record (p. 115) that the 57.725 acres, for the sale of which Shields claims

commissions, is included in the property referred to in the President's proclamation.

The appellant, Frank D. Schroth, Receiver of Cape May Real Estate Company contends that the order of the Supreme Court discharging the rule to show cause was erroneous, and should be reversed, and the judgment should be opened and set aside for the following reasons:

I. Cape May Real Estate Company was not indebted to Peter Shields at the time the bond and warrant were executed as stated in his affidavit upon which judgment was entered:

(1) The claim for \$22,500 for commissions for sale of land of Cape May Real Estate Company was not due to Shields for the reasons that:

(a) The authority therefor was not in writing, as required by the Statute of Frauds.

(b) No agreement was made between the Company and Shields to pay commissions.

(c) No sale was ever consummated through Shields' efforts.

(d) No money has ever been received on account of the lands which Peter Shields was negotiating for sale or on account of any other lands comprising the tract in question.

(2) The claim for \$8,541.75 for moneys advanced by Shields for the Cape May Real Estate Company was not due to Shields for the reasons that:

(a) Shields was obligated to pay for the same pursuant to his contract with the Mutual Liquidating Company.

(b) If any advances were made by

Shields, they were with few exceptions unwarranted or repaid to him.

II. The judgment and bond and warrant of attorney were repudiated by the Cape May Real Estate Company promptly.

III. The bond and warrant executed by the Cape May Real Estate Company to Shields, its President and Director, was never approved or ratified by the stockholders and is voidable at the option of the defendant corporation or Schroth, its Receiver.

IV. Cape May Real Estate Company, never authorized the execution and delivery of the bond and warrant to Shields.

V. The affidavit upon which the judgment was entered does not in substance specify the true consideration of the bond, and does not substantially comply with the statute, and therefore the judgment is inoperative and should be set aside.

VI. Appeal is the proper remedy to review the action of the Supreme Court discharging the rule to show cause.

I.

Cape May Real Estate Company was not indebted to Peter Shields at the time the bond and warrant were executed as stated in his affidavit upon which judgment was entered.

The affidavit of Peter Shields says that the true consideration of the bond on which judgment was about to be entered was (Record, p. 12):

- (1) \$22,500.00—due in connection with the sale of the Company's real estate to the United States of America.
- (2) \$ 8,541.75—moneys advanced by Shields for the Company.
- \$30,041.75—actual amount due on judgment entered.

(1) *The foregoing claim for \$22,500 for commissions for sale of land of Cape May Real Estate Company was not due to Shields for the reasons that:*

- (a) Authority therefor was not in writing as required by the Statute of Frauds.
- (b) No agreement was made between the Company and Shields to pay commissions.
- (c) No sale was ever consummated through Shields' efforts.
- (d) No money has ever been received on account of the lands which Peter Shields was negotiating for sale or on account of any other lands comprising the tract in question.

The record is entirely barren of any proof that Peter Shields at any time was authorized in writing, as required by the Statute of Frauds, to sell the lands in question of the Cape May Real Estate Company.

No sale was ever consummated.

No moneys were ever received on behalf of the 57½ acres which Peter Shields was negotiating to sell, or on account of any other lands comprised within said tract (Record, p. 34, ll. 10-37).

Charles C. Norris, a member of the Bar of Pennsylvania, stated that (Record, p. 34) he was present and prepared the minutes of the Board of Directors of the Cape May Real Estate Company be-

tween the Fall of 1915 and October 12, 1917, and testified (Record, p. 34, l. 25):

“Q. During that period (the Fall of 1915 and October 12th, 1917), was any corporate action taken with respect to any commission to be paid to Mr. Shields in respect of the sale of these 57 acres? A. No, sir; no action was taken.

Q. Do you know of any agreement between the Cape May Real Estate Company and Mr. Shields in respect of the payment to be made to him for the sale of this property? A. No, sir; I know of no such agreement.

Q. Are you qualified to state whether, during the period that you had charge of this matter, there was or was not such an agreement? A. There was not such an agreement.”

Frank D. Schroth, Receiver of the Cape May Real Estate Company testified (Record, p. 51) that the condemnation proceeding instituted by the Government with respect to the 57½ acres in question has not ended, and that the Government has not paid the condemnation money, and testified further:

“Q. Has any money whatever been received on behalf of the 57½ acres which Mr. Shields was negotiating concerning, or any of the other lands comprised within that tract? A. No, sir.”

The United States Government took possession of the 57½ acres which Shields was negotiating to sell to the Government, under the Proclamation of the President, dated December 2nd, 1918 (the bond

and power of attorney were dated October 20th, 1917) (Record, p. 205).

The proclamation (p. 205) negatives plaintiff's contention that he had completed the negotiations for the sale or consummated a sale of the 57½ acres, in question, as it states in part (p. 207):

“And Whereas, the Secretary of the Navy has been unable satisfactorily to consummate the negotiations for the purchase of the site needed for the Naval Aviation Station, at Cape May, New Jersey.”

Section 10 of “An act for the prevention of frauds and perjuries” (Revision) as amended by the Laws of 1911, page 703 (approved May 1st, 1911), reads as follows:

“10. No broker or real estate agent selling or exchanging land for or on account of the owner, shall be entitled to any commission for the sale or exchange of any real estate, unless the authority for selling or exchanging such land is in writing, and signed by the owner or his authorized agent, or the authority of the broker or real estate agent to make a sale or exchange of such land is recognized in a writing or memorandum signed by the owner or his authorized agent, whether or not such writing or memorandum is signed by said owner or agent before or after such sale or exchange has been effected, and the rate of commission on the dollar shall have been stated therein.”

No reported cases have been found construing the foregoing section in relation to the questions here under consideration, but there are reported

decisions construing the language of this section as it read before the amendment, which sustain defendant's contentions. The language of Section 10 of this act Vol. 2, C. S., p. 2617, is as follows:

“That no broker or real estate agent, selling or exchanging land for or on account of the owner, shall be entitled to any compensation for the sale or exchange of any real estate, unless the authority for selling or exchanging such land is in writing, and signed by the owner or his authorized agent, and the rate of commission on the dollar shall have been stated in such authority.”

The Court of Errors and Appeals of this State, in the leading case of *Stout v. Humphrey*, 69 N. J. L. 436, March Term, 1903, opinion of the court by Mr. Justice Vroom, construing the foregoing section, held that where there is no written contract a subsequent express promise to pay is without consideration and void, under the statute of frauds.

The opinion says, at page 441:

“But the plaintiff insists that, conceding that the contract is within the statute, the defendant has waived any benefits by a subsequent promise to pay, made verbally to the plaintiff and detailed in the statement prefixed to this opinion. He further insists that thereby the defendant acknowledged his liability, agreed to pay the commissions demanded, and that contract renders him liable in this action.

“The difficulty with this contention is that the subsequent promise to pay for the services is entirely without consideration, and

therefore void. The tenth section of the statute of frauds does not merely say that 'no action shall be maintained', but that 'no broker or real estate agent selling or exchanging land for or on account of the owner shall be entitled to any commission for the sale or exchange of any real estate, unless the authority for selling or exchanging such land is in writing, signed by the owner,' &c. It therefore follows, as correctly held by the trial judge, 'the statute declared a public policy, viz., in the absence of written contract there shall be an absence of right to compensation for services, and so, where there is no written contract, a subsequent express promise to pay for the services is entirely devoid of consideration.'"

The decision in *Stout v. Humphrey* was cited with approval by the Supreme Court in an opinion of that court by Mr. Justice Garrison in *Bagnole v. Madden*, 76 N. J. L. 255, decided June 8, 1908.

In this case, after the sale was made, plaintiff drew up and the defendant signed a written agreement as follows: "I agree to pay Charles Bagnole fifty dollars (50) for commission for the sale of my property at No. 36 Stone St. on or before July 1, 1907. Bridget Madden."

The plaintiff was non-suited on the ground, *inter alia*, that he made the sale without written authority in which the rate of commission was stated, and also on the ground that the writing executed after the sale lacked consideration. The judgment of non-suit in the court below was affirmed.

The opinion, continuing at the bottom of page 256, is as follows:

"In the case of *Stout v. Humphrey*, 40 Vroom 436, it was declared to be the policy of the statute of frauds that 'in the absence of a written contract there shall be an absence of right to compensation for services, and that where there is no written contract a subsequent express promise to pay for the services is entirely devoid of consideration.' In view of this language of the Court of Errors and Appeals it is fruitless to re-examine the interesting question presented by the case in hand."

(2) *The foregoing claim for \$8,541.75 for moneys advanced by Shields for the Cape May Real Estate Company was not due to Shields for the reasons that:*

- (a) Shields was obligated to pay the same pursuant to his contract with the Mutual Liquidating Company.
- (b) If any advances were made by Shields, they were with few exceptions unwarranted or repaid to him.

The separate items aggregating the said sum of \$8,541.75 are set forth in Shields' affidavit (Record, p. 12).

Shields admitted on cross-examination that he had instituted a suit against said Mutual Liquidating Company in the Court of Common Pleas, No. 5, County of Philadelphia, September Term, 1917 (Record, p. 93, l. 33), and that the record in that case containing the statement of his claim, contains an item of \$8,541.75, and that said sum is the aggregate of the other items alleged by him in this suit to be the consideration for the bond (other than the item for commissions). This record is marked "D-3" in this case (Record, p. 179), and

the pertinent provision thereof is contained in the affidavit of said Peter Shields, as follows (Record, p. 190, l. 38) :

"4. The plaintiff (Peter Shields) prior to July 31st, 1917, paid to the defendant (Mutual Liquidating Company) the sum of \$35,000 in cash and also paid, for and on account of taxes and other obligations as provided in said "Exhibit A" the sum of \$8,541.75, *as he was obligated to do by virtue of said contract.*"

The contract above referred to as "Exhibit A" will be found on page 192 of this record, and the pertinent provisions are paragraphs "Seventh" (p. 199 of the Record) and "Tenth" (p. 200 of the Record).

Charles C. Norris, a member of the bar of Pennsylvania, actively handled the affairs of the Mutual Liquidating Company, which owned the controlling stock interest in the Cape May Real Estate Company prior to the sale and transfer thereof to Nelson Z. Graves on October 12th, 1917 (Record, pp. 25, 26-29), was questioned with reference to the items making up the total of \$8,541.75. He stated that the payments therein claimed to have been made by Shields for taxes, should have been made by Shields under his said contract with the Mutual Liquidating Company, that the item of \$400 for the bookkeeper was never appropriately made because there was no reason for it, because the books were all kept in his (Norris') office, by his clerks, and if Peter Shields paid the same it was done without warrant (Record, p. 36, l. 23); that the interest on the J. S. Leaming mortgage was a payment which Shields likewise was obligated to make under the terms of his said contract with the Mutual Liquidating Company (Record, p. 37).

Peter Shields on cross-examination (Record, p. 89, l. 17) stated that the item of \$1,176.86 in his said affidavit was for taxes on Two Mile Beach property of Cape May Real Estate Company, and that the item of \$2,703.38 in the same affidavit was interest on mortgage held by the Ocean Villa Land Company upon Two Mile Beach, due May 27th, 1916 (Record, pp. 89, 90, l. 39).

Both of the foregoing items of \$1,176.86 and \$2,703.38 were directed to be paid by resolutions in the regular minute book of the directors of the Cape May Real Estate Company at a meeting held June 21st, 1916 (Exhibit D-1a, Record, p. 141, at p. 145, l. 11); and Mr. Shields, although repeatedly questioned on cross-examination as to whether he had received payment of these items, refused to affirm or deny that they had been paid to him (Record, p. 92, l. 1).

II.

The judgment and bond and warrant of attorney were repudiated by the Cape May Real Estate Company promptly.

On or about September 13th, 1917, Nelson Z. Graves entered into an agreement to purchase from Mutual Liquidating Company, 16,000 shares of stock of the Cape May Real Estate Company, which constituted the stock control (Record, p. 29, l. 21). Peter Shields had been elected president of the Cape May Real Estate Company, July 5th, 1917 (Record, p. 152, l. 14). The stock control was transferred to Graves on October 12th, 1917 (Record, p. 29, l. 21), and on a number of occasions during the period from September, 1917, to October 12th, 1917, Shields' resignation had been requested (Record, p. 30, l. 18).

On October 24th, 1917, the judgment in question was entered in favor of Peter Shields upon bond and warrant dated October 20th, 1917, signed "Cape May Real Estate Company, by Peter Shields, President", and said Shields was removed from the presidency on October 25th, 1917 (Record, p. 5, l. 3). Nelson Z. Graves and the present officers of the Cape May Real Estate Company had no knowledge of the bond and warrant of attorney and the entry of judgment until April 22nd, 1920, and at once took steps to investigate the same (Record, p. 5), and the company filed its petition to open the judgment and secured an order to show cause, which was dated June 28th, 1920 (Record, pp. 4-9).

On July 17th, 1920, Frank D. Schroth was appointed receiver of the Cape May Real Estate Company (Record, p. 23).

On September 1st, 1920, a stipulation was entered in the above action by the attorneys of the parties, as follows (Record, p. 18):

"Owing to the appointment of receiver for the defendant and certain complications growing out of the same, it is hereby stipulated and agreed, between the counsel for the respective parties, that this matter may be continued without prejudice until such time as formal notice is given to the attorney of the plaintiff by the attorney of the defendant."

No formal notice was given by the attorney of the plaintiff to the attorney of the defendant.

The foregoing stipulation was not altered or changed in any manner.

Laches cannot be attributed to Frank D. Schroth, receiver, and in view of the foregoing undisputed matters of record, it is respectfully submitted that the defendant, Cape May Real Estate Company,

and its said receiver, are free from laches, and repudiated the bond and warrant within the reasonable time contemplated by the decisions of our court of last resort as expressed in the opinion of *Stewart v. Lehigh Valley Railroad Co.*, 38 N. J. L. 505.

III.

The bond and warrant executed by Cape May Real Estate Company to Shields, its president and director, was never approved or ratified by the stockholders and is voidable at the option of the defendant corporation or Schroth, its receiver.

The general rule in this State is that a contract made by a corporation with one of its directors is voidable, to be avoided at the option of the cestui que trust, exercised within a reasonable time.

Frank D. Schroth, Receiver of defendant corporation, appointed by the Court of Chancery of New Jersey, as representative of the creditors, has the capacity to make this objection that the bond and warrant are not binding upon the corporation. *Stokes v. N. J. Pottery Company*, 46 N. J. L. 237, at 243, Supreme Court, June Term, 1885, citing *Vail v. Hamilton*, 85 N. Y. 453.

The Court of Errors and Appeals of this State in the leading case of *Stewart v. Lehigh Valley Railroad Company*, 38 N. J. L. 505, November Term, 1875, in an opinion by Mr. Justice Dixon has held that the true legal rule is that an express contract between a director of a company and his company is not void, but is voidable at the option of the cestui que trust, exercised within a reasonable time, and that it matters not that the contract seems a fair one.

Mr. Justice Dixon, speaking for the court, says at page 521:

"The plaintiff raises another and a most important question touching the validity of this contract, by a second replication to the second plea before mentioned, upon which no issue was joined, because of the judgment of the Supreme Court holding that plea bad. The main fact averred in the replication also appeared in evidence at the trial, and testimony as to some of the outlying circumstances was offered by the defendants, excluded and exception taken. On the argument before this court, the counsel for the plaintiff urged this main fact as necessarily invalidating the contract relied on by the defendants. This fact is, that at the time of the negotiations for, and the execution of, the contract in question, one of the defendants was a director of The Morris Canal and Banking Company—a trustee for it, to manage its affairs—and it is insisted that his relation to the company was, therefore, such that he was prohibited from entering into this contract with it, and that the contract is, *ipso facto* void.

The position thus assumed by the plaintiff rests upon the broad principle that it was the duty of the director to so deal with the property and franchises of the corporation—to so manage its affairs as would most conduce to the corporate interest, and that he could not perform that duty while contracting with it in his own behalf, or if by possibility his own interest was consistent with the best interest of the company in so contracting, yet, so insidious are the promptings of selfishness and so great is the danger, that it will override

duty when brought into conflict with it, that sound policy requires that such contracts should not be enforced or regarded. After an examination of all the cases cited, and such others as I have found, and a careful consideration of the principle and the results of regarding and of disregarding it, *I have come to the conviction that the true legal rule is, that such a contract is not void, but voidable, to be avoided at the option of the cestui que trust, exercised within a reasonable time.* I can see no further safe modification or relaxation of the principle than this. A director of a corporation may have rights not arising out of express contract—such as the right to pass over its railroad, or transport his goods over its canal on paying reasonable tolls, or to have money which he has loaned it repaid to him; but where the right is one which must stand, if at all, upon an express contract, and which does not arise by operation or implication of law, then he shall not hold it against the will of his *cestui que trust*; for in the very bargain which gave rise to it, in which he should have kept in view the interest of the *cestui que trust*, there intervened before his eyes the opposing interest of himself. The vice which inheres in the judgment of a judge in his own cause, contaminates the contract; the mind of the director or trustee is the forum in which he and his *cestui que trust* are urging their rival claims, and when his opposing litigant appeals from the judgment there pronounced, that judgment must fall. *It matters not that the contract seems a fair one. Fraud is too cunning and evasive for courts to establish a rule that invites its presence.*

This opinion is cited in an opinion of the Court of Errors and Appeals in *Gardner v. Butler*, 30 N. J. E. 702, March Term, 1879, in which Mr. Justice Van Syckel, speaking for the court, says at page 721:

"That directors of a company shall not be permitted to enter into engagements in which they have a personal interest conflicting with the interests of those whom they are bound by fiduciary duty to protect, and that no consideration of their apparent or intrinsic fairness will induce a court, either of law or equity, to enforce them against the resisting *cestui que trust*, is well settled. The rule has been so recently asserted in this court that it must be assumed to be the law of this case. *Stewart v. Lehigh Valley R. R. Co.*, 9 Vr. 505.

"The rule is, that the trustee cannot fortify himself by a contract which he makes with himself, or for his own benefit, and set it up, either at law or in equity, as a valid obligation. It is of no binding force as a contract, and the *cestui que trust* may repudiate it at will. The agreements, therefore which the directors made with themselves, must be pronounced to be illegal, and can furnish no support to their defence, as contracts."

Stewart v. Lehigh Valley R. R. Co., *supra*, is cited in the case of *Elkins v. Camden and Atlantic Railroad Company*, 36 N. J. E. 468, February Term, 1883, in which Vice Chancellor Van Fleet says in his opinion, at page 470:

"They are trustees. *Stewart v. Lehigh Valley R. R. Co.*, 9 Vr. 505. And like all other persons entrusted with fiduciary powers, they

are bound to use their authority for the maintenance of the rights and the protection of the interests of their *cestui que trust*. To attempt to use their power for their own personal advantage, to the injury of their *cestui que trust*, is an abuse of the confidence reposed in them, which entitles the *cestui que trust* to the protection of a court of equity; and if they attempt, by means of their power or position, to deprive the *cestui que trust* of any of his rights, their act, in its legal consequences, regardless of the motive which prompted it, is a fraud."

Stewart v. Lehigh Valley R. R. Co., is also cited in *Stroud v. Consumers' Water Co.*, 56 N. J. L. 422, Supreme Court, February Term, 1894. Mr. Justice Reed, delivering the opinion of the court says at page 427:

"A director of a corporation cannot make for himself or for his own benefit a contract which will bind the company. The contract may be repudiated by the company at the instance of a stockholder. *Guild, Executor v. Parker, Receiver*, 14 Vr. 430.

"The limitation upon this doctrine as well as its applicability to corporations and their directors is illustrated in the case of *Stewart v. The Lehigh Valley Railroad Co.*, 9 Vroom 505, decided in the Court of Errors."

The Court of Errors and Appeals in the case of *U. S. Steel Corporation v. Hodge*, 64 N. J. E. 807, November Term, 1902, in the opinion of the court, delivered by Mr. Justice Van Sickel, at page 813, says:

"The rule that directors cannot lawfully enter into a contract, in the benefit of which even one of their number participates without the knowledge and consent of the stockholders, is so firmly entrenched in our jurisprudence that it is not open to debate.

"It is emphasized and enforced in the following, among many other cases: *Staats v. Bergen*, 2 C. E. Gr. 554; *Winans v. Crane*, 7 Vr. 394; *Stroud v. Consumers' Water Co.*, 27 Vr. 422; *Gardner v. Butler*, 3 Stew. Eq. 702; *Guild v. Parker*, 14 Vr. 430; *Stewart v. Lehigh Valley Railroad Co.*, 9 Vr. 505; *Traction Co. v. Board of Works*, 27 Vr. 431.

"The rule is embedded in our jurisprudence and it cannot be too strongly stated or too rigorously applied. But in the cases cited the contract was made by the trustee without the knowledge or consent of the *cestui que trust* and without subsequent ratification or adoption by which the vice in it could be cured.

"The object of the rule is to prevent directors from secretly using their fiduciary position for their own emolument, and not to impair the right of stockholders to enter into any lawful engagement with a full disclosure of the facts."

The opinion at page 814 cites with approval the rule laid down in *Stewart v. Lehigh Valley Railroad Co.*

The opinion in the case of *U. S. Steel Corp. v. Hodge*, *supra*, is cited in the opinion in the case of *Mitchell v. United Box Board and Paper Co.*, 72 N. J. E. 580, decided May 14th, 1907.

Vice Chancellor Emery at page 586, says:

"The general rule, that directors cannot lawfully enter into a contract in the benefit of which even one, without the knowledge and consent of the stockholders, of their number participates, was restated in *United States Steel Corporation v. Hodge*, 64 N. J. Eq. (19 Dick.) 813 (*Court of Errors and Appeals*, 1902), and declared to be so firmly entrenched as not to be open to debate."

The Court of Errors and Appeals in its opinion in the case of *Marr v. Marr*, 73 N. J. E. 644, delivered by Chancellor Pitney, says at page 649:

"It is settled that a director has not complete freedom to contract with his corporation."

And on the same page, the legal rule laid down in *Stewart v. Lehigh Valley Railroad Co.*, *supra*, is cited with approval.

Again at page 650:

"But we deem it clear that the director, who is also creditor, must, on taking legal proceedings for collection of his debt, relinquish his trust *pro hac vice*, not covertly, but openly, and with fair notice to his company. Whether such notice should be given to the stockholders or to the directors may depend upon circumstances."

The facts in the opinion in *Marr v. Marr*, *supra*, make it peculiarly pertinent to the instant case.

William A. Marr, respondent, had advanced to the company in question considerable sums of

money and had become its sole creditor. He secured judgment in October, 1898, and, under execution, sold to himself all of the visible assets of the company, there being no other bidders, and the sale was advertised as required by the statute. Marr was not only the president, but practically in sole charge of the current business of the company and the Board of Directors had practically ceased to act. William A. Marr had purchased a judgment of Mrs. Rebecca G. Marr against the company. At a meeting of stockholders on December 29th, 1897, at which were present William A. Marr, George A. Marr, Mrs. Crawford, Dr. Felty and Mr. Glenn, trust officer of the trust company that was guardian of the complainant, Mr. Glen was also acting as attorney for Mrs. Rebecca G. Marr, mother of the complainant, who was herself a stockholder. Mrs. Marr's judgment against the company and assignment thereof to William A. Marr were reported and spread upon the minutes as a debt to William A. Marr. The other indebtedness due to William A. Marr was likewise mentioned and recognized.

At another meeting of stockholders on February 16th, 1898, William A. Marr, Dr. McWilliams, Mrs. Crawford, George A. Marr and Mr. Glenn were present and there was a general discussion of the indebtedness of the company, and George A. Marr and Mr. Glenn were appointed a committee to make arrangements for an auctioneer for the sale of the property. At the two stockholders' meetings just mentioned, William A. Marr stated to Glenn and others present that unless a sale of the property could be effected, he would put his claim to judgment and sell the property.

The action by William A. Marr against the company was without notice to anybody representing

the company, except possibly some agent of the company, upon whom process was served.

Chancellor Pitney says that the general notice given at the meetings of the stockholders by William A. Marr was not specific enough, in these words, at page 653:

"The general notice given by defendant Marr at the meetings of December and February, that unless something was done about his claims he would have to press them—the notice given hardly amounted even to a threat—did not, we think, dispense in fairness with the more specific notice that might, and, in our view, ought to have been given when steps were actually imminent to sell the property of the company for the payment of his claim."

In the case of *Van Alstyne v. Brown*, 77 N. J. E. 455, May Term, 1910, Vice Chancellor Leaming says in his opinion at page 458:

"Even though it may be found that the transaction has been without thought of wrong and beneficial to the beneficiary under the trust, public policy requires that the transaction be held to be voidable at the instance of the *cestui que trust*; for the defined policy of the law arises from the necessity of removing temptations for self-gain from all persons having trust duties to perform. *Stewart v. Lehigh Valley Railroad Co.*, 38 N. J. Law (9 Vr.) 505."

The decisions in the cases of *Stewart v. Lehigh Valley Railroad Co.* and *U. S. Steel Corp v. Hodge*,

supra, are cited in the opinion by Vice Chancellor Leaming in the case of *Purchase v. Atlantic Safe Deposit &c. Co.*, 81 Eq. 344, at page 346.

"The third view is that such contracts are not absolutely void, but voidable at the option of the corporation or its representative, provided the option is exercised within a reasonable time under all the circumstances of the case. This third view is the one which obtains in this jurisdiction. It was adopted by our court of last resort in *Stewart v. Lehigh Valley Railroad Co.*, 38 N. J. Law (9 Vr.) 505, and has since been uniformly maintained. Except for the power of ratification which this rule reserves to the stockholders of a corporation (*United States Steel Corporation v. Hodge*, 64 N. J. Eq. [19 Dick.] 807), it may be said to be essentially the same as the rule which holds such contracts absolutely void, for, as against the will of the corporation, exercised within a reasonable time, such engagements are given no contractual force, however open, fair and honest they may be."

Mr. Justice Swayze, speaking for the Court of Errors and Appeals in the case of *N. J. Car and Rubber Co. v. Fields*, 85 N. J. L. 217, says at page 219:

"This action is to recover money paid the decedent, upon the theory that the contract of July 15th, 1902, was void since the decedent as director was contracting with himself. *Gardner v. Butler*, 3 Stew. Eq. 702, is relied on.

"The case, however, differs from *Gardner v. Butler* in several respects—*first*, the contract

was assented to by all the stockholders who were also all the directors; *second*, the payments were continued for more than six years after the elder Fields had ceased to be a director or stockholder; *third*, the plaintiff corporation, controlled as it was by those who still control it, never repudiated the transaction until after the death of the elder Fields. The case of the defendant might therefore be rested upon the right of the stockholders as distinguished from the directors to make or to ratify the contract (*United States Steel Corporation v. Hodge*, 19 Dick. Ch. Rep. 807), or upon their acquiescence in what was done (*Breslin v. Fries-Breslin Co.*, 41 Vroom 274), or upon the long delay in acting (*Lillard v. Oil, Paint and Drug Co.*, 4 Robb. 197, 210)."

The opinion of Vice Chancellor Leaming in the case of *Busch v. Mary A. Riddle Company* was unanimously affirmed by the Court of Errors and Appeals, 92 N. J. E. 265, June Term, 1920.

At page 274, the opinion says:

"It is entirely clear that the relations of defendant, Riddle, to the Pennsylvania Company was such that the law of this state did not permit him to enjoy the fruits of a contract with the corporation he represented against the will of his *cestui que trust* exercised within a reasonable time. *Stewart v. Lehigh Valley Railroad Co.*, 38 N. J. Law 505, 522, is conclusive to that effect, and the doctrine there stated has since been uniformly recognized and repeatedly enforced in this state."

IV.

Cape May Real Estate Company never authorized the execution and delivery of the bond and warrant to Peter Shields.

The only pretended corporate action that appears in the record which might be referred to as authorizing the execution and delivery of the bond and warrant in question are the resolutions of purported special meetings of directors held on September 20, 1927 (D-2, p. 166), at which a resolution was passed authorizing the payment to Shields of \$31,041.75, also resolution passed by the special meeting of Board of Directors held October 20, 1917 (p. 171) authorizing the execution and delivery to Shields of bond and warrant for \$31,041.75, and resolution of special meeting of Board of Directors, at a meeting held October 30, 1917 (p. 175) ratifying and approving the two previous resolutions.

All of these minutes are in the "small" minute book, which C. Earle Miller, a witness produced by Shields, says he was instructed by Shields to use because the *large regular* minute books (in the possession of Mr. Norris, counsel for the Mutual Liquidating Company) were too large and cumbersome. The "small" minute book (D-2, p. 163) commences with minutes of meeting held on July 16, 1917 and ends December 3, 1917.

(a) The foregoing meetings of directors held on September 20, 1917 and October 30, 1917, were *irregular in that no notice thereof was sent to Mr. Lamb, or to Nelson Z. Graves (both of whom were directors on those dates) (pp. 45, 47), and Mr. Buzby, who admittedly was a director, denies he*

received notice (p. 48). The secretary, C. Earle Miller, testified that he sent notices only to himself, Scully, Lloyd, Buzby and Shields (p. 98, l. 29).

Nelson Z. Graves was elected a director at the annual meeting of stockholders, April 11, 1911 (D-1a, p. 121) and annually thereafter, to and including stockholders' meeting held May 15, 1915 (p. 125); there was no annual meeting 1916-1917, so he held over as a director and was elected again at a special meeting of stockholders held October 25, 1917 (p. 127) at which meeting the other directors elected were Matthies, Carr, Ferdinand Graves, Sullivan and Wilson. In September, 1917, Mr. Graves acquired and still held a majority of the stock of the Cape May Real Estate Company, constituting a controlling interest thereof. Nelson Z. Graves never resigned as a director. The by-laws of the defendant corporation in 1917, provided for seven directors (p. 112, l. 30).

C. Earle Miller, a witness for plaintiff, Shields, says (p. 99, l. 8) that Lloyd was elected in Graves's place at a meeting of directors held July 5, 1917, but this is obviously a mistake on Miller's part as he wrote plaintiff, Shields, three months later, under date of October 18, 1917, that *no one had been elected in Graves's place, as director* (p. 112, l. 32).

Thyele M. Lamb was elected a director at the annual meeting of stockholders held May 15, 1915 (p. 126) and never resigned and no one was elected by the stockholders or appointed by the directors, in his place. It is significant that at the special meeting of stockholders, October 25, 1917 (p. 127) only *six* directors were elected (the by-laws provided for *seven*). Lamb therefore apparently held over; and a special meeting of directors was called for April 28, 1916 (p. 141) to fill vacancies in the

Board, and no one was elected in Lamb's place. Both Lamb (p. 47) and Nelson Z. Graves (p. 45) testified they received no notice of the meeting of September 20, October 20, October 30, 1917 (at which the purported resolutions were passed for the payment to Shields and execution of the bond and warrant in question). And it is also significant that said Miller wrote in his letter to the plaintiff, Shields, dated October 18, 1917 (p. 112): "*I don't find where Lamb resigned.*"

The resolutions passed at both of these meetings were not passed or adopted by the requisite number of votes, in accordance with the provisions of the by-laws.

The resolution passed on September 20, 1917, authorizing the payment to Shields of \$31,041.75, received the affirmative votes of *only three* directors (Lloyd, Miller and Scully) (p. 170); and the resolution passed at the meeting of October 20, 1917, authorizing the execution and delivery of the bond and warrant in question to plaintiff, Shields, received the affirmative vote of *only two* directors (Lloyd and Miller) (pp. 171, 175, l. 12). The by-laws provided for seven directors and also provided that a director may serve as an employee of the company and receive compensation, provided the *majority of the whole Board* of Directors, without the vote of such director, shall fix and determine his compensation (p. 121).

"4. Any member of the Board of Directors may serve as an officer and employee of this company, and shall receive such compensation as shall be fixed by the Board of Directors for his services while acting as such officer, and his acting as director shall not incapacitate him from acting as such officer and re-

ceiving the compensation fixed by the board, *provided the majority of the whole board of directors without the vote of such director shall fix and determine his compensation.*"

(b) As to the meeting of October 30, 1917 (D-2, p. 175): The two previous meetings of September 20, 1917 and October 20, 1917, were held at Cape May. Shields must have had some misgivings as to the legality of these meetings, and held another special meeting of his Board of Directors at the office of Wescott & Weaver, attorneys at law, in Camden, N. J.

Miller's testimony is vague and conflicting as to whom he sent notices of this meeting, but he is sure that he sent them to Lucas and Shaw, two directors in the call for the meeting of October 30, 1917 (p. 110). Prior to October 30, 1917, Lucas and Shaw were not directors and therefore Mr. Miller is again mistaken in his testimony. Lucas and Shaw were elected directors at the meeting of October 30, 1917, as appears from the minutes of that meeting (D-2, pp. 175, 176). At this purported meeting, Lucas, Shaw and Tindle were elected and with Lloyd, Miller, Scully and Shields would make seven directors required by the by-laws and evidently were elected by Shields so that a resolution might be passed by an apparently full Board of Directors, approving the action taken at the meeting of September 20, 1917, and October 20, 1917. *Shields ignored the fact that Lamb was still a director and that Nelson Z. Graves, who had purchased the control of the company after Shields had failed in his contract with the Mutual Liquidating Company, was still a director.*

It is clear from the testimony of C. Earle Miller, the secretary, that no notice of this meeting of

October 30, 1917, was sent to Lamb or Nelson Z. Graves (pp. 100-114).

Furthermore the minutes of the meeting of September 20, 1917 (p. 166), refer to the \$150,000 appropriation by the United States Government. This appropriation was not made until October 6, 1917 (p. 207, l. 31). The minutes pretend to record the authorizing of payment by the treasurer to Shields for items aggregating \$1,594.68 (p. 172). *One of the items enumerated is dated October 1, 1917, eleven days after the supposed date of the meeting.*

The minutes further recite that the sale of the property to the United States was *consummated* prior to Mr. Shield's election as president of the Company. The record shows that Shields was elected president July 5, 1917 (p. 152).

It is obvious from the letters offered in evidence by Shields, dated July 7, 1917 (p. 72), July 11, 1917 (p. 74) and July 14, 1917 (p. 77), that the principal negotiations upon which he relied were in fact *after* he was elected president, and that they were not consummated at all.

Furthermore, at the so-called special meeting of October 20, 1917, recorded in the small minute book (being the meeting at which the bond and warrant are purported to have been authorized by the Board), it will be seen that there were only *two* votes for the resolution—Lloyd and Miller (p. 175, l. 12).

The final meeting dealing with this subject, the purported special meeting of October 30, 1917, at the office of Wescott & Weaver, at which they undertook to ratify the action taken at the meetings of September 20 and October 20, 1917, was a meeting held at a time when all of the participants had ceased to be directors. A new Board had been

elected at the meeting of stockholders October 25, 1917 (p. 127).

The irregularity of these purported special meetings, notice of which had not been sent to Graves, Lamb or Buzby, three of the directors, is so apparent and the action taken so completely wanting in legality that it would seem there could be no serious possibility that the court would hold the bond and warrant to have been authorized or the indebtedness properly recognized, even by the directors.

V.

The affidavit upon which the judgment was entered does not in substance specify the true consideration of the bond, and does not substantially comply with the statute and therefore the judgment is inoperative and should be set aside.

The affidavit of Peter Shields (p. 12) says that the true consideration of the bond on which the judgment was about to be confessed was the sum of \$31,041.75, of which \$22,500 was due for Shields's services in connection with the sale to the United States of America of certain real estate of the defendant, Cape May Real Estate Company, and the further sum of \$8,541.75, moneys expended by Shields for the benefit of said company.

The applicant contends that it has been heretofore demonstrated in this brief that the plaintiff Shields cannot recover said sum of \$22,500 commissions for sale of real estate under the circumstances of this case, and also that a very large part of the balance of \$8,541.75 has either been paid to said Shields, or claim therefor is improperly made against the defendant corporation.

The courts of this state have repeatedly held that if the affidavit does not, in substance, specify the true consideration of the bond for which the judgment is confessed, or in any other respect, be not a substantial compliance with the requirement of the statute, *the judgment is ipso facto fraudulent and inoperative against creditors.*

The act under which the judgment in question was entered is entitled "*An act directing the mode of entering judgments on bonds and warrants of attorney to confess judgments*" (R. S. 931, 934, P. L. 1849, p. 264, Rev. 1877, p. 81) C. S. Vol. 1, p. 219. Section 11, p. 221 is as follows:

11. Affidavit required. That no judgment shall be entered in any court of record of this state, on a warrant of attorney to confess such judgment, or by the defendant appearing in person in open court and confessing the same, unless the plaintiff or his attorney shall produce, at the time of confessing such judgment, to the court, judge, justice, or commissioner before whom the judgment shall be confessed, an affidavit of the plaintiff, his attorney or agent, of the true consideration of the bill, bond, deed, note, or other instrument of writing or demand for which the said judgment shall be confessed; which affidavit shall further set forth that the debt or demand for which the judgment is confessed is justly and honestly due and owing, to the person or persons to whom the judgment is confessed and that the said judgment is not confessed to answer any fraudulent intent or purpose or to protect the property of the defendant from his other creditors (Rev. 1877, p. 83).

The Court of Errors and Appeals of this State in the case of *Clapp v. Ely*, 27 N. J. L. 555 (March

Term, 1858) points out that the opinions of the Supreme Court theretofore were conflicting upon the construction of the statute then in force relating to the entry of judgment by confession upon bond and warrant and stated the true construction, in an opinion by Chief Justice Green, to be as follows (p. 577):

"But whatever may be regarded as the weight of authority, or the result of the conflicting opinions in the Supreme Court, the question is now, for the first time, presented for the consideration of this court, and a fitting opportunity is offered to declare the true construction of the statute.

"In order to render the statute operative, and to carry into effect the clearly-expressed design of the legislature to prevent the fraudulent confession of judgments, it must be held—

"That, under the laws of this state, no judgment by confession can be entered, except for a demand founded on a legal consideration, and for a debt justly and honestly due and owing at the time of the entry of the judgment.

"That the affidavit required by the statute is a *pre-requisite to the entry of the judgment, and essential to its validity.*

"That, if no affidavit be made, or, if the affidavit does not in substance specify the true consideration of the instrument or demand for which the judgment is confessed, or in any other respect be not a substantial compliance with the requirement of the statute, *the judgment is ipso facto fraudulent and inoperative against creditors.*"

In this case the facts are stated at page 555 of the opinion to be as follows: Benjamin Parkhurst

confessed a judgment to Ely, Clapp & Bowen for \$10,000, of which sum \$3,052.94 was actually due and owing from Parkhurst to the plaintiffs at the time the judgment was confessed and, for the balance of \$6,947.06, the plaintiffs gave Parkhurst their note, with the understanding that the note should be paid in goods and cash, as the defendant should require. The judgment was entered in the Supreme Court, November 4th, 1853, and execution issued. Thereafter, defendant confessed judgments to other parties and execution was issued. Under all the executions, the property was sold by the sheriff and produced \$7,951.10. On application of the junior judgment creditors, the Supreme Court ordered the money paid to the clerk of that court, and granted a rule to show cause why the money should not be applied to the junior judgments, to the exclusion of the first judgment. The question before the Supreme Court was whether the judgment of Ely, Clapp & Bowen was a valid judgment or whether it should be declared unlawful and void as against subsequent judgment creditors.

The two justices of the Supreme Court before whom the cause was argued decided that the first judgment was valid and ordered that the money should be paid to the plaintiffs therein. The cause was removed to the Court of Errors by writ of error brought by junior judgment creditors.

The cause was twice argued before the Court of Errors.

The opinion of Chief Justice Green at page 557 tersely states the questions presented are:

“The questions now presented for consideration are—

“1st. Is such judgment valid by the laws of

this state, as against subsequent *bona fide* creditors of the defendant?

“2nd. If it is not, may the plaintiffs in error, who are *bona fide* creditors, have relief against that judgment?”

After stating that the answer to these questions depends upon the true construction of the statute in *Nix. Dig.* 59, Sec. 5, and that the provision under consideration was first incorporated in an act entitled “An act to prevent the fraudulent confession of judgments”, the opinion continues at page 557:

“By the first section of that act, it is enacted ‘that *no judgment* shall be entered up *in any court of record* of this state on a warrant of attorney for confessing such judgment, unless the plaintiff or his attorney shall produce, at the time of confessing the judgment, to the court or judge before whom the judgment is confessed, an affidavit of the plaintiff, his attorney or agent, of the *true cause of action*, and that the debt is *bona fide* and *justly due and owing* to the person or persons to whom the judgment is confessed and that the said judgment is not confessed to answer any fraudulent purpose, or to protect the property of the defendant from his creditors.’ (The phraseology of this section has since been modified, in certain particulars, to render it more effective, which will be hereafter noticed.)”

Again at page 558, with reference to the interpretation of this statute:

“In looking for the true interpretation of this statute, it is obvious to remark that the terms of the act are clear. Whatever doubts

legal ingenuity may suggest—whatever difficulties common law learning and technical rules may interpose in carrying the act into execution—there can be no doubt as to the intent of the legislature. They intend that *no judgment* should be entered up by confession, even for a note or bond, unless founded on a real consideration and on a *bona fide* debt justly due and owing, untainted by fraud, and not prompted by a design to protect the defendant's property from his honest creditors; and that those facts should be verified by oath before the judgment should be entered. They intended, as they have plainly declared, that no judgment should be entered up in any court of this state, unless the affidavit therein prescribed was made. They intended, moreover, that the facts required to be verified by affidavit should *actually exist*. They did not mean to suppress fraud, by offering a bounty for the commission of perjury. Such is the fair and natural import of the language of the act. Such is the impression it must make upon every candid mind unembarrassed by legal technicalities.”

Again at page 560, Chief Justice Green in his opinion points out that the legislature not only prohibited the entry of any judgment by confession, except upon a real consideration and for a *bona fide* debt, but required that the plaintiff in the judgment should, under oath, disclose the true consideration of the judgment.

“But the legislature not only prohibited the entry of any judgment by confession, except upon a real consideration and for a *bona fide* debt, but they required that the plaintiff in

the judgment should, under oath, disclose the true consideration of the judgment, and place it upon record in order— 1. That the court might judge whether there be a legal consideration for the judgment. An ignorant party might believe, or an ingenious or unscrupulous attorney might advise, that there was a legal consideration, when none existed in fact. 2. The true consideration was required to be disclosed upon oath, and to be placed upon record for the more important reason that the *bona fide* creditors of the defendant might see and know what the consideration of that judgment was, without being driven into a Court of Chancery for a discovery. Fraudulent judgments, designed to cover the defendant's property, are ordinarily confessed to confidential creditors, friends, or relatives, under circumstances which render a discovery essential to the vindication of justice. The uncertainty, expense and delay incident to a bill in equity for a discovery would naturally deter any small creditor from venturing upon the experiment. The legislature designed, therefore, by the act, to furnish, upon the face of the proceedings, that discovery to every creditor without a resort to equity. A judgment, therefore, entered by confession, without the existence of a *bona fide* debt, or without an affidavit disclosing the true consideration of the judgment, is in direct contravention of the spirit of the law and the clear intent of the legislature.”

The opinion at page 562 quotes with approval the following from the opinion of Chief Justice Kirkpatrick, in *Parker v. Griggs*, 1 South. 161 (Supreme Court) :

"The only question which presented itself upon this case being moved at the bar was, whether *the party* himself confessing the judgment could assign the want of the affidavit for error. But upon a little reflection, there can be no doubt upon that head. The words of the statute are *peremptory*. The judgment is fraudulent."

The opinion then proceeds to trace the history of the statutes relating to the entry of judgment by confession on bond and warrant at great length.

The opinion continues at page 577 to quote with approval the following language of Mr. Justice Ogden in *Reading v. Reading*, 4 Zab. 362:

"the judgment may have been confessed for an honest debt, and no actual injustice may have been done by it to the defendant or to his other creditors; yet, as the legislature, in seeking to secure fairness, honesty, and good faith in such transactions, in their wisdom, have directed upon what conditions alone an honest creditor can exercise his common law right of securing a just debt by a judgment, this court, when called upon to act, must *ex debito justitae*, see that the requirements of the statute are not evaded or misunderstood."

The opinion then continues at page 578 to apply the foregoing rules to the case there under consideration: Plaintiffs had a debt against Parkhurst, the defendant in the judgment, for about \$3,000. Arrangement was made that the judgment should be confessed for \$10,000, of which amount \$3,000 was to secure the debt then due and the remaining \$7,000 to stand as a security for future

advances, in money or goods, to be made by the plaintiffs as it should be needed or called for by the defendant, and the query is raised in the opinion at page 578:

"Was that \$7,000 then a subsisting debt? Was it a debt justly and honestly due and owing? But, again, does the affidavit state the true consideration of the judgment, as required by the statute? One great object of the statute, in requiring that the consideration should be disclosed, was, as has been said, that the court might see that there was a valid consideration, and that the creditors might know the truth, without resort to a bill of discovery.

"In this case the true consideration is not stated. The consideration was not money lent; it cannot be so held by the broadest and most liberal interpretation. The true consideration of the judgment was a security for future advances. Had that been disclosed, the design of the judgment would have been defeated. It would have appeared upon its face that it was valid only to the amount of \$3,000. It is paltering with the statute to make the validity of the judgment depend upon the honesty of the party or the integrity of the attorney; upon the question whether the failure to disclose the true consideration was honest or corrupt. It is totally immaterial whether it was the result of mistake, ignorance, or design. The simple inquiry is, was the requirement of the statute complied with? To this inquiry there can be but one reply.

"It is impossible to conceive of a case which illustrates more strongly the wisdom of the

statute, and the importance of enforcing it, than the present; none which shows more clearly the facility with which, by means of confessed judgments, property may be covered up from the claims of honest creditors, and the plausible pretexts by which it may be defended."

The opinion of Chief Justice Green concludes with the statement that the judgment is entered in violation of the clear letter and spirit of the law, and contravenes the manifest policy of the statute, in these words, at page 582:

"In my opinion, the judgment is entered in violation of the clear letter and spirit of the law. It contravenes the manifest policy of the statute, and is therefore illegal, fraudulent, and void as against creditors. I am therefore of opinion that the judgment below should be reversed; that the judgment of Ely, Clapp and Bowen, and the execution issued upon it, should be set aside, and the money in the hands of the sheriff should be ordered to be paid to the other execution creditors, in the order of their priority; that the defendants in error should pay the costs of the proceedings below, as if the order had been there correctly made in the first instance, but not the costs in this court; and that the proceedings should be remitted to the Supreme Court, to be proceeded in accordingly."

Fries, Adm'r. v. Woodworth and Chew, 31 N. J. L. 273, Supreme Court, June Term, 1865. Opinion of court by Mr. Justice Elmer.

This case was before the court on rule to show cause why the judgment, entered by virtue of a warrant of attorney, should not be set aside, and the opinion concludes that if the defendant prefers to take a rule to open the judgment and have leave to plead, he can do so, and says at the middle of page 274:

"The judgment has been regularly entered, and we see no good reason for setting it aside on any of the grounds that have been relied on. The plaintiff is in possession of the bond, and has a perfect right to proceed on it in this state, and to collect the money of the surety, if it is due. *If there is nothing in fact due, the defendants must have that question tried, as other disputed questions are tried in our courts.*"

Shallcross v. Deats, 43 N. J. L. 177, Supreme Court, February Term, 1881. Opinion by Mr. Justice Magie.

The opinion says at page 181:

"2. The next question raised relates to the judgment of Emma Deats against Jane B. Newell. This was a judgment by confession on a bond and warrant of attorney. Mrs. Newell attacks this judgment upon the ground that it was without consideration. The evidence satisfies me that such was the fact. But the testimony of Mrs. Newell further discloses that the judgment was confessed without consideration and with the intent to defraud the creditors of Jesse F. Deats and Jane B. Newell. This is a fair deduction from her own evidence, and under such circumstances

she cannot invoke the aid of this court to relieve her from the situation in which she has voluntarily placed herself. *Pollock v. Price*, 8 Vroom, 44.

"The rule to show cause obtained by her must, therefore, be discharged, without costs."

Warwick v. Petty, 44 N. J. L. 542. Supreme Court, November Term, 1882. Opinion of the court by Mr. Justice Depue.

In this case Warwick recovered judgment against Petty by confession in virtue of a warrant of attorney to confess judgment. Judgment was entered January 25, 1881, for a real debt of \$3,028 and costs. John Petty recovered judgment against Isaac Petty, the defendant, on May 19, 1881 by action, for \$806.88 and costs. The proceeds of the sales of defendant's real and personal property under both judgments realized \$3,165.10. It was contended that Warwick's judgment is, as against subsequent judgment creditors of the defendant, invalid wholly or in part.

At page 545, the opinion points out that before the decision of the Court of Errors in *Clapp v. Ely*, 27 N. J. L. 555, the law on the subject of judgments by confession, by warrant of attorney, was in an unsatisfactory and perplexing condition, but that the Court of Errors, in that case, had settled definitely certain propositions with reference thereto.

At page 547, the opinion says:

"On error, the judgment of the Supreme Court was reversed, by a vote of six for reversal and five for affirmance. By the concurrence of all the judges who voted for reversal, these propositions were settled: First, that creditors whose rights are affected by a

confessed judgment may contest its validity, and to that end may show that the judgment was entered in violation of the statute; second, that, under the statute, a judgment by confession can be entered only for a debt actually due and owing at the time of the entry of the judgment, and a judgment confessed for a contingent indebtedness that may arise in the future, is invalid as against other creditors."

The opinion continues at page 550 to lay down the rule as to whether the judgment shall be set aside entirely or only in part, as follows:

"Whether the judgment shall be set aside entirely, or only in part, will depend upon whether or not it was entered for a greater sum than was actually due, with a fraudulent intent."

Sterling v. Fleming, 53 N. J. L. 652. Court of Errors and Appeals, June Term, 1891. Opinion of the court by Mr. Justice Scudder.

In this case judgment was entered on bond and warrant to confess judgment and the Judge in the Hudson Circuit vacated the judgment in part and confirmed as to the balance.

The position of the plaintiff was that the assumption to pay and satisfy certain notes when they became due, made in writing at the time of executing the bond by the obligee, constituted a present indebtedness for which an action might be immediately brought against him, and therefore there was a debt due and owing when, later in the day, a judgment was entered on the bond and warrant of attorney to confess judgment. The opinion says at page 655:

"It is a kind of novation by the intervention of a new debtor, where another person becomes a debtor instead of a former debtor, and is accepted by the creditor, who thereupon discharges the first debtor, as defined in Bouvier's Law Dictionary. The outstanding obligation must be paid, or the new debtor substituted by such consent. In this way a present indebtedness of the maker to the endorser results, and he may make the oath required by the statute. This construction has, also, the sanction of judicial decision in *Warwick v. Petty*, 15 Vroom 543. In that case there was a note in bank made by the obligor, and endorsed by the obligee, not yet due, which was assumed by the latter when the bond was made, by an agreement in writing. It was also, as in this case, an accommodation note. It was not charged up to the endorser until it matured. The notes in dispute in this case were not paid until they were due. In both cases payment was made after the judgment was entered on the bond. The court said there was no debt due by Petty to Warwick for this note until it was paid by the latter, and the amount was stricken out of the judgment on the motion of a subsequent judgment creditor. In that case the court examined the cases of *Clapp v. Ely*, 3 Dutcher 555; *Sayre v. Hewes*, 5 Stew. Eq. 652; *Hoag v. Sayre*, 6 Id. 552, which are in agreement with it on this point. See also, *Blackwell v. Rankin*, 3 Halst. Ch. 152.

"Any other construction would lead to the substitution of a promise for a debt, the word used in the statute, and make the fraudulent preference of contingent creditors, over those

whose claims are actually due, a frequent occurrence. The object of requiring the affidavit in the form used, is to prevent the preference of contingent claims and future advances, and make a present indebtedness the prerequisite for a confessed judgment on bond with warrant of attorney.

"The order and judgment of the court will be affirmed."

Bates v. Norton, 55 Eq. 251. February Term, 1897. Opinion by Vice Chancellor Pitney.

The bill charges that certain judgments were confessed without consideration and prays for discovery as to the true consideration of a judgment so confessed and in what manner the consideration arose and by what the same was evidenced.

The opinion reviews the cases on the subject under consideration at length, and cites with approval the language of Mr. Justice Depue in *Warwick v. Petty*, 44 N. J. L. 542, at page 259 as follows:

"The law on the subject is stated with great clearness by Mr. Justice Depue in *Warwick v. Petty*, 15 Vr. 548, as follows:

"It may therefore be considered as decided by the Court of Errors that a judgment by confession for a gross sum, made up in part of a debt then actually due and owing and in part of a contingent indebtedness of a definite amount to become due in the future will be set aside as to the latter, at the instance of subsequent judgment creditors, although such contingent indebtedness matured and became an actual debt before the other judgment credi-

tors recovered their judgments, and that such confessed judgment will be allowed to stand for so much as was actually due and owing when it was entered, if the affidavit, to that extent, truly stated the consideration, provided it appears that the judgment was taken for the larger sum without any fraudulent intent.' ”

And again (at p. 550) :

*“Whether the judgment shall be set aside entirely or only in part will depend upon whether or not it was entered for a greater sum than was actually due, with a fraudulent intent. * * **

“A judgment laid upon the property of a debtor for more than is due is in clear violation of the law. It tends to keep other creditors from pressing for their debts and gives the debtor repose from the harassment of other creditors by conveying the assurance that creditors' suits would be useless, nothing could be collected, and this is obnoxious to the policy of the law which denominates as illegal all transactions the tendency of which is to hinder and delay creditors. *Such a burden is, prima facie, wholly fraudulent, and the burden of rebutting and overcoming the inferences of fraud lies upon the party who seeks to uphold the transaction.* And the burden of proof is not successfully met by mere proof that all the money was afterwards advanced on the judgment which the judgment creditor was required by the statute to advance before he took his judgment and covered the defendants' property with it. On the issue of fraud, proof

that the money which was not actually due and owing when the judgment was entered was subsequently advanced, is evidence, and evidence only, of more or less weight according to the circumstances of the particular case.”

Keyes v. Smith, 67 N. J. L. 190, Supreme Court, November Term, 1901. Opinion of the court by Mr. Justice Hendrickson.

This case was before the court on a rule to show cause to vacate a judgment entered by confession upon bond and warrant. The rule to show cause was made absolute and the judgment vacated. One of the grounds alleged for relief was that the judgment was void for want of an affidavit showing the true consideration of the bond for which the judgment was confessed. Upon this point, the opinion says at page 191 :

“One of the grounds alleged for relief is that the judgment is void for want of an affidavit showing the true consideration of the bond for which the judgment was confessed. The affidavit made and filed with the proceedings declares the true consideration to be a note of hand for \$7,000, dated October 7th, 1900, made by the defendant, payable to one Edward J. McCarthy in three months after the date thereof, endorsed by said McCarthy and the plaintiff, a copy of which appears in the affidavit. *It thus appears that the affidavit does not show the true consideration of any part of the debt or demand for which the judgment was confessed. When the question is properly raised such omission is fatal to the validity of the judgment.* *Reading v. Reading* 4 Zab. 358; *Latham v. Lawrence*, 6 Halst. 322;

Evans v. Adams, 3 Gr. 373; *Clapp v. Ely*, 3 Dutcher 555.

"It is contended for the plaintiff in the judgment that an affidavit setting forth as the true consideration of the bond a promissory note, as in this case, is sufficient. In support of this contention he cites *Latham v. Lawrence*, *supra*, and *Woodward v. Cook*, 1 Halst. 160. It is only necessary to say, with regard to the former case, that it holds distinctly the contrary of the doctrine suggested. An error in the syllabus has probably led to a misconception of the point decided. In the latter case the setting aside of a judgment was sustained, because the affidavit set forth the true consideration of the assignment of the bond, and not of the bond itself.

"Reference has been made also to a *quaere*, in *Warwick v. Petty*, 15 Vroom 542, whether a judgment by confession for an existing debt, actually due and owing, will be set aside, on the application of other judgment creditors, for the sole reason that the affidavit did not truly state the consideration. But the question thus left unanswered plainly refers only to cases where the affidavit does set forth a consideration, but fails to state it truly. See *Simons v. Schneider*, 13 N. J. L. J. (1890) 131.

The Supreme Court in the late case of *Kleeman v. The J. & P. Baltz Brewing Co.*, 70 N. J. L. 202, decided November 9th, 1903, held that a judgment by confession will be set aside if the affidavit does not, as required by the statute, state the true consideration of the bond (citing *Reading v. Reading*, 4 Zab. 358; *Clapp v. Ely*, 27 N. J. L. 555).

The opinion in this case (Per Curiam) is as follows:

"This is an application to set aside a judgment by confession because the affidavit does not, as required by the statute, state the true consideration of the bond. It sets forth that the true consideration of the bond was money loaned and advanced by plaintiffs to defendant.

"The evidence shows that a considerable portion of the debt was for beer sold by plaintiffs to defendant. The judgment is therefore set aside. *Reading v. Reading*, 4 Zab. 358; *Clapp v. Ely*, 3 Dutcher 555."

VI.

Appeal is the proper remedy to review the action of the Supreme Court discharging the rule to show cause.

In the case of *Knight v. Cape May Sand Company*, 83 N. J. L. 597 (decided June 20th, 1912), two judgments were entered by confession on bond and warrant of attorney. The defendants obtained a rule to show cause why the judgments should not be vacated. Upon appeal to the Court of Errors, the plaintiff contended that a writ of error would not lie to review the discharge of a rule to show cause but the Court of Errors dismissed this contention, and in the opinion of the court, delivered by Mr. Justice Kalisch, said at page 599:

"The same questions are involved under both writs, and, for convenience, may be considered together. Before entering upon a consideration of the main question involved in the case, it becomes necessary to dispose of two

preliminary questions raised by the plaintiff, which not only go to the root of the procedure, but vitally affect the defendant's right to any relief. The first contention of the plaintiff is that a writ of error will not lie to review the discharging of a rule to show cause. While the general legal rule is that a writ of error will not lie to review the granting or discharging of a rule to show cause, it has always been confined to cases where the action of the court was founded solely upon the exercise of its discretionary power, but not to a case where the effect of the granting or discharging of the rule is dispositive of the entire case—in that, its action is tantamount to the rendering of a final judgment.

The mere fact that the proceeding was by a rule to show cause does not and cannot affect the real function of the writ of error, that is, to bring the judgment record under review. The rule to show cause was simply an orderly procedure by which to bring to the knowledge of the court circumstances and facts under which the judgment was entered. The same object could have been attained by an application to the court to vacate the judgment, without an intervening rule to show cause. It is clear that if there was a defect on the face of the judgment record and an application had been made to vacate it and the court had in the first instance granted a rule to show cause, and subsequently either discharged or made the rule absolute, the action of the court could not have operated to prevent the party prejudiced by such ruling to have the validity of such judgment brought under review by writ of error.

And where the invalidity of the judgment can only be made to appear by matters *dehors* the record, as in the case *sub judice*, no different rule is logically applicable.”

The judgment of the Supreme Court discharging the rule to show cause was reversed, and the judgments under review set aside.

The portion of the opinion quoted above was cited with approval in an opinion of the Court of Errors, delivered by Mr. Justice Kalisch in the case of *Corn v. Kaplan*, N. J. Adv. Rep., Vol. V, No. 43, page 1448 at page 1450 (decided October 17th, 1927).

It is respectfully submitted that the judgment of the Supreme Court discharging the rule to show cause should be reversed and the judgment under review set aside.

Respectfully submitted,

CARLYLE GARRISON,
attorney of Frank D. Schroth,
Receiver of Cape May Real Estate Company.

HARRY LANE,
of Counsel.

Dated, May Term, 1928.

New Jersey Court of Errors and Appeals

PETER SHIELDS (Harry Darlington, Jr., Assignee),
Plaintiffs-Appellees.

v.

CAPE MAY REAL ESTATE COMPANY, (Frank D. Schroth, Receiver, substituted),
Defendant-Appellant.

Action at
Law.

On Appeal
from Supreme
Court.

APPELLANT'S REPLY TO BRIEF OF APPELLEE.

Counsel for Appellee in point "I" predicates his argument that the order of the Supreme Court from which this appeal was taken was based not upon a matter of law, "but upon a matter resting in the sound discretion of the court, namely, whether the attack on the judgment had been instituted and prosecuted with due promptness." In support of his argument, he cites, the decision of this court in *Smith v. Livesey*, 67 N. J. L. 269. The opinion in this case did not deal with the question of the vacation of a judgment entered by confession upon bond of warranty pursuant to the provisions of the Act entitled: "*An Act directing the mode of entering judgments on bonds and warrants of Attorney to confess judgments*," (under the terms of which the judgment in this proceeding was entered.) In the *Smith* case, the defendants applied to the Supreme Court to open a judgment entered by default

against them, on the ground that the default was due to the neglect of their attorneys, and that they had a meritorious defense which should be submitted to a jury. The Supreme Court refused to open the judgment, and thereupon the defendants sued out a Writ of Error, contending that this refusal was erroneous, and the court held that by the common law an application to open such a judgment regularly entered was addressed wholly to the discretion of the court in which the judgment was entered, and consequently a Writ of Error would not lie to review the determination of that court. This case was decided March 3, 1902. The opinion in the case of *Knight v. Cape May Sand Company*, 83 N. J. L. 597 (on which the Appellant relies), was decided by the Court of Errors ten years later, June 20, 1912, and involved, not a judgment entered by default due to neglect of attorneys, but the question raised by the present appeal. (Appellant's Brief Point VI, p. 59).

That the attack upon the judgment in the present appeal involves questions other than the prompt institution and prosecution of the proceedings and laches of appellant is apparent from the eight grounds of the notice of appeal, which will be found on pages 1-4 of the Printed Record.

The incomplete excerpt on page three of the brief of Counsel for Appellee from the opinion in *Ames v. Stiles*, 31 N. J. L. 490 does not convey the full import of the paragraph from which it is excised. The full paragraph will be found on page 494 of the opinion and reads as follows:

"From the cases above cited, it is clear that it is not a requisite to the right of revision in this court, that the decision alleged to be erroneous should have sprung from a proceed-

ing in the course of the common law. This ancient test is not applicable to a writ of error in this court. The only requisites are, that the decision of the inferior court is final, and has not proceeded from a matter resting in discretion. It is to be understood however, that the term final is here used in the sense of the common law rule applicable to writs of error. *The decision must have settled definitively in the suit or proceeding the rights of the parties.* The rule as established, appears simply to have removed the requisite of the coincidence of the proceedings with the course of the common law; the other tests of the common law still obtain. What are matters of discretion and what is a final decision, are still to be decided by reference to the ancient system and the principles established in the decisions of the courts."

The Notice of Appeal raises several questions, at least one of which the Supreme Court must have considered as a matter of Law, and which was not addressed to the discretionary powers of that court, namely, whether or not the affidavit upon which the judgment in question was entered in the Supreme Court specified the true consideration of the bond and substantially complied with the Act entitled: "*An Act directing the mode of entering judgments on bonds of warrants of attorney to confess judgment.*" This question is discussed under point V, page 41 of Appellant's brief.

Counsel for Appellee under point II, cites four lines from the Opinion of Chief Justice Beasley in *First National Bank of Red Bank v. Jones*, 44 N. J. L. 60 in support of his argument relative to laches. This excerpt taken from its context in the

connection in which it is used in appellee's brief, conveys an entirely erroneous impression of the opinion, and we therefore quote the paragraph in full, which will be found on page 61 of the opinion.

"It is true that in this case the judge of the Pleas has signed a bill of exceptions in which the ground for discharging the rule in question is stated to have been that the act of the bank, in putting in its claim, founded on the note in suit before the assignee, did not discharge the defendant from his accomodation endorsement. But because the judge sitting in the court below stated a legal proposition as the ground of the action of the court, the action of the court is not in consequence put under the control of this court. If this proceeding could be reviewed before us the question would be, not whether a right or wrong reason was assigned for the judicial action in the inferior tribunal, but whether the rule in question should or should not be discharged, and that would depend on the dictates of discretion, and on no settled rule of law. For example, in the present case, even on the assumption of an error existing in the statement of the legal rule stated by the judge in the Court of Common Pleas, still, it would seem to me that the result which has been reached was proper if we are to form an opinion on the facts as we find them brought before us. This conclusion would be grounded on the fact that the exhibition of this claim to the assignee by the bank, and which is the act on which the plaintiff in error relies as a defense in the suit, occurred before the entry of judgment in the action and before even the time of pleading had

expired, so that such circumstance could have been set up by way of plea and could have been tried upon the issue so raised. The declaration was filed on the 18th of April, 1879, and the claim was exhibited to the assignee on the 23rd of April, 1879, and nothing appears in the case to show that such fact was not known to the defendant in time to set it up as a defense. Even, therefore, if this court could exercise the discretion on which the law confides to the court below, it would not avail the plaintiff in error as the case at present stands.

But this writ of error, for the reason stated, must be dismissed."

At the risk of reiteration, we desire to call the attention of the court to the following statement on page 10, line 16, of Appellee's brief.

"Pending the negotiations, and in the month of August, 1917, the Government took possession of the property in question (p. 78), and on October 6, 1917, an Act of Congress was passed approving of this purchase for the sum above named, and such Act was subsequently approved by the President."

Counsel for Appellee apparently desires to convey by this language the impression that the alleged agreement for the sale of the 57½ acres in question for \$150,000 was consummated and executed by the said Act of Congress, and approved by the President. Such an impression or inference is wholly unjustified upon the proofs in this case. While no reference to the proofs in the case is made by counsel for Appellee in support of his intention, we assume that his statement is based upon the

proclamation of the President, Exhibit D-3, line 31, page 205 of the printed record.

The proclamation of the President, after reciting the Act of Congress of October 6, 1917, authorizing the Secretary of the Navy to provide for the acquisition of an air station site, further recites the fact that the Secretary of the Navy has been unable to consummate the negotiations for the purchase of the site needed at Cape May, (which is the 57½ acres in question), in the following words, which will be found on page 207, line 38 of the printed record.

“And Whereas, the Secretary of the Navy has been unable satisfactorily to consummate the negotiations for the purchase of the site needed for the naval aviation station, at Cape May, N. J.”

Respectfully submitted,

CARLYLE GARRISON,
Attorney of Frank D. Schroth,
Receiver-Appellant.

HARRY LANE,
of Counsel,

Dated, May Term, 1928.

New Jersey Court of Errors and Appeals.

PETER SHIELDS (Harry Darlington, Jr.,
Assignee),
Plaintiff-Appellee,

v.

CAPE MAY REAL ESTATE COMPANY
(Frank D. Schroth, Receiver, Substi-
tuted),

Defendant-Appellant.

Action at Law.

On Appeal from
Supreme Court.

BRIEF FOR APPELLEE.

This is an appeal from an order made by the Supreme Court discharging a rule to show cause allowed in that Court on June 28, 1920, and which required the appellee to show cause why a judgment, entered by confession in the Supreme Court on October 24, 1917, should not be set aside.

The Supreme Court, after stating their opinion that the several grounds relied upon by the appellant were highly technical and could not successfully impeach the validity of the judgment or the meritorious basis upon which it rested, based their conclusion upon the extreme laches evidenced by the conduct of the appellant with respect to the judgment in question.

Accordingly we respectfully submit,

- (1) The order from which the appeal was taken was not an appealable order;
- (2) The appellant is chargeable with extreme laches;
- (3) There are no meritorious reasons for attacking the judgment in question.

I.

The order in question is not appealable.

Appellant argues that the order of the Supreme Court discharging the rule to show cause may be reviewed in this Court under the authority of *Knight v. Cape May Sand Company*, 83 N. J. L. 597.

We submit that this argument overlooks entirely the fact that the order of the Supreme Court was based not upon a matter of law, but upon a matter resting in the sound discretion of the Court, namely, whether the attack on the judgment had been instituted and prosecuted with due promptness.

It will not be disputed that, as a general rule, a motion made in the Supreme Court to open one of its judgments regularly entered is addressed to the discretion of the Court, and its determination thereon cannot be reviewed by writ of error.

That was held by this Court in *Smith v. Livesey*, 67 N. J. L. 269, where Justice Dixon said:

“By the common law an application to open a judgment regularly entered was addressed wholly to the discretion of the court in which the judgment was rendered, to be there decided as justice and equity should require, (Citing authorities) and, consequently, a writ of error would not lie to review the determination of that court.”

It has invariably been held that the utmost promptitude is required of persons invoking such action by the Court. As Chief Justice Gummere said in *Assets Development Company v. Wall*, 97 N. J. L. 468:

“And the Court may exercise this power at any time while the cause remains under its

control, provided the moving party embraces the first opportunity he has of presenting his case.”

We submit it was not intended by *Knight v. Cape May Sand Co.*, *supra*, to question the finality of orders based upon matters resting in the discretion of the Court to which the application was addressed.

The Court, in *Knight v. Cape May Sand Co.*, expressly approved of the conclusions reached by Chief Justice Beasley in the leading case of *Eames v. Stiles*, 31 N. J. L. 490. The Chief Justice, speaking of the test of what is an appealable order or judgment, said:

“The only requisites are that the decision of the inferior court is final and has not proceeded from a matter resting in discretion * * * What are matters of discretion, and what is a final decision, are still to be decided by reference to the ancient system and the processes established in the decisions of the courts.”

The judgment brought before this Court for review in *Knight v. Cape May Sand Co.*, *supra*, rested, not upon a matter lying in the discretion of the Court, but upon the decision of a question of law. The point was whether a judgment, entered upon a bond secured by a mortgage on real estate, could be justified where no proceedings had been first had for the foreclosure of the mortgage. It turned upon the proper application of the Act of March 23, 1881 (Gen. Stat. p. 2112), which reads:

“That in all cases where a bond or mortgage has or may hereafter be given for the same debt, all proceedings to collect said debt shall be first to foreclose the mortgage.”

That, of course, was not a matter lying in the discretion of the Court.

The language of Chief Justice Beasley in *Eames*

v. *Stiles, supra*, at page 495, is appropriate in this connection:

"Neither can it be said that the decision was discretionary. The court, by the express terms of the statute, was compelled to entertain and decide the motion. The award could not be either ratified or disallowed, except on legal grounds. The decision, if correct, must be the result of the application of the law to the premises before the court."

Whether an applicant has proceeded promptly or is in laches, on the contrary, is not a matter of statute or the rules of law, but is, in each case, a matter for the decision of the court exercising its sound discretion upon the facts presented.

In *First National Bank of Red Bank v. Jones*, 44 N. J. L. 60, Chief Justice Beasley, speaking of the discretionary character of an application made to open a judgment by default in order to permit a defense to be made, and having in mind the fact that the applicant had been aware of the proposed defense prior to the expiration of the time limited for pleading, said:

"When the court has exercised its discretion in cases of this sort, it is impossible to say that any error in law has been committed. The practice is entirely settled and it conclusively negatives all right to such a remedy. The admission of a principle sustaining this procedure would very largely increase the litigation in this court."

II.

Furthermore, the opinion of the Supreme Court that the applicant was in laches was entirely justified.

There can be no question that it was incumbent upon the defendant to move to vacate the judgment within a reasonable period of time.

Stewart v. Lehigh Valley Railroad Co.,
38 N. J. L. 505, at page 522.

The Supreme Court was of opinion that the repudiation of the judgment and the effort to secure its vacation were not undertaken with reasonable dispatch.

That the opinion of the Supreme Court in this respect is well founded, appears from the following:

(a) The judgment in question was entered on October 24, 1917;

(b) On October 31, 1917, at what purported to be a meeting of the Board of Directors of the defendant, Nelson Z. Graves was elected President of the company to serve until the next annual meeting (p. 154). At the meeting of the Directors following the annual meeting on April 9, 1918, Mr. Graves was elected President of the company (p. 162).

(c) On August 5, 1918 the judgment was assigned to Harry Darlington for One Dollar and other considerations (see p. 15). No attack has been made on the bona fides of this assignment.

(d) Many meetings of the stockholders and directors of the Cape May Real Estate Com-

pany having intervened without any mention in any of them of an objection against the judgment in question, Nelson Z. Graves, as President of the defendant, on June 24, 1920 verified the petition to open the judgment and on June 28, 1920 the order to show cause was allowed.

(e) Testimony in support of said petition was not taken until October 1, 1925.

(f) The rule was argued at the May Term, 1926 (p. 214).

In the effort to avoid what would seem to be the necessary consequence of the above recital of facts, appellant refers to certain alleged circumstances in palliation of the delay.

In the first place, it is stated that Mr. Graves and his associates did not know of this judgment until shortly before the petition to vacate the judgment was verified on June 24, 1920.

There is not a word of proof to this effect.

Counsel realizing that, attempt to support this argument by a reference to the general allegation found in the second paragraph of the petition (see p. 5), to the effect that "the present officers of your petitioner company had no knowledge of said bond and warrant of attorney and the entry of said judgment until very recently, to wit, April 22, 1920". This petition was verified by Mr. Graves upon knowledge, information and belief only.

Mr. Graves, although appearing as a witness upon the depositions taken in behalf of the petitioner (p. 45), carefully refrained from testifying as to the date when he first learned of the entry of the judgment, nor was there any other proof as to the date when any of the other officers of the defendant learned of the judgment. The defendant, therefore, stands charged with knowledge of the judgment

from the very time of the entry thereof. We cannot assume otherwise in view of the lack of any contradictory testimony, and the further fact that the bond and warrant were referred to in the minutes of the company (all of which were produced in Court from the custody of the receiver himself (p. 23)). And here it may be noted that at the very next meeting of stockholders (April 9, 1918) two of the directors who voted for the bond and warrant, Messrs. Scully and Miller, were present and participated in the meeting (p. 133).

Next, reference is made to the stipulation entered into between the attorney of Peter Shields and the attorney of the defendant, under date of September 1, 1920, although not filed in Court until February 16, 1923 (see p. 18). This stipulation, it will be noted, was entered into almost three years after the entry of the judgment and when, it is submitted, the defendant had already been barred by laches. Furthermore, it did not purport to be made on behalf of Mr. Darlington, the present owner of the judgment, although the assignment to him was executed on August 5, 1918, some two years before, and recorded in the Office of the Clerk of the Supreme Court on August 6, 1918.

Even were that stipulation binding on Mr. Darlington, it could not possibly operate as an excuse for the delay of almost five years which intervened between the making thereof and the taking of testimony on behalf of the defendant. Nor does it appear that Frank D. Schroth, as receiver of the Cape May Real Estate Company, was a party to that stipulation or had anything to do with it. In fact, the order substituting Mr. Schroth as a party defendant was not made until some two years later, namely, on December 25 (*sic*), 1922, and was not filed until February 16, 1923.

How it can be asserted, on the above record, that the attack was instituted and prosecuted with due diligence, we cannot conceive. If the question,

therefore, is open, any conclusion contrary to that reached by the Supreme Court would seem to be impossible. In this connection the words of Chief Justice Beasley, in *First National Bank of Red Bank v. Jones, supra*, are applicable:

“Even, therefore, if this court could exercise the discretion which the law confides to the court below, it would not avail the plaintiff in error as the case at present stands.”

III.

The grounds of attack against this judgment possess no merit.

As the affidavit of plaintiff upon the entry of this judgment shows (p. 12), the consideration of the bond and warrant and the justification of the judgment was an indebtedness of the defendant to the plaintiff of the sum of Thirty-one Thousand Forty-one Dollars and Seventy-five cents (\$31,041.75), consisting of one item amounting to Twenty-two Thousand Five Hundred Dollars (\$22,500.00) for compensation to the plaintiff for his services and expenses in connection with the sale of a portion of the defendant's property which he negotiated to the United States of America, and the remaining items cover various disbursements made by the plaintiff on behalf of the defendant, such as taxes, etc.

Without going fully into the facts, it is sufficient to say that the defendant was engaged in the real estate business, owning large acreage at Cape May, New Jersey. Prior to the giving of the bond and warrant, the plaintiff was president of the defendant company.

The defendant and its receiver do not seriously dispute the fact that Mr. Shields made the pay-

ments in question and that he expended considerable of his own funds and a great amount of his time in negotiating the sale of some fifty-seven acres of this property to the Federal Government, although the suggestion is made that his negotiations did not actually result in a sale.

The record discloses that Mr. Shields expended a considerable sum and a great deal of his time in instituting and conducting negotiations with the Federal Government officials with respect to the purchase of the property in question. This was just prior to the entry of the United States in the Great War, and the purpose of the negotiations was to give the Government acreage at Cape May for development as a Naval Station.

At the time these negotiations took place Mr. Graves, who is now the controlling stockholder of the defendant company, had been forced to part with his stock and transfer it to a committee of his creditors headed by Mr. William N. Elliott, President of the Central National Bank of Philadelphia (p. 55), and this committee, of which Mr. Elliott was the directing head, formed a corporation known as the Mutual Liquidating Company to take title to these shares of stock, and through ownership of this stock, the Mutual Liquidating Company, under the direction of Mr. Elliott, caused its own nominees to be elected to the positions of officers and directors of the Cape May Real Estate Company.

It was through the vote of this interest that Mr. Shields was elected in the first place a director of the company and later its president.

Mr. Shields had many talks with Mr. Elliott on the subject of the negotiations with the Government and reached an agreement with Mr. Elliott that Mr. Shields was to receive, in compensation of his services and disbursements, fifteen per cent. (15%) upon the amount of any sale to the Gov-

ernment which he negotiated (p. 81). A general statement of what Mr. Shields did appears at page 56, etc., of the record. It indicates the greatest activity on his part in New York, Philadelphia, and Washington and protracted negotiations with the then Secretaries of War and Navy. The nature of these negotiations and their extent are further borne out by copies of some of his correspondence at that time, particularly with the Secretary of the Navy (see p. 60, etc.).

Entirely through Mr. Shields' activities the matter progressed to the extent that an agreement was reached with the Government officials whereby approximately fifty-seven (57) acres were purchased for the sum of One Hundred and Fifty Thousand Dollars (\$150,000). Pending the negotiations, and in the month of August, 1917, the Government took possession of the property in question (p. 78), and on October 6, 1917, an Act of Congress was passed approving of this purchase for the sum above named, and such act was subsequently approved by the President. Pending the transfer of the title to the property by deed from the Cape May Real Estate Company, the need of the Government for additional acreage became apparent, and under the war emergency, the President made a proclamation taking over not only the fifty-seven acres in question, but also considerable additional acreage. The Government entered into possession of all of the property and made extensive improvements thereon and is still in possession of the property.

Proceedings were instituted to fix the amount to be paid to the defendant for all of the property taken, and an award was made which was not satisfactory to the company and is still being challenged by its receiver in proceedings now pending in the United States Court of Claims (p. 51).

It must be conceded that Mr. Shields had done

everything which anyone could do to negotiate the sale of the property, and that the sale actually went through so as to entitle him to the payment of the agreed upon amount. His work had been done, the Government accepted the property and now has title to it. Undoubtedly in the Court of Claims the Government will be bound by the agreement solemnly reached by it as to the price of the fifty-seven acres, although, in view of the greater acreage involved, the question is still open as to what compensation will finally be awarded to the defendant for the entire acreage taken.

Counsel rather disingenuously seek to suggest, through the testimony of Mr. Norris, the Philadelphia attorney who represented the Mutual Liquidating Company, that Mr. Shields was not in fact responsible for the negotiation of this sale. He so testified upon his direct testimony. He was then confronted with a letter he wrote some time ago to Mr. Shields and was required materially to modify his testimony. The following extracts from the cross examination of Mr. Norris are enlightening (p. 40):

“Q In this letter occurs the following language: ‘Concerning the sale of land to the United States, I know that this sale was due entirely to your efforts’; what did you mean by that? A I meant by that that he had conducted all the negotiations, had done a great deal of work. By sale I did not mean to imply that the sale had been consummated. Of course I have no knowledge beyond October 12, 1917, as to whether or not an agreement was made or the sale accomplished.” * * *

(page 41):

“Q Further down in this letter, Mr. Norris, occurs the following language: ‘The terms of the sale were definitely concluded, and my last knowledge of the transaction was that we had submitted a brief of title to the solicitors gen-

eral department of the United States, who in turn referred it to, I think, the United States District Attorney of New Jersey'. What do you mean by that language, namely, 'The terms of sale were definitely concluded?' A What I mean by that was this: The negotiations had been entered into in June or July, of 1917, for the sale of the property; my recollection is that an offer was made by the Cape May Real Estate Company to sell this tract of land, and it was accepted by the Navy Department, with certain conditions relating to dredging. Those conditions, however, were not finally determined, and all was to be subject to the approval of some higher authority, I don't remember what it was." * * *

(page 42) :

"Q Again referring to Exhibit P. 1 for identification, I call your attention to the following language: 'I do know, however, that up until this time you had been in constant negotiation with the United States and had consummated the terms of sale.' A Well, that was an entirely correct statement, so far as it went. My recollection is that those terms, which I have specifically stated a minute ago, had not been approved.

"Q You say that was a correct statement? A That was a perfectly correct statement." * * *

(page 42) :

"Q In the next paragraph of the letter occurs the following language: 'I also know that you advanced certain taxes on property of the Cape May Real Estate Company and other properties in Cape May, at a time when the Cape May Real Estate Company had not the moneys to pay these taxes'; is that correct? A That is correct."

The other amounts which made up the total of the judgment and which covered taxes and various disbursements made by Mr. Shields on behalf of

the defendant company, were testified to by him (p. 84). No evidence was introduced to contradict his statement that such moneys were in fact paid and remained due to him and still are due to him.

Such being the facts, the inquiry arises whether any legal grounds have been suggested in the brief of the defendant which would have justified the Supreme Court in opening the judgment in question.

The amount due was specifically ordered paid in a resolution of the Board of Directors of the company, and the execution on the bond and warrant were authorized by like resolution.

Before discussing in detail the points made by the defendant, it is appropriate to point out here that it cannot be disputed that the Board of Directors which passed the resolutions above referred to was the legally constituted Board of Directors of the defendant company, and the only point made by the defendant in this connection is whether the meetings at which the resolutions were passed had been duly convened upon notice to all of the members of the Board. The Board of Directors, which was elected after Mr. Graves regained control of the stock, was not elected by the stockholders until after authorization of the execution of the bond and warrant (annual meeting of April 9, 1918, p. 133).

We come then to the points made by the defendant.

a. The Statute of Frauds does not apply.

Assuming that the meetings of the Board of Directors which passed the resolutions found on pages 169, etc., were duly convened meetings of the Board of Directors of the company, the written

memoranda contained in these minutes, as well as the written memoranda contained in the bond and warrant itself are sufficient to meet the requirements of the Statute of Frauds. It does not seem necessary here to do more than to quote the provision of the statute to the effect that the authority for selling the land must be in writing, but that the writing is effective, "whether or not such writing or memorandum is signed by said owner or agent before or after such sale or exchange has been effected."

b. The quoted provision of the By-Laws does not affect this claim.

Reference is made in the brief (p. 38) to the provision of the By-laws of the defendant company, that the Board of Directors may authorize the payment of compensation to a director as "an officer and employee of the company," provided that the amount of such compensation is fixed by a majority of the whole Board acting without the vote of the director involved.

A reading of this By-Law demonstrates that it is limited in its effect entirely to the employment of a director as an officer or employee of the company and the fixing of his salary or compensation as such. It has no reference to the furnishing of services outside of the scope of the duties of an officer or regular employee.

c. The affidavit upon which the judgment was entered complies with the statute.

Mr. Shields' affidavit is printed on page 12 of the State of the Case. It contains a full and complete statement of the consideration for the bond. We cannot conceive how any argument can justly be made that it did not give sufficient information to apprise all persons interested as to the true

consideration of the bond. In this connection, as the authorities all hold, the design of the statute is to require the holder of the bond to make a sufficient statement to apprise anyone interested of the true consideration, to the end that if the consideration were fraudulent, as against creditors, that might appear. Where the consideration of the bond is not the protection of the defendant's property from his honest creditors, the courts universally endeavor to sustain an affidavit which contains a substantial statement of the transaction. Here the issue is the same as that which arises when a judgment can be sustained only in part, as the Court said in *Warwick v. Petty*, 44 N. J. L. 542:

"Whether the judgment shall be set aside entirely or only in part will depend upon whether or not it was entered for a greater sum than was actually due with a fraudulent intent."

d. Were the meetings of the Board of Directors of the company which authorized these transactions duly convened?

The questions here are whether the meetings were in fact held, and whether notice of the meetings was sent to all of the then members of the Board of Directors.

In the first place, it is not seriously suggested that meetings, as described in the minutes in question were not, in fact, held. The record of these minutes appears in Mr. Miller's handwriting, he then being the secretary of the company, and the minutes appear in a small minute book which he used at that time. Both he and Mr. Shields testified that this small minute book was used with Mr. Elliott's approval, and was used for purposes of convenience, in view of the fact that the minute books theretofore used were ponderous volumes and in the office of Mr. Norris in Philadelphia (see pp. 84 and 97).

There can be no question that Mr. Miller was in face the secretary of the company at that time, and, as stated, the minutes are in his handwriting. Assuming then that such meetings were held, the argument is made that they were not proper meetings, for the reason that no notice of the meetings was sent to Nelson Z. Graves or F. M. Lamb, and that Mr. Busby says that he did not receive a notice of the meeting.

This then involves two questions—

(1) Were Graves and Lamb directors at this time? and

(2) Was a notice of the meetings sent to Mr. Busby?

Mr. Miller testified that at the time of these meetings there were only five members upon the Board of Directors of the company, namely, C. D. Scully, Ernest W. Lloyd, Peter Shields, C. Earle Miller and C. L. Busby (p. 98, l. 24), and that he sent notices of these meetings to these gentlemen.

He sent no notices to either Graves or Lamb, for the reason that they were not at that time directors of the company.

He testified that Mr. Lloyd was elected as a director of the company in the place of Mr. Graves (p. 99, l. 19), and that Mr. Graves never attended a meeting of the Board of Directors after he transferred his stock to the Mutual Liquidating Company, and during this period of Mr. Miller's secretaryship. The minutes bear out Mr. Miller as to this. And the same thing is true in the case of Mr. Lamb. Mr. Miller testified positively (p. 99, l. 21) that Mr. Lamb never acted as a director of the company during his incumbency as secretary, that he never attended any meeting and that he (Miller) never sent him a notice of a meeting and that this applied to all meetings.

That Mr. Miller's recollection in this respect is correct, is borne out by the minutes themselves. The minutes of the Board of Directors of the defendant company are printed in the State of the Case beginning with the minutes of the meeting of August 24, 1915, more than two years before the passing of the resolutions in question (p. 139). These minutes disclose that Mr. Lamb did not, in fact, attend any of these meetings.

Apparently it was the custom at the end of the minutes of each meeting to insert the names of the gentlemen to whom notice of the meetings was sent. It is significant that the only reference to Mr. Lamb in this connection is found in connection with the notice of the meeting of April 26, 1916 (p. 144), about one and a half years before the resolution in question. The record shows his name but that it had been crossed out in pencil. The record in the minutes of all subsequent meetings (see p. 144, etc.) eliminates the name of Mr. Lamb. That was true not only during the secretaryship of Mr. Miller, but also of his predecessors, E. S. Baer and C. F. Limroth. It is therefore apparent that Mr. Lamb had disappeared as a director, although no record is shown on the minutes of the manner of his going, nor does it appear in what manner Mr. Graves relinquished his directorship, but the fact is that he attended no meetings and that no notices of any meetings were sent to him after the meeting of May 28, 1917.

As already stated, Mr. Miller testified that Mr. Lloyd succeeded Mr. Graves. That this is so appears from the minutes of the meeting of July 5, 1917 (p. 151), at which Mr. Lloyd was elected as a director. The reference appears early in the minutes. Mr. Baer resigned at this meeting, but the reference to his resignation follows by several paragraphs the reference to the election of Mr. Lloyd, and it is quite apparent thus that Lloyd

did not succeed Baer, but succeeded someone else. In fact, as testified by Mr. Miller, he succeeded Mr. Graves. It is quite clear that neither Mr. Graves, nor Mr. Lamb were directors at this time. That leaves the question as to whether or not Mr. Busby had notice of this meeting. He testified that he did not have notice, but on cross examination he admitted that he did not even remember whether he was in fact a director of the company at this time. His evidence is quite perfunctory (p. 48). Mr. Miller testified that notice was in fact sent to Mr. Busby and all of the directors at that time (p. 98, l. 30). That Mr. Miller was telling the truth in this connection, we submit appears conclusively from a letter which he wrote to Mr. Shields under date of October 18, 1917, at about the time of the meeting, and which letter is printed on page 112 of the book. He distinctly says in this letter that he sent notice to Mr. Busby, calls attention to the necessity of having Mr. Busby at the meeting, and informed Mr. Shields as to Mr. Busby's address.

There would have been no possible motive for Mr. Miller at that time to have deceived Mr. Shields. No reason can be suggested why his contemporaneous letter, sent out at the same time as the mailing of the notices, does not accurately show to whom notice was sent. Surely this should be sufficient to countervail Mr. Busby's very indistinct recollection.

We submit that the execution of the bond and warrant were duly authorized at a regular meeting of the Board of Directors, of which all of the members of the Board had proper notice. That, we submit, is sufficient to justify the entry of the judgment upon the authority of the bond and warrant.

Nor is there anything in the suggestion that the transaction should also have been formally ratified or approved by the stockholders of the company. The cases cited in the brief for the defendant are not applicable, for the reason that

this case does not present action put through by the Board of Directors at the instance of a controlling stockholder without notice to the minority stockholders. Mr. Shields, although president of the company, was not its controlling stockholder. His arrangement with respect to commission was made with Mr. Elliott, who represented the controlling stockholder, and therefore the stock which he represented must be counted as approving of Mr. Shields' claim.

Assuming that Mr. Elliott made the agreement which he did, and that the stock held by the Mutual Liquidating Company was bound by such agreement, it would have been the duty of the holder of this stock, had the matter been submitted to the stockholders, to vote in favor of the ratification and approval of Mr. Shields' claim. As the cases cited in the brief for the defendant show, the question as to whether or not corporate approval must be obtained through the directors of the company or through its stockholders, depends upon the circumstances of the particular case. Here it is clear that no further corporate authority was appropriate or necessary.

e. The agreement of April 1, 1916, between Peter Shields and the Mutual Liquidating Company has no relation to this controversy.

Appellant argues that in some way Mr. Shields was foreclosed from asserting the claims, which were the basis of the bond and warrant, by reason of the agreement which he entered into under date of April 1, 1916, with Mutual Liquidating Company (p. 192 of the printed book). It is obvious that this is not so.

In the first place, this agreement was not made with or in the interest of the Cape May Real Estate Company. That company was not a party to the agreement. The only way in which it was con-

cerned therewith at all was that, among the assets referred to therein and which were to be purchased by Mr. Shields from the Mutual Liquidating Company, were 16,044½ shares of the capital stock of the Cape May Real Estate Company, and also certain other obligations of that company (see p. 193). None of the property, either real or personal, of the Cape May Real Estate Company itself was included within the contract. The personal property therein included consisted of shares of stock, mortgages, etc., and the real estate consisted of various parcels, all of which had been the property of Nelson Z. Graves, personally. It was with respect to this property that the understandings expressed in the 7th and 10th paragraphs of the agreement had reference. Thus, paragraph 7th begins, "Shields will accept the real and personal property covered by this agreement," etc., and the 10th paragraph refers to all taxes "on any of the property included herein", etc.

All of the items which were the basis of Mr. Shields' claim were incurred after the date of this agreement and they all related to properties of and expenses of the Cape May Real Estate Company. They did not relate to charges in connection with the former Graves property included in the agreement between Shields and the Mutual Liquidating Company. This seems too plain for further argument.

It is respectfully submitted that there is no merit in this appeal and that it should be dismissed, or, if not dismissed, the order below should be affirmed.

Respectfully submitted,

ARTHUR F. EGNER,
Of Counsel with Appellee.