

vol. 398-1907

NEW JERSEY COURT OF ERRORS AND APPEALS.

No. 75. JUNE TERM, 1906.

JAMES BROWN,
Complainant and Appellee,
and
CITIZENS' ICE AND COLD STORAGE COMPANY, ET ALS,
Defendants,
PENNSYLVANIA IRON WORKS COMPANY,
Defendant and Appellant.

ON APPEAL FROM
CHANCERY.

BRIEF OF E. A. ARMSTRONG, FOR COMPLAINANT AND
RESPONDENT.

The bill in this cause was filed to foreclose two certain mortgages held by complainant, given to secure the bonds of the Citizens' Ice and Cold Storage Company. The first was for ten thousand dollars, and is dated September twenty-second, eighteen hundred and ninety-nine; it

is made directly to complainant (Exhibits C1 and C2, pages 34-35). The second is dated May first, nineteen hundred and one, and made to Bessie Lisle Ballingall for seven thousand two hundred and thirty-five dollars, and assigned to the complainant July eighteenth, nineteen hundred and one. (Exhibits C3, C4 and C5, pages 35-36). No interest was paid on either of said mortgages or the bonds thereby secured, so that at the date of the decree, October third, nineteen hundred and five, there was due the complainant, on the first mortgage, twelve thousand six hundred and eleven dollars and fifty cents, and on the second, nine thousand one hundred and fifty-six dollars and ninety-two cents. No question was raised as to the amount of principal and interest owing on these two mortgages, and it is not disputed that the principal sums thereof were received by the defendant mortgagor and used by it. The Pennsylvania Iron Works Company, one of the defendants and the appellant here, held a mortgage dated July fifteenth, nineteen hundred and two, for twenty-eight thousand one hundred and sixty-one dollars and nineteen cents, which was offered in evidence (marked Exhibit D9, page 82), and for the amount owing thereon a decree made, decreeing the lien thereof subsequent to the lien of complainant's mortgages. At the hearing no dispute was made as to the amount due (see Opinion, page 87), on the complainant's mortgages, but it was insisted that inasmuch as the articles of incorporation (Exhibit D1, offered page 36, printed page 83), provides as follows:

“And the objects for which the company is formed are the purchase, manufacture and sale of ice, distilled water, hay, straw, feed, grain, coal, kindling wood and all other articles of fuel, and the maintenance of a plant for these

purposes, and also for cold storage purposes, including the acquisition by purchase, lease or otherwise, of all necessary lands and buildings thereon, equipments thereof and machinery and other articles necessary or convenient for the use in connection with the carrying on of the business of manufacturing and selling as aforesaid; and in general the engaging in any and all other business whatever necessary or convenient in connection with the business of said company, and the doing of any other act or acts, thing or things, incidental to, growing out of or connected with, said business or any part or parts thereof; to issue bonds secured by a mortgage or mortgages upon the property and franchises of said company, and to sell the same for the purpose of raising money with which to erect buildings and machinery, and otherwise to improve said lands." The creation of these mortgages was *ultra vires*; it not appearing that the money thereby secured was used to erect buildings and machinery or otherwise improve the lands of the corporation. An inspection of the dates of the two mortgages held by the complainant and the record thereof will show that they were executed and recorded long prior to the making of the mortgage of the appellant, who had full notice thereof; besides which, as shown by the testimony taken on the part of the defendant, the proceeds of these mortgages were all received and expended by the mortgagor company for its own benefit.

It is respectfully submitted that this would be sufficient to estop the mortgagor from any defense against these mortgages, and if that be so that then the appellant is likewise estopped.

The learned Vice Chancellor held, however, that the language in the articles of incorporation above quoted

did not restrict the power of the corporation; that under the statute it had full power and authority to give these mortgages, and nothing contained in the language quoted in any wise restricted or limited that power.

It will be noticed that the powers of the corporations are very generally expressed, and then follows the paragraph on which the appellant relies; this is an extension of power, not a limitation; so that independent of the fact to which the Vice Chancellor referred, that the article quoted in terms does not apply to complainant's mortgages, the words themselves are no limitation. While it is true that an act of incorporation—and in this must be included all acts under general statutes which confer incorporation—are to be construed most strongly against the corporation, that is to be done in cases where it is asserting some supposed power and authority in the affirmative. It cannot be claimed by the corporation, or those under it, to defeat its own obligation. The doctrine of *ultra vires* as applied to the acts of a corporation are to be reasonably construed.

The General Corporation Act of 1896 (see P. L. 1896, page 277), in the latter part of paragraph IV of the powers of the corporation in Section 1, it is provided "and to mortgage any such real and personal estate, with its franchises." It follows, therefore, that as a corporation the mortgagor, the defendant in this cause, had full power to make the mortgages in question, if nothing else appears.

As is shown by the provision from the certificate of incorporation quoted, ample and general powers were conferred on the corporation, nor are there any express words of limitation whatsoever.

I suppose under the provisions of the act, the incorporators might, if they saw fit, make limitations on the corporation prohibiting the conveying or mortgaging of its real estate, but it would have to be an express limitation. This on which the appellant relies is no such limitation. The power to mortgage is expressly given in words by the act; the power to make bonds is not expressly stated, and while the company would have unquestioned power to make the bonds without so stating it, expressly conferring such power in the articles of incorporation really does no more than declare the power already possessed (see *Ellerman vs. Chicago Junction Railway Co.*, 4 Dick., 217, page 240), and because corporate negotiable bonds have a recognized character of their own (*Boyd vs. Kennedy*, 9 Vr., 146), it may be that fact led the draftsman of these articles of incorporation to expressly refer to bonds in the articles, as an additional power in order to help the bonds.

It ought not, and cannot, be so unreasonably construed as to say, without express words to that effect, that it is intended to prevent the corporation from dealing with its own property in a manner that corporations are generally authorized to do, and that it is especially true when the articles read together confer the most ample and extensive powers possible upon the corporation thereby formed.

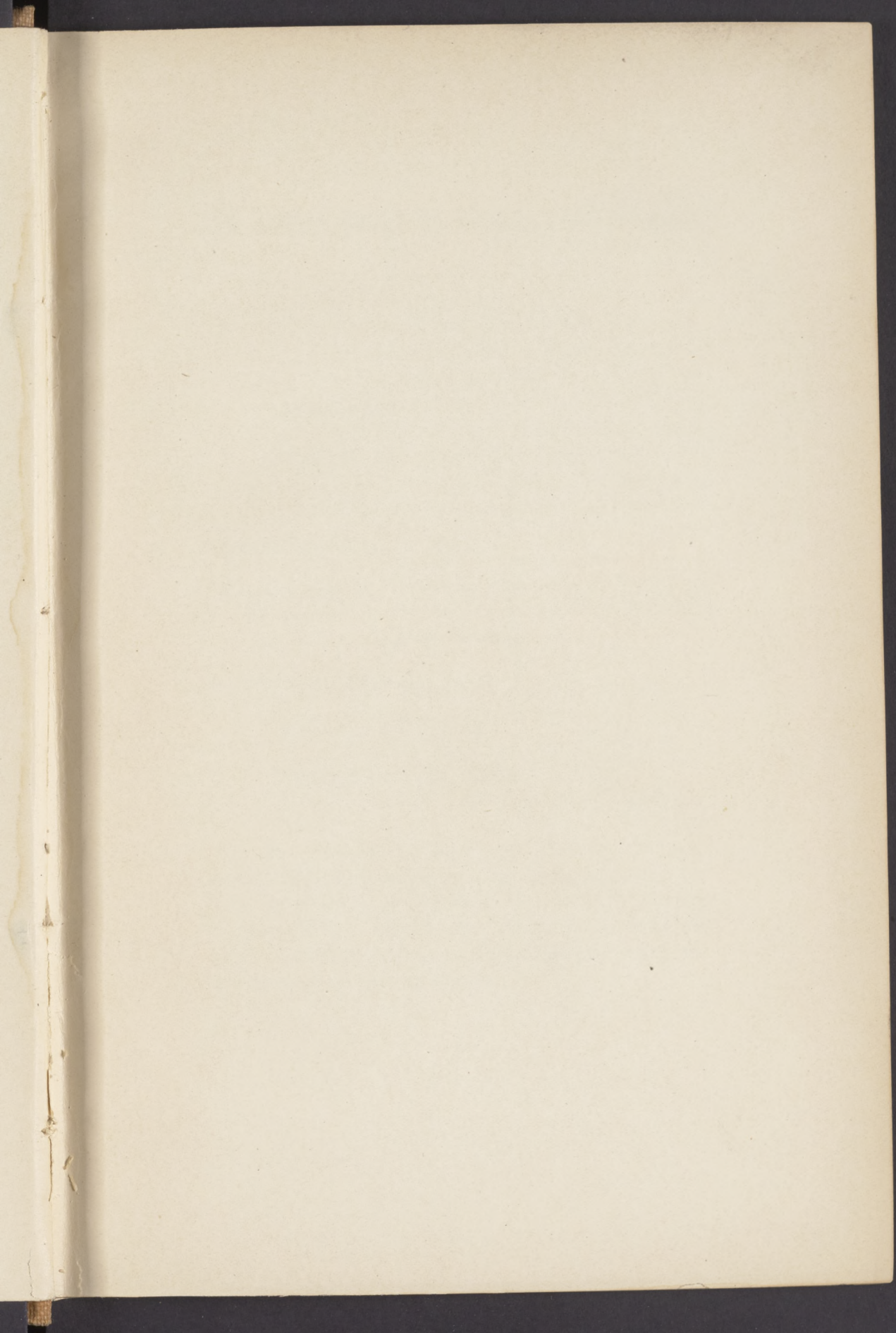
The fact upon which appellant seems to greatly rely is that Brown was a director of the mortgagor company defendant. In this case it is submitted that this fact is without significance. As a director he can get no special advantage, nor can he deal with his trust to his personal gain. But as such director he is in no wise debarred from the regular, ordinary and open dealings allowed to

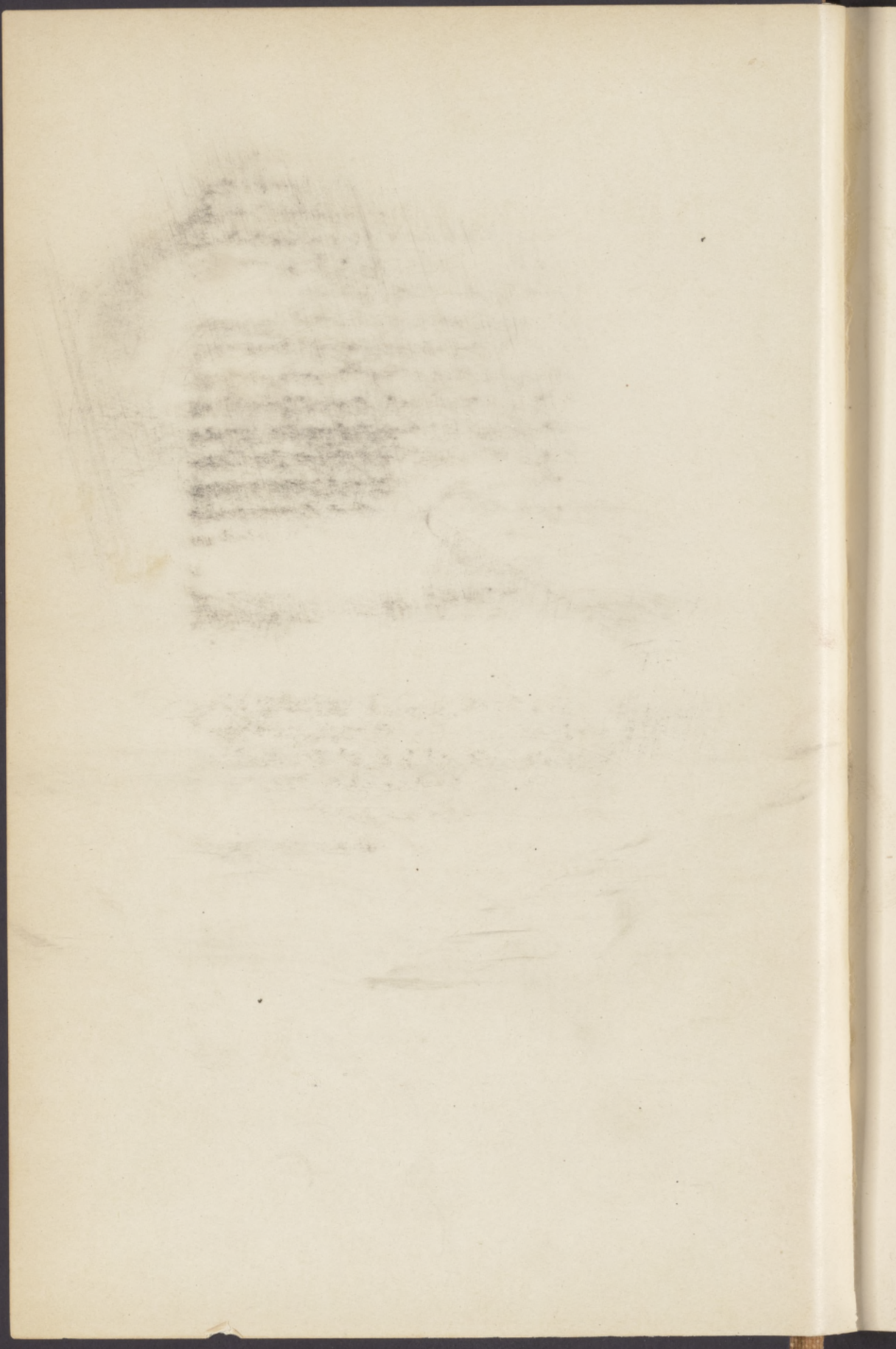
the corporation. It was such in this case. In all the items going to make up the amount of the mortgages, the company had rightfully and properly incurred the obligations, owed the money, for its own benefit and advantage, secured a long extension of time—ten years—in which to pay the same. A long time thereafter the appellant's interest by way of mortgage was created. This case shows no attempt of a creditor director attempting to get some preference or security above his fellow creditors, or in any way coming under the condemnation of the statute as to preferences, or our adjudications concerning the trust relation a director occupies.

It seems to me that the whole question is one of corporate power, and if there is no question upon that, and I think there is none, then the decree is right. In a given case there might be an abundance of power and yet securities in the hands of a director by reason of his relation as a trustee and the peculiar circumstances of the case, be held to be invalid against some other creditor. The case at bar, however, presents no such distinguishing features, nor are any attempted to be made.

It is respectfully submitted that there is no error whatever in the decree appealed from (found pages 26-29), and that the appeal is without merit, and the decree should be affirmed.

E. A. ARMSTRONG,
Of Counsel with Complainant and
Respondent.





NEW JERSEY COURT OF ERRORS AND APPEALS.

NO. 75. JUNE TERM, 1906.

JAMES BROWN,
Complainant and Appellee,
and
CITIZENS' ICE AND COLD STORAGE
COMPANY, ET AL.,
Defendants,
PENNSYLVANIA IRON WORKS CO.,
Defendant and Appellant.

ARGUMENT OF NORMAN GREY,
Of Counsel with Appellant.

In this cause bill was filed in the Court of Chancery by the complainant to foreclose two mortgages—one for \$10,000, made by the Citizens' Ice and Cold Storage Company to him, and the other for \$7,235, given by the same Ice Company to Annie Lisle Ballingall, which she had assigned to the complainant.

The complainant, James Brown, was, during the transactions leading up to the creation of the mortgages, and was at the time the mortgages were made, executed and delivered, and also at the time the Ballingall mortgage was assigned to him, a director of the Ice Company. (Pages 51 and 52 of the book.)

The charter of the company, which was incorporated on the second day of May, 1894, provides (page 84 of the book) that the company has power to issue bonds secured by mortgage or mortgages upon the property and franchises of the company, and to sell the same for the purpose of raising money with which to erect buildings, machinery and otherwise to improve said lands.

The mortgages were dated respectively—the \$10,000 mortgage September 27, 1899, and the \$7,235 mortgage May 1, 1901, and were assigned to Brown July 18, 1901.

The two mortgages were both executed and delivered, attempting to secure a pre-existing indebtedness of the Ice Company which had arisen through a period of years prior to the creation of the mortgage, and which indebtedness had arisen during the time that James Brown was a director and had as such a voice in controlling the company's affairs. A large portion of the indebtedness thus arising was for money loaned and disposed of by the directors in the carrying on of the ordinary business of the company, wholly unrelated to the erection of buildings or machinery or the improvements of the lands; that is, entirely aside from the purposes named in the charter of the company for which the company could create a mortgage indebtedness. These items were for money spent for coal, payroll, insurance premiums, freight bills, etc.

The Court of Chancery decreed that the full amount claimed by the complainant on the mortgages was due

him with interest. From this decree this appeal was taken.

The argument relied on by the appellant in urging a reversal of that decree is this: James Brown was a director and trustee of the corporation. He was fully aware of the corporate powers. He had a voice in the disposal of the corporate funds and in the operation of the company's business, and as against a stockholder or other creditors (the appellant is a subsequent mortgagee, the consideration for the mortgage being moneys due it for the construction of an ice plant and machinery upon the land of the Ice Company), Brown had no right to take a mortgage which was *ultra vires* the corporation, and such mortgage is void as to such portion of the consideration thereof as was expended by Brown's participation otherwise than for building and machinery.

The appellant relies upon the following cases:

Leggett vs. N. J. Mfg. & Banking Co., 1 Eq., 549, 550.

Hackensack Water Co. vs. De Kay, 36 Eq., 548, 561, et seq., 566, and cases cited.

Chambers vs. M. & M. R. R. Co., 5 B. & S., 588, 607.

Kelsey vs. New England Street Railway Co., 48 Atl. Rep., 1001, 1002, and cases.

Applying this rule of law to the facts in evidence, it appears that as to the \$10,000 mortgage the following items were expended for purposes other than building and machinery and improvement to the land:

\$2,392 was for interest due Brown on coupons on a prior mortgage made to the Camden Safe Deposit and Trust Co., trustee for the bonds which Brown held. (Page 57 of the book.)

Another item of \$385.97 was for interest due Brown on general account; that is, it was interest on the other items which went to make up the \$10,000 mortgage. (Page 68.)

Again, \$500 was expended for wages and freight. (Page 69.)

Again, \$194.28 was for insurance premiums. (Page 69.)

\$500 was also expended for the same purpose—insurance premiums—at another time. (Page 70.)

Again, \$197.61 was expended for fire insurance premiums. (Page 70.)

\$462.60 was expended for freight and payroll, as appears by calculation from items on page 71.

\$320.15 was paid for feed for horses, and counsel fee for Mr. Perry, and sundry expenses. (Page 71.)

\$544.28 was again expended for insurance premiums. (Page 71.)

All of these items were paid out of moneys loaned by Brown to the company for the purpose of making these specific payments, or they were for debts of the company paid directly by Brown and credited to him on the books of the company.

These items total \$5,496.89, which, deducted from the principal sum of \$10,000, leaves a balance of principal of \$4,503.11, which may be due with interest, less any credits on account of interest which may have been paid.

As to the other mortgage of \$7,235, which was made

out to Annie Lisle Ballingall, this mortgage was given to secure balance due Mrs. Ballingall on the books. Mrs. Ballingall was the wife of Peter Ballingall, one of the directors. The account itself was an account which, by succession of transfers, had originally come from C. A. Furbush joint account. The account so called was a joint account in which Mr. Brown, the complainant, had a half interest. He was a half owner. (See pages 73 and 74.)

During the time that these various accounts were running and during the time that Annie Lisle Ballingall advanced some moneys on her own account, James Brown, the complainant, was a director and participated in the control of the corporate business. When he became finally the holder the Annie Lisle Ballingall mortgage, he took the mortgage subject to the relations between himself and the corporation at the time the mortgage indebtedness arose.

The Farmers' Loan & Trust Co. vs. San Diego Street Car Co., 45 Fed. Repr., 519.
City of Chicago vs. Cambon, 120 Ill., 456.

This mortgage was, among other things, given to secure the following items of pre-existing indebtedness which had nothing whatever to do with building, machinery or plant account.

\$752.34 was for coal. (Page 79 of the book.)

There was \$285.18 expended for interest on other entries in the same account secured by the same mortgage.

\$75.20 was for oil. (Page 77.)

\$5.20 was for horse feed. (Page 78.)

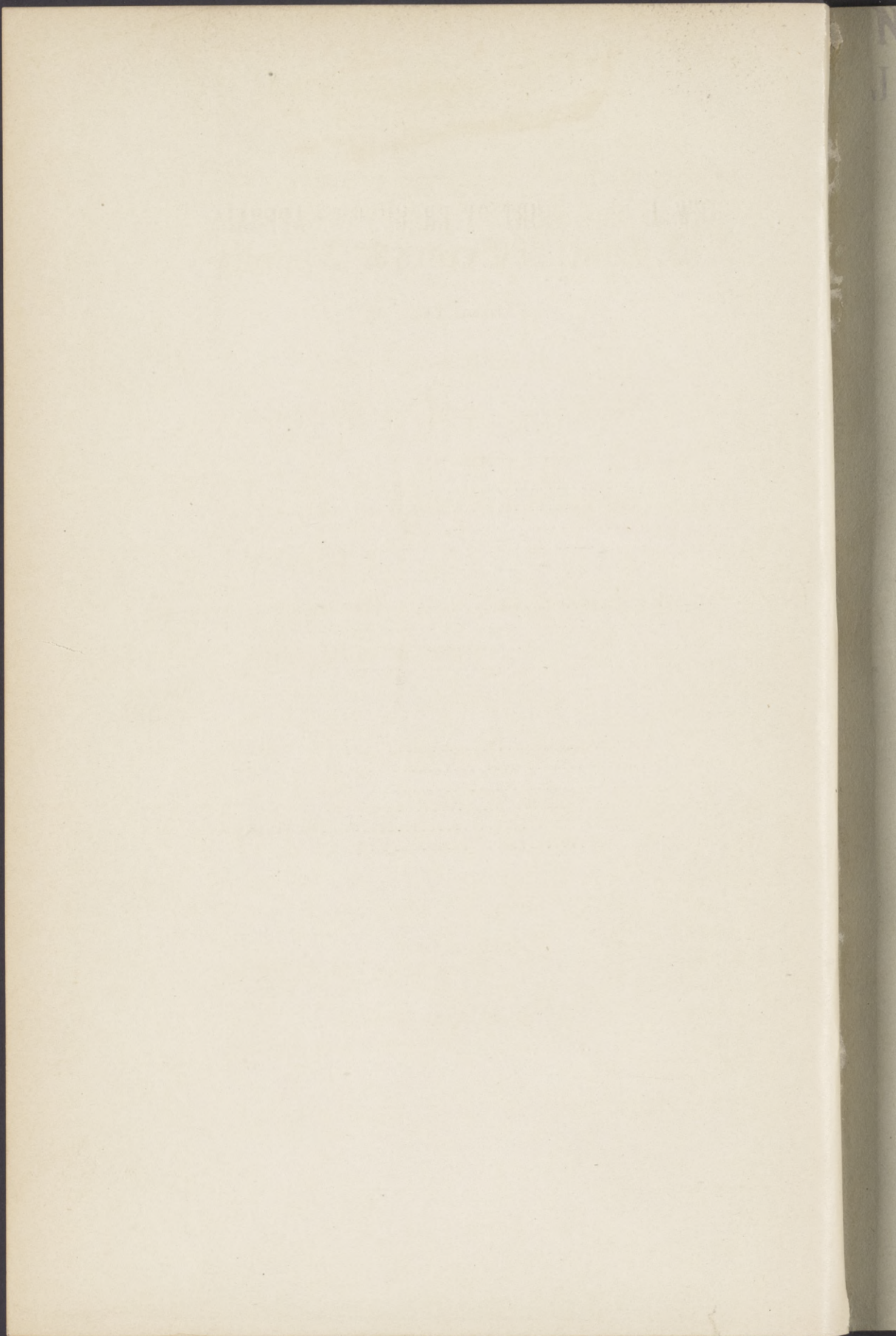
The sum total of these items is \$1,117.92, which, deducted from the principal of \$7,235, leaves a balance of

\$6,117.08 principal, for which, with interest, less credits of any interest that may have been paid, the complainant may have been entitled to a decree.

Respectfully submitted,

NORMAN GREY.





N. J. Court of Errors & Appeals

JAMES BROWN,

Complainant and Appellee,

and

CITIZENS' ICE AND COLD STORAGE COMPANY, ET AL.,

Defendants,

PENNSYLVANIA IRON WORKS COMPANY,

Defendant and Appellant.

No. 75. JUNE TERM.

STATE OF THE CASE.

NORMAN GREY,
Of Counsel with Appellant.

E. A. ARMSTRONG,
Of Counsel with Appellee.

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IN CHANCERY OF NEW JERSEY.

To the Honorable the Chancellor of the State of New Jersey:

Humbly complaining, show unto your Honor, your orator, James Brown, of the city and county of Philadelphia, State of Pennsylvania, that on or about the twenty-seventh day of September, in the year one thousand eight hundred and ninety-nine, the Citizens' Ice and Cold Storage Company, a corporation of the State of New Jersey, became and was justly indebted unto James Brown (your orator), in the sum of ten thousand (10,000.00) dollars, and being so indebted, the said Citizens' Ice and Cold Storage Company, in order to secure the payment of the said sum of money, with interest, did make and execute, under its corporate hand and seal, and deliver unto James Brown (your orator), a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of twenty thousand dollars, lawful money of the United States, with a condition thereunder written, that if the said Citizens' Ice and Cold Storage Company, its successors, or any of them, heirs, executors or administrators, should well and truly pay, or cause to be paid, unto James Brown, his certain attorney, executors, administrators or assigns, the just and full sum of ten thousand dollars, lawful money aforesaid, at the expiration of ten years from the date thereof, together with interest thereon at and after the rate of six per cent. per annum, payable semi-annually in like lawful money as aforesaid, without any fraud or further delay, and shall not

apply for any deduction by reason of the accompanying mortgage, from the taxable value of the lands therein described and embraced, and shall produce to the said obligee, or his assigns, on or before the first day of December in each year, receipts for all taxes and municipal liens or charges of the current year assessed upon said mortgaged premises, and shall in case suit shall be brought in any court for the recovery of such principal sum and interest, or any part thereof, or any other sums herein stipulated to be paid, or judgment shall be obtained by virtue of the warrant of attorney annexed hereto, or proceedings to foreclose the accompanying mortgage shall be had, by reason of any default in the conditions of this bond, pay an attorney's commission of two per cent. for collection by reason of such suit, judgment or proceedings, besides costs of suit; then this obligation to be void, otherwise to be and remain in full force and virtue; Provided, however, and it is hereby expressly agreed, that if default shall be made in the production, in any year, of the tax receipts, as above provided and covenanted, or in payment of said taxes and charges, or if default shall be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof shall become due, then and in every [Then the said obligation should be void, otherwise to remain in full force and virtue. (printed)] such case whether it be the first or any subsequent default, the whole principal debt aforesaid shall, at the option of the said obligee, his executors, administrators or assigns, become immediately due and payable, and payment of said principal debt, and all interest thereon may be enforced and recovered at once, any thing herein contained to the contrary notwithstanding. As in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear. And your orator further shows, that the said Citizens' Ice and Cold Stor-

age Company, in order to secure payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by said Citizens' Ice and Cold Storage Company, a corporation of the State of New Jersey of the first part and James Brown (your orator) of the second part, in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto James brown, said party of the second part, his heirs and assigns, all the following described tract or parcel of land and premises, situate, lying and being in the city of Atlantic City, in the County of Atlantic and State of New Jersey:

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Beginning in the northerly line of Baltic avenue, distant seventy-five feet westwardly from the westerly line of Massachusetts avenue, and extending thence (1) northwardly at right angles with Baltic avenue one hundred and seventeen feet; thence (2) westwardly, parallel with Baltic avenue two hundred and seventy-five feet; thence (3) southwardly parallel with Massachusetts avenue one hundred and seventeen feet to the northerly line of Baltic avenue; thence (4) eastwardly along the northerly line of Baltic avenue two hundred and seventy-five feet to the place of beginning.

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Also all the machinery placed or to be placed in and erected in and upon said premises, forming a complete ice manufacturing plant, and all machinery and personal property whatsoever which the said corporation, party of the first part hereto, now owns or may at any time hereafter acquire (excepting raw materials, goods in process of manufacture and manufactured products), and also all corporate rights, privileges and franchises of the said party of the first part, and all dividends, royalties, incomes, issues and profits thereof that shall

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or may in any wise accrue from said lands, property and franchises, together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof: To have and to hold, the said hereditaments and premises above granted or intended so to be, with the appurtenances, unto the said party of the

10 second part and assigns forever; Provided always, nevertheless, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Citizens' Ice and Cold Storage Company, party of the first part to the said indenture of mortgage, its successors or assigns, should well and truly pay, or cause to be paid, unto the said party of the second part, his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the

20 interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your orator further shows, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said, and proven by John Gray, secretary of the Citizens' Ice and Cold Storage Company, before Charles C. Babcock, a Master

30 of the Court of Chancery of New Jersey, and duly recorded in the office of the Clerk in and for the said County of Atlantic, in Book 53 of Mortgages, page 50, on the ninth day of October, in the year one thousand eight hundred and ninety-nine, as by the certificate of the Clerk of the said county endorsed on the said indenture of mortgage, more fully appears, and to which your orator for greater certainty begs leave to refer, if it be necessary so to do.

And your orator further shows, that there is endorsed upon the said mortgage an affidavit of the consideration of the said mortgage, in accordance with the statute in such case made and provided, and that the same was sworn and subscribed to by James Brown (your orator), before Samuel K. Robbins, one of the Masters of the Court of Chancery of New Jersey, on the sixth day of October, A. D. one thousand eight hundred and ninety-nine, and that the said mortgage of your orator was afterwards recorded in the Clerk's office of Atlantic County, in Book No. 13 of Chattel Mortgages, page 167, &c., on the ninth day of October, in the year of our Lord one thousand eight hundred and ninety-nine, as by the certificate of the Clerk of said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do. 10

Your orator further shows, that after the execution and recording of the mortgage of your orator, to wit, on or about the first day of May, in the year of our Lord one thousand nine hundred and one, the Citizens' Ice and Cold Storage Company did execute and deliver, under its corporate seal, its certain indenture of mortgage unto one Bessie Lyal Ballingall, to secure the payment of the just sum of seven thousand two hundred and thirty-five dollars, together with interest thereon from the date thereof, at the rate of six per cent. per annum, payable semi-annually; Provided, however, and it is further expressly agreed that if default shall be made in the payment of interest as aforesaid, for the space of thirty days after and semi-annual payment thereof shall shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the obligee, his executors, administrators or assigns, become forthwith due and payable, and all interest thereon may be enforced and recovered at once, any thing herein contained to the contrary notwithstanding, which 20 30

said mortgage was acknowledged before Joseph S. Hagen, a Commissioner of Deeds for the State of New Jersey, residing in the city of Philadelphia, State of Pennsylvania, and recorded in the Clerk's office of Atlantic County, at Mays Landing, N. J., in Book No. 62 of Mortgages, page 403, &c., and which said mortgage was afterwards re-acknowledged before Clarence Pettit, a Master of the Court of Chancery of New Jersey, and recorded in the said Clerk's office in Book 63 of

10 Mortgages, page 496, &c., as appears by the several endorsements thereon; that the lands and premises as described in the mortgage of your orator is described in the said mortgage.

Your orator further shows, that after the execution and recording of the said mortgage, the said Bessie Lyal Ballingall did execute and deliver unto James Brown (your orator) her certain indenture of assignment of mortgage, wherein and whereby the said Bessie Lyal Ballingall did bargain, sell, transfer, assign and set over unto your orator, the said mortgage made by

20 the Citizens' Ice and Cold Storage Company unto her, the said Bessie Ballingall, to secure the payment of the sum of seven thousand two hundred and thirty-five dollars with interest, which said deed of assignment of mortgage was duly acknowledged before Joseph S. Hahan, a Commissioner of Deeds for the State of New Jersey, and recorded in the office of the Clerk of Atlantic County, at Mays Landing, N. J., in Book No. 14 of assignments of mortgages, page 250, &c. Your orator further shows that said mortgage still remains a lien

30 upon the lands and premises in the mortgage mentioned, and that there has been no payment of interest thereon, and that the whole principal sum, with interest thereon, is now due and payable to your orator.

Your orator further shows, that after the execution and recording of the mortgage of your orator, and with full notice thereof, to wit, on or about the fifteenth day

of February, in the year of our Lord one thousand nine hundred and one, the Citizens' Ice and Cold Storage Company did execute and deliver, under its certain corporate seal, its lease unto the Purity Ice Company, a corporation of the State of New Jersey, wherein and whereby it did remise and lease unto the said The Purity Ice Company, the lands and premises, machinery, etc., as is mentioned and described in the mortgage of your orator, which said lease is of record in the Clerk's office at Atlantic County, at Mays Landing, N. J., in Book No. 4 of Agreements, page 274, &c., by virtue of which said lease the said The Purity Ice Company, or its assigns or sub-tenants, claims to have some interest in the lands, premises and machinery, etc., in the mortgage of your orator described and referred to, but your orator expressly charges that if the said lease is a lien or encumbrance at all upon the lands, premises or machinery, etc., in the mortgage of your orator described, it is subsequent thereto and subject to the mortgage of your orator.

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Your orator further shows, that after the execution and recording of the mortgage of your orator and with full notice thereof, to wit, on or about the eighth day of May, in the year of our Lord one thousand nine hundred and one, the Citizens' Ice and Cold Storage Company and the Purity Ice Company did make and entered into an agreement with the Pennsylvania Iron Works Company, a corporation under the laws of the State of Pennsylvania, for the installation of certain machinery and additions on the lands and premises mentioned in the mortgage of your orator, which said agreement is of record in the Clerk's office of Atlantic County, at Mays Landing, N. J., in Book No. 16 of Chattel Mortgages, page 434, &c., by virtue of which said agreement the said Pennsylvania Iron Works Company claim to have some interest or lien upon a part or all of the lands and premises and machinery in the

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mortgage of your orator mentioned and described; but your orator expressly charges that such agreement was made after the execution and recording of the mortgage of your orator, with full notice thereof, and if said agreement is a lien at all upon any portion of the lands and premises or machinery described and referred to in the mortgage of your orator, it is a subsequent encumbrance and subject to the mortgage of your orator.

- 10 Your orator further shows, that afterwards, to wit, on or about the fifteenth day of July, in the year of our Lord one thousand nine hundred and two, the Citizens' Ice and Cold Storage Company and the Purity Ice Company did jointly execute and deliver, under their corporate seals, their certain indenture of mortgage unto the Pennsylvania Iron Works Company, a corporation under the laws of the State of Pennsylvania, to secure the payment of the sum of twenty-eight thousand one hundred and sixty-one dollars and nineteen cents, or some other sum, with interest, which said mortgage is on record in the Clerk's office of Atlantic County, at 20 May's Landing, N. J., in Book 70 of Mortgages, page 66, &c., and which said mortgage was also recorded in said Clerk's office in Book No. of Chattel Mortgages, page , &c.; that the lands and premises, goods and chattels, etc., in said mortgage described are the same goods and chattels, machinery, etc., lands and premises as are mentioned and described in the mortgage of your orator, but your orator expressly charges, that the said mortgage was executed and delivered subsequent to the execution and recording of the mortgage of your orator, with full notice thereof, and if the said mortgage is a lien at all or an encumbrance upon the whole or any part of the lands and premises, machinery, etc., in the mortgage mentioned and described, it is subsequent to the mortgage of your orator and subject thereto.
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Your orator further shows, that afterwards, to wit, on or about the fourteenth day of August, in the year

of our Lord one thousand and nine hundred and two, the Purity Ice Company did execute and deliver unto the Christian Moerlein Brewing Company, a corporation, its certain lease, wherein and whereby the Purity Ice Company did lease unto the said The Christian Moerlein Brewing Company, a part of the lands and premises, etc., in the mortgage of your orator described, by virtue of which said lease the said The Christian Moerlein Brewing Company are in possession and claim to have some interest or lien in the lands and premises, machinery, etc., as mentioned and described in the mortgage of your orator. 10

But your orator expressly charges, that such lease, if a lease at all, was made after the execution and recording of the mortgage of your orator, with full notice thereof, and if the same is a lien at all or conveys any interest in all or any portion of the lands, premises, machinery, etc., as described in the mortgage of your orator, it is subsequent to the mortgage of your orator and subject to the mortgage of your orator. 20

Your orator further shows, that afterwards, to wit, on or about the twenty-eighth day of October, in the year of our Lord one thousand and nine hundred and two, the Citizens' Ice and Cold Storage Company did execute and deliver, under its corporate seal, its certain indenture of mortgage upon the lands and premises as mentioned and described in the mortgage of your orator, unto one Emily C. Hopper, trading, &c., as the Atlantic City Coal Company, to secure the payment of the just sum of thirty-four hundred and forty-one dollars and forty-four cents, or some other sum, together with interest thereon, which said mortgage is of record in the Clerk's office of Atlantic County, at Mays Landing, N. J., in Book No. 70 of Mortgages, page 103, and by virtue whereof the said Emily C. Hopper, trading, &c., as the Atlantic City Coal Company, claims to have some interest or lien in said lands and premises. 30

But your orator expressly charges, that said mortgage was executed and recorded subsequent to the execution, delivery and recording of the mortgage of your orator, with full notice thereof, and if the said mortgage is a lien at all upon any portion of the lands and premises mentioned and described in the mortgage of your orator, it is subsequent thereto and subject to the mortgage of your orator.

10 Your orator further shows, that afterwards, to wit, on or about the twelfth day of October, in the year of our Lord one thousand nine hundred and one, one John T. French filed a mechanic's lien against a part of the lands and premises as mentioned and described in the mortgage of your orator to secure the payment of the sum of fifty-nine dollars and ninety cents debt and costs, or some other sum, by virtue of which said mechanic's lien the said John T. French claims to have some lien or interest upon a part of the lands and premises mentioned and described in the mortgage of your orator.

20 But your orator expressly charges, that if the said mechanic's lien is a lien at all or encumbrance upon the whole or any part of the lands and premises mentioned and described in the mortgage of your orator, it was for work done or materials delivered after the execution and recording of the mortgage of your orator, and with full notice thereof, and if a lien at all, it is subsequent to the mortgage lien of your orator and subject thereto.

30 Your orator further shows, that afterwards, to wit, on or about the fourth day of March, in the year of our Lord one thousand nine hundred and three, as your orator is informed, the city of Atlantic City caused the lands and premises, machinery, etc., as mentioned and described and referred to in the mortgage of your orator, to be sold for the taxes assessed against the said premises for the years of nineteen hundred and nineteen hundred and one, amounting to the sum of eight

hundred and ninety-one dollars and thirty-one cents, together with costs and interest, or some other sum, to one Charles A. Furbush, by virtue of which said sale the said Charles A. Furbush claims to have some interest or lien upon the lands and premises as is mentioned and described in the mortgage of your orator.

But your orator expressly charges, that if the said Charles A. Furbush by virtue of said sale has any interest or lien in the lands and premises described and mentioned, it is subject to the redemption of your orator or assigns. **10**

Your orator further shows, that there has been assessed against the lands and premises mentioned and described in the mortgage of your orator, taxes for the year of nineteen hundred and two, in the sum of five hundred and sixty-one dollars and fifty cents, or some other sum, which remains due and unpaid, and by virtue whereof the city of Atlantic City claims to have some interest or lien upon the lands and premises mentioned and described in the mortgage of your orator. **20**

Your orator further shows, that after the execution and recording of the mortgage of your orator, to wit, on or about the sixteenth day of January, A. D. nineteen hundred and three, the Somers Lumber Company recovered a judgment in the Supreme Court of the State of New Jersey against the Purity Ice Company and others, for the sum of and three hundred and forty-one dollars and four cents respectively, two hundred and thirty-seven dollars and fourteen cents debt and costs, or some other sum, by virtue of which said judgment the said Somers Lumber Company claim to have some interest or lien upon the lands and premises as mentioned and described in the mortgage of your orator; but your orator expressly charges, that the said judgment was obtained subsequent to the execution and recording of the mortgage of your orator, with full notice thereof, and if the said judgment is a lien or encum- **30**

brance at all, it is subject to the mortgage of your orator.

Your orator further shows, that afterwards, to wit, on or about the twenty-fifth day of April, A. D. nineteen hundred and three, and after the execution and recording of the mortgage of your orator, one Emily Hopper, trading, &c., as Atlantic City Coal Company, recovered a judgment in the Supreme Court of the State of New Jersey against the Purity Ice Company and others, for the sum of sixteen hundred and seventy dollars and forty cents, or some other sum, by virtue of which said judgment the said Emily C. Hopper, trading, &c., as Atlantic City Coal Company, claims to have some lien or interest in the lands and premises mentioned and described in the mortgage of your orator.

But your orator expressly charges, that the said judgment was obtained subsequent to the execution and recording of the mortgage of your orator, with full notice thereof, and if the said judgment is a lien at all upon any of the lands and premises, it is subsequent to and subject to the mortgage of your orator.

Your orator further shows, that since the execution and recording of the mortgage of your orator, the Citizens' Ice and Cold Storage Company or the Purity Ice Company did execute and deliver to one Butler to one Joseph F. Rank and to one James Davis, it or their certain lease for some part or portion of the lands and premises mentioned and described in the mortgage of your orator, by virtue of which said several leases the said Caroline Butler, Joseph F. Ryan and James Davis are each in possession of some part or portion of the lands and premises as mentioned and described in the mortgage of your orator, and they each claim to have some interest or lien in the mortgaged premises.

But your orator expressly charges, that such leases were made and entered into and possession of the premises delivered after the execution and recording of

the mortgage of your orator, with full notice thereof, and if there is any interest or lien in said premises or right of possession in the said Caroline Butler, Joseph F. Ryan or James Davis it is subject to the mortgage of your orator.

And your orator further shows, that all the principal money shown in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to your orator, so that your orator greatly delayed and disappointed in the receipt of the said money, by means of which said several promises the said deed of mortgage, and the estates thereby mortgaged as aforesaid, has become absolute in your orator and

And your orator further shows that the said The Citizens Ice and Cold Storage Company, since the execution of your orator's said mortgage, have possessed and enjoyed, and that The Citizens Ice and Cold Storage Company still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive the rents, issues and profits thereof. And your orator further shows and expressly charges that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid. And that he, or some other person or persons for him, has frequently and in a friendly manner applied to the said The Citizens Ice and Cold storage Company and requested them to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage hereinafter mentioned and set forth; and your orator well hoped that it would have complied with such reasonable requests of your orator and would have paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience it ought to have done.

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises of and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and deed of mortgage without the aid and decree of this honorable Court;

- 10** To the end, therefore, that the said The Citizens' Ice and Cold Storage Company, The Purity Ice Company, Pennsylvania Iron Works Company, Emily C. Hopper, Emily C. Hopper trading, &c., as Atlantic City Coal Company, Christian Moerlein Brewing Company, John T. French, Somers Lumber Company, City of Atlantic City, Charles A. Furbush, Caroline Butler, Joseph F. Ryan, James Davis, may without oath, true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they thereto particularly interrogated, according to the best of their knowledge, information, remembrance and belief; and that the said defendant may be decreed to pay to your orator the said principal sums so due to him on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable Court, and in default thereof that that the said defendant, and all persons claiming or to claim under
- 20** may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your orator all deeds, demises and writings whatsoever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by the
- 30**

order and decree of this honorable Court, be sold, and out of the moneys arising out of the sale thereof your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained. And that your orator may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience. May **10** it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpoena, issuing out and under the seal of this honorable Court, to be directed to the said The Citizens Ice and Cold Storage Company, The Purity Ice Company, Pennsylvania Iron Works Company, Emily C. Hopper, Emily C. Hopper trading, &c., as Atlantic City Coal Company, Christian Moerlein Brewing Company, John T. French, Somer Lumber Company, City of Atlantic City, Charles A. Furbush, Caroline Butler, Joseph F. Ryan, James Davis, therein and thereby **20** commanding them on a certain day and under a certain penalty, therein to be inserted, to be and appear before your honor and this honorable Court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

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

Solicitor for and of Counsel with Complainant. **30**

IN CHANCERY OF NEW JERSEY.

Between

JAMES BROWN,

Complainant, ON BILL, &c.

10

and

ANSWER AND CROSS

THE CITIZENS' ICE AND COLD BILL.

STORAGE COMPANY, ET AL.,

Defendants.

20 The answer of the Pennsylvania Iron Works Company to the bill of complaint of the complainant in the above cause, or to so much thereof as it is advised it should answer, answering says:

1. That this defendant neither admits nor denies the allegations contained in paragraph one of said bill as to the statement of indebtedness, of the form and execution of the bond, and of the form and execution of the mortgage purported to have been given as security for the said debt and the said bond, but requires the complainant to make such proof thereof as he may be able.

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2. And this defendant further answering says, as to the paragraph in said bill alleging the execution and delivery of a second mortgage on said mortgaged premises to one Bessie Lyal Ballingall, to secure the payment of the sum of seven thousand two hundred and thirty-five dollars, and interest, that this defendant neither admits nor denies said allegations as to the execution, delivery, recording, form and amount of indebt-

edness secured by the said mortgage and the assignment thereof to the said complainant, but requires the complainant to make such proof thereof as he may be able.

3. And this defendant further answering says, that as to the allegations contained in said bill relating to the making of a lease by the Citizens' Ice and Cold Storage Company to the Purity Ice Company, and the terms thereof, this defendant neither admits nor denies the said allegations, but requires the complainant to make such proof thereof as he may be able. 10

4. And this defendant further answering, says, that as to the allegations contained in said bill relating to the making of an agreement between this defendant and the Citizens' Ice and Cold Storage Company and the Purity Ice Company, this defendant admits the allegations contained in said bill.

5. And this defendant further answering says, that as to the allegations contained in said bill relating to the execution, delivery and recording by the said Citizens' Ice and Cold Storage Company and the Purity Ice Company, to this defendant, of their certain indenture of mortgage to secure the payment of the sum of twenty-eight thousand one hundred and sixty-one dollars and nineteen cents, said mortgage being a chattel as well as a real estate mortgage, this defendant admits said allegations. 20

6. And this defendant further answering says, that as to the allegations contained in said bill relating to the execution and delivery by the Purity Ice Company to the Christian Moerlein Brewing Company of a lease of a part of the said mortgaged premises, this defendant neither admits nor denies said allegations, but requires the complainant to make such proof thereof as he may be able. 30

7. And this defendant further answering says, that as to the allegations contained in said bill relating to the

execution, delivery and recording of a mortgage made by the Citizens' Ice and Cold Storage Company to Emily C. Hopper, trading as the Atlantic City Coal Company, to secure the payment of the sum of three thousand four hundred and forty-one dollars and forty-four cents, this defendant neither admits nor denies said allegations, but requires the said complainant to make such proof thereof as he may be able.

10 8. And this defendant further answering says, that as to the allegations contained in said bill relating to the filing of a mechanic's lien against the said mortgaged premises, by John T. French, to secure the payment of the sum of fifty-nine dollars and ninety cents, this defendant neither admits nor denies said allegations, but requires the complainant to make such proof as he may be able.

20 9. And this defendant further answering says, that as to the allegations contained in said bill relating to the sale, by the city of Atlantic City, of said premises, for taxes, to the amount of eight hundred and ninety-one dollars and thirty-one cents, to Charles A. Furbush, this defendant neither admits nor denies said allegations, but requires the complainant to make such proof thereof as he may be able.

10. And this defendant further answering says, that as to the allegations contained in said bill relating to the taxes due and unpaid on said premises, this defendant requires the complainant to make such proof thereof as he may be able.

30 11. And this defendant further answering says, that as to the allegations contained in said bill relating to the recovery of judgments which are alleged to be a lien on the said mortgaged premises, by the Somers Lumber Company against the Purity Ice Company, for three hundred and forty-one dollars and four cents, and two hundred and thirty-seven dollars and fourteen cents, respectively, this defendant neither admits nor denies

said allegations, but requires the complainant to make such proof thereof as he may be able.

12. And this defendant further answering says, that as to the allegations contained in said bill relating to the recovery of a judgment by the said Emily Hopper, trading as the Atlantic City Coal Company, against the said Purity Ice Company and others, for the sum of sixteen hundred and seventy dollars and forty cents, this defendant neither admits nor denies said allegations, but requires the complainant to make such proof thereof as he may be able. 10

13. And this defendant further answering says, that as to the allegations contained in said bill relating to the execution and delivery by the Citizens' Ice and Cold Storage Company or the Purity Ice Company to one Caroline Butler, Joseph F. Ryan and James Davis, of a lease for some part or portion of the said mortgaged premises, this defendant neither admits nor denies said allegations, but requires the complainant to make such proof thereof as he may be able. 20

14. And this defendant further answering says, that it does not admit that the said complainant has any lien or encumbrance whatever on said mortgaged premises, or that any of the other defendants, above named, have any lien or encumbrance upon the said mortgaged premises prior to the lien and encumbrance of this defendant's said mortgage, and this defendant requires the complainant to make such proof thereof as he may be able of the amount due upon the mortgage set out in said bill. 30

15. And this defendant, by way of cross bill, exhibited against the said complainant and against the defendants, the Citizens' Ice and Cold Storage Company, the Purity Ice Company, and Emily Hopper, trading as the Atlantic City Coal Company, shows that the Citizens' Ice and Cold Storage Company is a corporation of the State of New Jersey, incorporated under the Act of

the Legislature of the State of New Jersey entitled, "An Act concerning corporations," approved April 7th, 1875, and the supplements thereto, on the second day of May, eighteen hundred and ninety-four; that a copy of the certificate of said company is hereto annexed and made a part of this cross bill, to which this defendant refers; that by the said certificate it appears that the company was authorized and empowered to issue bonds secured by a mortgage or mortgages upon the property and franchises of the said company, and to sell the same for the purpose of raising money with which to erect buildings and machinery and otherwise to improve said lands; and this defendant shows and charges that unless the respective mortgages of the said complainant and said Emily C. Hopper, trading as the Atlantic City Coal Company, were executed and delivered for the purpose of raising money to erect buildings and machinery and to improve said mortgaged premises, and unless the money so acquired was so used the said Citizens' Ice and Cold Storage Company had no power to execute and deliver said mortgages, and the same were *ultra vires* the corporation, and were and are absolutely void, and the said complainant and the said Emily C. Hopper, trading as the Atlantic City Coal Company, have no lien or claim whatsoever upon the said mortgaged premises, as a security for any indebtedness which may be due to them respectively.

16. And this defendant alleges that this defendant's mortgage was executed and delivered for the purpose of raising money to erect buildings and machinery and to improve said mortgaged premises, and is a good and valid lien and encumbrance on said premises.

17. And this defendant charges that the said mortgages of the complainant and the said Emily C. Hopper, trading as the Atlantic City Coal Company were executed and delivered *ultra vires* the corporation; that whatever moneys were received by the said Citizens' Ice and Cold

Storage Company, upon the execution and delivery of the said mortgages, were not expended by the said company for the purposes required in its charter, to wit, the erection of buildings and machinery and improvement of said mortgaged premises.

17½. And this defendant further says, alleges and charges, that the said complainant, James Brown, well knew that the moneys loaned and advanced by him to the said Citizens' Ice and Cold Storage Company were not to be used and expended in the erection of buildings and machinery, and improving the lands of the said complainant, and complainant well knew that said moneys when advanced by him were not so used and applied.

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18. And this defendant further charges and alleges that the said Citizens' Ice and Cold Storage Company did not receive from the said complainant the whole consideration named in said mortgage, made directly to the said complainant, as set out in his said bill of complaint, but received, if anything, a less sum than said amount, and that said mortgage was made by the said Citizens' Ice and Cold Storage Company either without consideration at all or for a much less consideration than the amount named in the said bill.

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19. And this defendant has frequently, and in a friendly manner, applied to the said complainant and the said defendant, Emily C. Hopper, trading as the Atlantic City Coal Company, requesting them to cancel their said mortgages of record and to discharge any claim that they may have for liens, by reason of the said mortgages, and this defendant well hoped that the said complainant and the said Emily C. Hopper, trading as the Atlantic City Coal Company, would have complied with such reasonable requests of this defendant, as in equity and good conscience they ought to have done; but this defendant shows and charges that the said complainant and the said Emily C. Hopper, trading as the Atlantic City Coal Company, have refused to comply with such requests of this defendant,

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but insist and maintain that their said respective mortgages are prior liens upon the said mortgaged premises, and are valid and subsisting liens, and they allege that there is a large sum of money respectively due thereon, with arrears of interest, and that the said property is liable to pay said money and interest before the payment of anything to this defendant on its said mortgage.

10 20. All which actings, doing and pretences of the said complainant and the said defendant, Emily C. Hopper, trading as the Atlantic City Coal Company, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of this defendant in the premises.

21. In consideration whereof, and forasmuch as this defendant is without adequate remedy in the premises, and by the strict rules of the common law, and can only obtain relief in this honorable Court, where matters of this nature are properly cognizable and relievable;

20 22. To the end, therefore, that the said complainant, James Brown, and the said defendants, Emily C. Hopper, trading as the Atlantic City Coal Company, and the Citizens' Ice and Cold Storage Company, may, but without oath, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every one of them distinctly interrogated thereto; and that the said complainant, James Brown, and the said defendant, The Citizens' Ice and Cold Storage Company, may set forth and discover the true
30 consideration of the respective mortgages held by the said complainant, and that the said Citizens' Ice and Cold Storage Company may set forth and discover for what purpose the said mortgages, held by the said complainant, were created, and what disposition was made by the said Citizens' Ice and Cold Storage Company of the proceeds of the said respective mortgages, and that the said Cit-

izens' Ice and Cold Storage Company may state an account of the application of said mortgage moneys; and this defendant prays that it may be decreed that the said respective mortgages, held by the said complainant and the said defendant, Emily C. Hopper, trading as the Atlantic City Coal Company, are void and of no effect as liens upon the said mortgaged premises, and that they are not prior to the lien and encumbrance of this defendant's said mortgage, and that the said mortgaged premises, both realty and personalty, are not in any manner bound thereby, as against the lien and encumbrance of this defendant's said mortgage, and of other valid and subsisting liens upon said mortgaged premises, and that this defendant may have such further and other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience. **10**

NORMAN GREY,
Solicitor for and of Counsel with Penn-
sylvania Iron Works Company.

20**30**

IN CHANCERY OF NEW JERSEY.

	Between	
	JAMES BROWN,	} ON BILL TO FORE-
	Complainant,	
10	and	} CLOSE.
	THE CITIZENS' ICE AND COLD	} REPLICATION, &C.
	STORAGE COMPANY, ET AL.,	
	Defendants.	}

20 The complainant joins issue on so much of the defendants answer as is not in the nature of a cross bill, and as to that part of said answer which is in the nature of a cross bill he says, now and at all times hereafter saving and reserving to himself any and all manner of benefit and advantage of exceptions to the many errors, uncertainties and imperfections in the said cross bill contained, for answer thereunto, or so much thereof as the complainant is advised it is material or necessary for him to make answer thereunto, answering says:

30 That the complainant admits that the defendant, The Citizens' Ice and Cold Storage Company, is a corporation under and by virtue of the laws of the State of New Jersey, with powers contained in its charter to which the Court is referred, and says that the said The Citizens' Ice and Cold Storage Company duly executed and delivered the said mortgages of the complainant within the power and authority of the corporation rights, as in the said charter contained, and that the complainant has a legal lien upon the mortgaged premises, by virtue of the said

mortgages, as surety for the sums which are due thereon to the complainant by the terms thereof.

And the complainant further answering says, that the said mortgage of the defendant, The Pennsylvania Iron Works Company, was not made, executed and delivered *for the purposes of raising money to erect buildings and machinery and to improve the mortgaged premises* of the defendant, The Citizens' Ice and Cold Storage Company, or for any other good and valuable consideration to The Citizens' Ice and Cold Storage Company, but that the same was executed and delivered *as a surety for one*, The Purity Ice Company, *and is ultra vires the corporation*, and the mortgage of the defendant, The Pennsylvania Iron Works Company, is not a valid lien or claim against the mortgaged premises. 10

And the complainant further answering says, that the mortgage of the complainant is not *ultra vires* the corporation, and that the moneys in said mortgage mentioned were loaned and advanced to, and by the defendant, The Citizens' Ice and Cold Storage Company, had and received, and by the defendant as aforesaid expended and used for its benefit, and for the uses and purposes set forth in its charter. 20

And the complainant further answering says, that The Citizens' Ice and Cold Storage Company did have and receive the amount of moneys in said mortgage mentioned and described, and the said mortgage was not made without consideration.

And the complainant denies that he knew the moneys loaned and advanced by him to The Citizens' Ice and Cold Storage Company were not to be used and expended in the erection of buildings and machinery and improving the lands of the said defendant, and that he well knew that said moneys when advanced by him were not so used and applied, as in the defendant's said cross bill alleged. 30

J. S. WESTCOTT.

IN CHANCERY OF NEW JERSEY.

Between

JAMES BROWN,

Complainant,

and

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CITIZENS' ICE AND COLD STORAGE

COMPANY, ET ALS.,

Defendants.

ON BILL, &C.

FINAL DECREE.

20 This cause coming on to be heard before the Court, at the State House, in the city of Trenton, in the presence of John S. Westcott and E. A. Armstrong, of counsel with the complainant, and Norman Grey, of counsel with the defendant, the Pennsylvania Iron Works Company, the complainant's bill having been heretofore taken as confessed against the other defendants, to wit, the Citizens' Ice and Cold Storage Company, the Purity Ice Company, Emily C. Hopper, Emily C. Hopper, trading as Atlantic City Coal Company, Christian Moerlein Brewing Company, John F. French, Somers Lumber Company, City of Atlantic City, Charles A. Furbush, Caroline Butler, Joseph F. Ryan

30 and James Davis, and the bill of the complainant, and the answer and cross bill of the defendant, Pennsylvania Iron Works Company, having been read and proofs having been taken before the Court, and the arguments of the respective counsel having been heard, and the Court having considered the said pleadings, proofs and arguments, and it appearing to the Court that the com-

plainant is entitled to the relief sought and prayed for by him in his bill of complaint, and that the defendant, Pennsylvania Iron Works Company, is not entitled to the relief sought and prayed for by it in its cross bill in so far as it prays that it may be decreed that the mortgages held by the said complainant are void and of no effect as liens upon the said mortgaged premises, and that they are not prior to the lien and encumbrance of said defendant's mortgage, and that the said mortgaged premises, both realty and personalty, are not in any manner bound thereby as against the lien and encumbrance of said defendant's said mortgage. 10

And it appearing that there is due and owing to the complainant this day, for principal and interest upon the mortgage set out in said bill of complaint, made by the Citizens' Ice and Cold Storage Company to the complainant, bearing date the twenty-seventh day of September, in the year eighteen hundred and ninety-nine, the sum of twelve thousand six hundred and eleven dollars and fifty cents, and there is due to the said complainant, for principal and interest on the mortgage set out in said bill of complaint made by the Citizens' Ice and Cold Storage Company to Bessie Lyle Ballingall, dated May first, nineteen hundred and one, and duly assigned to the complainant, the sum of nine thousand one hundred and fifty-six dollars and ninety-two cents, and there is due to the defendant, Pennsylvania Iron Works Company, for principal and interest on the mortgage in said bill of complaint made by the Citizens' Ice and Cold Storage Company and the Purity Ice Company to the said Pennsylvania Iron Works Company, dated July 15th, 1902, the sum of thirty-three thousand five hundred and ninety-six dollars and thirty cents, and that the said premises are comprised in the respective mortgages of the complainant, and that the mortgage first above named is first in registry and execution, and is entitled to priority of payment, and the 20 30

mortgage secondly above named is second in registry and execution and is entitled to be secondly paid, and that the mortgage thirdly above named is third in registry and execution, and is entitled to be thirdly paid, and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid;

10 It is, on this third day of October, in the year of our Lord one thousand nine hundred and five, by William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that the said mortgaged premises in the said bill of complaint described be sold to raise and satisfy the several sums of money due to the said complainant and the said defendant, Pennsylvania Iron Works Company, as aforesaid, that is to say—in the first place, the said sum of twelve
 20 thousand six hundred and eleven dollars and fifty cents, together with lawful interest thereon from this date, and in the second place, the said sum of nine thousand one hundred and fifty-six dollars and ninety-two cents, with lawful interest thereon from this date, with the complainant's costs in this cause to be taxed, and in the third place, the said sum of thirty-three thousand five hundred and ninety-six dollars and thirty cents, with lawful interest thereon from this date, with the defendant's costs in this cause to be taxed, and that a writ of fieri facias do issue for that purpose out of this Court, directed to the Sheriff of the county of Atlantic, commanding him to make sale according to law of the said
 30 mortgaged premises, and that out of the money arising from such sale he pay to the complainant, or to his solicitor, his said debt, interest and costs, together with a counsel fee of _____ dollars, and to the said defendant, Pennsylvania Iron Works Company, or its solicitor, its said debt, interest and

costs, together with a counsel fee of dollars, and in case more money be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court, and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

And it is further ordered, adjudged and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree. 10

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IN CHANCERY OF NEW JERSEY.

Between

JAMES BROWN,

Complainant,

10

and

CITIZENS' ICE AND COLD STORAGE

COMPANY, ET ALS.,

Defendants.

ON BILL, &C.

NOTICE OF APPEAL.

20 The defendant, the Pennsylvania Iron Works Company, hereby appeals from the decree made in this Court in the above stated cause on the third day of October, nineteen hundred and five, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all Causes.

Dated February 5th, 1906.

NORMAN GREY,
Solicitor for and of Counsel with Defendant,
Pennsylvania Iron Works Company.

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

NORMAN GREY,
Of Counsel with Defendant, Pennsylvania
Iron Works Company.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

JAMES BROWN,

Appellee,

and

CITIZENS' ICE AND COLD STORAGE

COMPANY, ET ALS.,

Appellants.

10

ON BILL.

PETITION OF APPEAL OF PENNSYLVANIA IRON WORKS
COMPANY.

20

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

The petition of the Pennsylvania Iron Works Com-
pany, appellant in the above stated cause, respectfully
shows:

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That your petitioner finds itself aggrieved by a final
decree made in the Court of Chancery by his Honor
William J. Magie, Chancellor of New Jersey, bearing
date the third day of October, in the year of our Lord
one thousand nine hundred and five, wherein the said
James Brown was complainant and the said Pennsyl-

vania Iron Works Company and other were defendants, in this respect, to wit:

That the said decree adjudges that the said mortgaged premises in the said bill of complaint described, be sold to raise and satisfy the several sums of money due to the said complainant and the said defendant, Pennsylvania Iron Works Company, as follows: In the first place, the sum of twelve thousand six hundred and eleven dollars and fifty cents (\$12,611.50), together with
 10 lawful interest thereon from the date of the said decree; and in the second place, the sum of nine thousand one hundred and fifty-six dollars and ninety-two cents (\$9,156.92), with lawful interest thereon from the date of said decree, with the complainant's costs in said cause to be taxed; and in the third place the sum of thirty-three thousand five hundred and ninety-six dollars and thirty cents (\$33,596.30), with lawful interest thereon from the date of said decree, with the defendant's costs in said cause to be taxed; and that a writ of fieri facias
 20 do issue for that purpose out of said Court, directed to the Sheriff of the county of Atlantic, commanding him to make sale according to law of the said mortgaged premises, and that out of the money arising from said sale he pay to the complainant or to his solicitor his said debt, interest and costs, together with a counsel fee of _____ dollars (\$ _____), and to the said defendant, Pennsylvania Iron Works Company, or its solicitor, its said debt, interest and costs; and in case more money should be raised by the said sale than should be sufficient to answer such several
 30 payments, that such surplus be brought into said Court to abide the further order of the Court, unless otherwise previously disposed of by the order of said Court, and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

And that the said decree further adjudges that the defendants stand absolutely debarred and foreclosed of

and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of said decree.

And your petitioner humbly appeals from the said decree of the said Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous because there is not due to the complainant under his said mortgages the said sum of twelve thousand six hundred and eleven dollars and fifty cents (\$12,611.50), nor the said sum of nine thousand one hundred and fifty-six dollars and ninety-two cents (\$9,156.92). 10

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

NORMAN GREY,
Solicitor for and of Counsel with
Appellants.

20

Answer in the usual form.

30

27th day of September, 1899, before Charles C. Babcock, Master in Chancery; its consideration is verified by the affidavit of James Brown, under date of the 6th of October, 1899, before Samuel K. Robbins, Master in Chancery, and recorded in the Atlantic County Clerk's Office, at May's Landing, October 9th, 1899, in book 53 of mortgages, page 50, &c., and also recorded in book 13 of chattel mortgages, on page 167.

(Marked Exhibit C1.)

10

I also offer in evidence a bond intended to be secured by the foregoing mortgage, made by the Citizens' Ice and Cold Storage Company to James Brown, bearing date the 27th day of September, 1899, conditioned for the payment of \$10,000 at the expiration of ten years from the date thereof, with six per cent interest, payable half yearly, with the provision thereunder written "that if default be made in the payment of interest for the space of thirty days after any semi-annual payment thereof shall fall due, then at the option of the obligee the principal sum of the bond should become due and payable."

20

(Marked Exhibit C2.)

Next I offer in evidence an indenture of mortgage, bearing date the 1st day of May, 1901, made by the Citizens' Ice and Cold Storage Company to Bessie Lisle Ballingall, duly proved on the 1st of May, 1901, before Mr. Joseph S. Hagen, a Commissioner of Deeds for New Jersey, on the oath of Joseph F. Ryan, Secretary of the company, and re-proved on the 9th of October, 1901, on the oath of Joseph F. Ryan, the secretary, before Clarence Pettitt, Master in Chancery, and recorded on the 18th day of June, 1901, in Atlantic County Clerk's Office, at May's Landing, in book 62 of deeds, page 432, &c.; and re-recorded on the 10th of October, 1901, in the said County

30

Clerk Office, at May's Landing, in book 63 of mortgages for said county, at page 496, &c.

(Marked Exhibit C3.)

10 I also offer in evidence the bond purporting to be secured by the said last mentioned mortgage made by the Citizens' Ice and Cold Storage Company to Bessie Lisle Ballingall in the penal sum of \$14,470, conditioned for the payment of \$7,235 in ten years from date, with interest at six per cent. per annum, payable half yearly, with the condition "that if default be made in the payment of interest for thirty days, the principal sum should become due.

(Marked Exhibit C4.)

20 I also offer in evidence a deed of assignment, made by Bessie Lisle Ballingall, dated July 18th, 1901, duly acknowledged on the same day before Joseph S. Hagen, Commissioner of Deeds for New Jersey, residing in Pennsylvania, and certified over his seal and recorded in the Clerk's office of Atlantic county, at May's Landing, on the 23d day of July, 1901.

I will call the attention of the Court to the fact that there is no credit of interest payment on this bond.

Marked Exhibit C5.

Complainant rests.

30

Mr. Grey: I offer in evidence the certificate of incorporation of the Citizens' Ice and Cold Storage Company.

Marked Exhibit D1.

Mr. Grey: I call upon the complainant to prove the amount due. The mere fact that there is nothing endorsed on the bond or on the mortgage does not prove that there has been nothing paid.

Court: Does the answer deny that there is anything due on this mortgage?

Mr. Grey: Yes.

10

Court: I do not think you have proved your claim; it is not like a note or an instrument of a negotiable character which if offered in evidence speaks for itself.

Mr. Armstrong: I present the papers here as proof of the amount we claim under the allegations of our bill, and we prove the amount in the manner that is required, and we have shown by the affidavits attached to the mortgage—

20

Mr. Grey: Well, do you rest?

Mr. Armstrong: We rest.

Mr. Grey: I call upon Mr. Bergen, the Receiver of the Citizens' Ice and Cold Storage Company, to produce the books of account of that company that are in his possession.

Mr. Bergen: What books do you want particularly?

30

Mr. Grey: I suppose I want them all.

Mr. Bergen: The books are all here.

PETER BALLINGALL, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath saith:

Examined by Mr. Grey.

Ques. Do you know Mr. Keller's handwriting?

Ans. I do.

10 Ques. Was he ever a bookkeeper in the employ of the Citizens' Ice and Cold Storage Company?

Ans. He was.

Ques. When?

Ans. From May, 1894, to some time in the early part of 1896.

Ques. Will you please examine the books produced by Mr. Bergen, the Receiver of the Citizens' Ice and Cold Storage Company, and pick out the books kept by Mr. Keller?

20 Ans. Well, the debit side of the cash book from page 1 to page 146, covering the period between May, 1894, and April, 1895, is in his handwriting.

Ques. What book—how do you designate it?

Ans. "Cash Book No. 1."

Ques. Is that a book of original entry?

Ans. Yes, sir; it is.

Ques. Is there any other book kept by Mr. Keller, ledger or otherwise?

30 Ans. "Journal, No. 1"—there are a great many entries in his handwriting in that book, and there are many items in the ledger posted in his handwriting.

Ques. What ledger is that?

Ans. Ledger No. 1.

Ques. Where is Mr. Keller? Is he living?

Ans. I don't know where he is; he died several years ago.

Ques. Is that all that were kept by Mr. Keller?

Ans. That is all the books that are here except the private ledger; there were some other books that he kept.

Ques. How about the private ledger, did he make any entries in that book?

Ans. Yes, sir; there are entries in his handwriting in this book.

Ques. What date are they?

Ans. In 1894 and 1895.

Ques. Who succeeded Mr. Keller?

Ans. Mr. Grey, as bookkeeper, but for a short time before Mr. Gray took charge as bookkeeper, a party by the name of Clapp was bookkeeper for a few weeks.

Ques. Do you know his handwriting?

Ans. I do.

Ques. What books did he keep?

Ans. He made entries in the cash book or sales book.

Ques. The same books to which you have already referred?

Ans. Yes, sir; but I said that he was in the employ of the company for probably two weeks—

Ques. Did he make any entries in the ledger?

Ans. I have no doubt but he did.

Ques. The ledger you have before you?

Ans. That is the private ledger.

Ques. Was there any other book in which Mr. Clapp made entries?

Ans. In some of the drivers' accounts, he may have made entries there.

Ques. And who succeeded Mr. Clapp?

Ans. Mr. Gray.

Ques. And who succeeded Mr. Gray?

Ans. Mr. Gray was in the employ of the company for some years, and I think Mr. Morrow succeeded him.

Ques. Where is Mr. Morrow?

Ans. He was in Atlantic City the last word I had of him, but I understand he has disappeared from there lately.

10

20

30

Ques. How long ago is it you heard of his being there?

Ans. He was there ten days ago, I believe.

Ques. As a resident of Atlantic City?

Ans. Yes, sir.

Ques. Have you heard since that time that he has disappeared?

Ans. I heard this morning that he was off on a drunk.

Ques. Is he in the State of New Jersey or elsewhere?

10 Ans. I don't know whether in the State of New Jersey or any other State.

Ques. Who succeeded Mr. Morrow?

Ans. Mr. Ryan, kept the books for a short time, when there was not much bookkeeping to do.

Ques. What date was that?

Ans. That would be probably 1899 or 1900.

Ques. And who after him?

Ans. Mr. Morrow again I think.

Ques. And who after him?

Ans. I think he was the last bookkeeper.

20 Ques. What Mr. Ryan was that?

Ans. Joseph F. Ryan.

Ques. Where is he?

Ans. In Atlantic City.

Ques. Will you look at the books which are in the upper room and see if there are any books there that were kept by any of these gentlemen you have mentioned?

Ans. All of these books that I have seen there to-day have been kept by one or the other of the bookkeepers and by Mr. Sweeney; he straightened out the books for them occasionally.

30 Ques. Where is Mr. Sweeney?

Ans. Out in the West somewhere.

Ques. Please enumerate the books kept by these gentlemen?

Ans. There are cash books, more than one, and general ledgers and private ledgers, one private ledger, stock cer-

tificate book, and stock ledger, and there are numerous books for keeping the individual account of the ice drivers' customers in, and also a feed ledger.

Ques. Who delivered those books here to the Receiver?

Ans. I did.

Ques. And at the time you delivered them, what books were they—were they the books of the Citizens' Ice and Cold Storage Company?

Ans. Yes, sir; all the books of the Citizens' Ice and Cold Storage Company that I had.

Ques. Do you find here the books that you delivered to the Receiver? **10**

Ans. Well, I find a copy of the receipt I got from Mr. Bergen, the Receiver.

Ques. I do not mean exactly.

Ans. Well, what books are not here are, I think, in the other room.

Ques. What were you in the Citizens' Ice and Cold Storage Company?

Ans. President.

Ques. All that time? **20**

Ans. Yes, sir.

JOHN GRAY, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath saith:

Examined by Mr. Grey: **30**

Ques. Do you know the Citizens' Ice and Cold Storage Company?

Ans. Yes.

Ques. Were you in their employ?

Ans. I was.

Ques. When did you begin?

Ans. In 1896 sometime.

Ques. What duties did you perform?

Ans. Bookkeeper.

Ques. How long did you continue bookkeeper?

Ans. About two years.

Ques. Were you also secretary of the company?

Ans. Yes, sir.

Ques. Did you keep any minute book as secretary?

Ans. Yes.

10 Ques. Do you find it there in front of you?

Ans. Yes.

Ques. Look at it and state what that is (handing book to witness)?

Ans. The record book of the Citizens' Ice and Cold Storage Company.

Ques. Do you find any minutes there in your handwriting?

Ans. Yes, sir, several; the first being on March 7th, 1896—

20 Mr. Armstrong: I object to this as immaterial, and we also object to any of the books of the Citizens' Ice and Cold Storage Company being introduced in any phase of this cause.

Court: The minutes of the corporation speak for the acts of the corporation; I think they are competent.

30 Mr. Armstrong: As against the corporation, your Honor, but not for anyone outside, or for an individual who happens to be also a member of the corporation, and then only in his relation as a member of the corporation—each stockholder so far as this holding under the corporation is bound by the declarations made by the corporation, but it has always to be against the corporation, but not against outside people.

By Mr. Grey:

Ques. How late do the minutes come down that you kept?

Ans. To October 16th, 1899.

Ques. Turn to a minute found on pages 45 and 47 of the minute book—do you find such a minute?

Ans. There are minutes in those pages.

Ques. In your handwriting?

Ans. Yes.

10

Ques. Were you present at that meeting?

Ans. I was.

Mr. Grey: I offer that minute in evidence and ask that it be read.

Mr. Armstrong: I object to it as immaterial.

The Court: I will permit it to be read.

20

By Mr. Grey:

Ques. Read that minute so far as it relates to the making of the mortgage to James Brown?

Ans. I will read the resolution.

“Mr. Morrow offered the following resolution, viz.:

Whereas, in pursuance of a resolution adopted at a special meeting of the stockholders of this company, called for that purpose, and held on the first day of June, A. D. eighteen hundred and ninety-eight, a bond or obligation bearing the day and year aforesaid, in the penal sum of \$20,000, conditioned for the payment by this company to James Brown, his certain attorney, executors, administrators and assigns, of the just sum of ten thousand dollars (\$10,000), at the expiration of

30

ten years from the date thereof, together with interest thereon at the rate of six per cent per annum, payable semi-annually, and a mortgage to the said James Brown upon the real estate of the company, situate on the northerly side of Baltic avenue, near Massachusetts, in the city of Atlantic City, county of Atlantic and State of New Jersey, bearing even date with and intended to secure the payment of such bond, were duly executed by the president of the company, under its corporate seal, attested by its secretary, and delivered to
 10 the said James Brown, in exchange for certain coupons and other obligations of the company, held by the said James Brown, and amounting in the aggregate to the sum of over ten thousand dollars, which mortgage was afterwards, on the fourth day of June, in the year aforesaid, duly recorded in the Clerk's office of said County, at Mays Landing, in Book No. 49 of Mortgages, page 166, &c.

And whereas, no minute of the special stockholders
 20 meeting aforesaid, or copy of the resolution authorizing said bond and mortgage were kept, and questions have arisen relative to the authority to execute said bond and mortgage, and objections have been made to the form and effect thereof.

And whereas, said James Brown has agreed to surrender the same upon the payment of the interest now due thereon, and the execution and delivery to him of
 30 a new bond for the principal sum of ten thousand dollars, payable in ten years, with interest semi-annually, at the rate of six per centum per annum, and a mortgage upon the property real and personal, and franchises of the company, to secure the payment of said bond.

And whereas, this meeting has been duly called according to law, for the purpose of authorizing the creation of said bond and mortgage.

Now, therefore, be it resolved, that the Board of Directors be and they are hereby authorized to cause to be executed, under the corporate seal of the company, a bond in the penal sum of twenty thousand dollars, conditioned for the payment to the said James Brown, his certain attorney, exècutors and administrators of the just sum of ten thousand dollars at the expiration of ten years from the date thereof, together with interest thereon at and after the rate of six per centum per annum, payable semi-annually, and a mortgage to him upon all the real estate of this company, also all the machinery placed or to be placed in and erected in and upon said premises, forming a complete ice manufacturing plant, and all machinery and personal property whatsoever which the said company now owns or may at any time hereafter acquire (excepting raw material, goods in process of manufacture and manufactured product), and also all the corporate rights, privileges, and franchises of the company, and all the dividends, royalties, incomes, issues and profits that shall or may in any wise accrue from said land, property and franchises, and that they be authorized to deliver the same to the said James Brown upon the surrender by him of the bond and mortgage bearing date June first, eighteen hundred and ninety-eight, above mentioned and set forth, and to pay to him upon such surrender, the interest now accrued on said bond and mortgage.

Mr. Gray moved that said resolution be adopted, duly seconded, and on stock vote being taken, the majority of the stock, represented by twenty-two hundred and four and one third shares unanimously voted in the affirmative.

Mr. Robbins moved, seconded by Mr. Gray, that meeting adjourn. So ordered.

JOHN GRAY,
Secretary.

Ques. Who else were present at the meeting?

Ans. There were present Peter Ballingall, John Gray, S. H. Robbins as proxy for James Brown, and John Burt, Robert E. Morrow as proxy for B. L. Ballingall, same being more than a quorum.

Ques. Turn to page 60 to 63 in that minute book, the meeting of May 1st, 1901, of the directors.

Ans. I have it.

10 Mr. Armstrong: I object to this as immaterial.

By Mr. Grey:

Ques. What is the date of that meeting?

Ans. May 1st, 1901; but I was not secretary that time:

Ques. That is not in your handwriting?

Ans. The minute is, but not the signature of secretary.

20 Ques. Who was secretary then?

Ans. Joseph F. Ryan.

Ques. Were you present at that meeting?

Ans. I was not, by the minute.

Ques. Turn to the minute of February 12th, 1901, "Stockholders' meeting;" is there a minute there?

Ans. Yes, sir.

Ques. What page is it on?

Ans. Page 60.

Ques. Were you present at that meeting?

30 Ans. I really do not know whether I was or not; I do not think so—I may have been—no, I don't think I was.

Ques. Whose handwriting is that minute in?

Ans. I cannot tell you.

Ques. Who signed it?

Ans. Joseph F. Ryan, secretary.

Ques. Do you know his signature?

Ans. Yes, sir.

Ques. Is that it?

Ans. It is very like it—I don't know whether it is or not, I did not see him attach it.

Ques. Do you know his handwriting?

Ans. I am not an expert in handwriting; I believe it to be his signature, although I do not know.

Ques. I ask that that minute be read?

Mr. Armstrong: I object to it as immaterial.

10

The Court: I will permit this to be read.

By Mr. Grey:

Ques. Read so much of the minute as relates to the mortgage to Bessie L. Ballingall?

Ans. The following is a copy of the board's resolution referred to:

"J. F. Ryan moved, seconded by W. S. Laumaster, that the same be referred to the stockholders for action thereon"—I shall have to read it all over myself, before I know whether it refers to the mortgage or not. I never saw the resolution before, and I don't know what it is.

20

Ques. Read that portion referring to the mortgage.

Ans. Walter T. Reed offered the following resolution:

"Whereas, the company is indebted to Bessie Lisle Ballingall, for a sum a little in excess of seven thousand dollars, for money loaned the company.

30

Now, be it resolved that the proper officers be and are hereby directed to execute a mortgage in her favor for the amount that may be due her on May 1st, 1901.

Said mortgage to bear interest at six per cent. per annum, and to be payable in ten years from the date thereof.

W. S. Laumaster moved, seconded by Joseph F. Ryan, that the same be adopted.

On motion adjourned.

Attest,

JOSEPH F. RYAN,
Secretary."

Ques. What is the page of that minute?

Ans. Page 63.

10 Ques. What is the date of that meeting?

Ans. The date is February 12th, 1901.

Ques. Will you refer to the private ledger?

Mr. Armstrong: I object to any admissions from the records in a book which on its face is called "Private Ledger."

20 The Court: Mr. Brown would not be bound by anything in the book unless it is shown that he had been furnished with a statement of it or that he had knowledge of it.

By. Mr. Grey:

Ques. What is that book now before you?

Ans. "Citizens' Ice and Cold Storage Company private ledger."

Ques. Did you keep it or part of it?

Ans. I have made entries in it.

Ques. From what dates?

30 Ans. In reference to this special account, I have made entries from July 16th, 1896, until June 1st, 1897.

Ques. What do you mean by "this special account?"

Ans. As found on page 44.

Ques. What do you mean by "special account?"

Ans. The account you have specially referred to.

Ques. I haven't said anything about any special account.

Ans. On this special page on which there is a special account.

Ques. At that time were you secretary of the company?

Ans. Yes; I believe I would be.

Ques. What account appears on that page?

Ans. It is entitled "James Brown, loan account."

Ques. Where were the entries in that page taken from?

Ans. Some from the journal and some from the cash book.

Ques. See if you can find the journal and the cash book for all the entries? **10**

Ans. The cash book entries refer to a later date than cash book No. 1. But the journal entries cover this book.

Ques. What pages?

Ans. Pages 78, 87 and 93.

Ques. In the journal?

Ans. Yes, sir.

Ques. What do you call the journal—is that the only journal the company ever had?

Ans. That I do not know. **20**

Ques. What do you call it?

Ans. Journal No. 1.

Ques. Did you keep these journal entries?

Ans. I have made them; yes, sir.

Ques. And the cash book, did you make the entries in the cash book?

Ans. I haven't got the cash book here.

Ques. Look on this table and see if you can find it?

Ans. Yes, sir; here it is.

Ques. Are there any original entries in the cash book that are posted in the private ledger? **30**

Ans. Yes, sir; they are here.

Ques. What page?

Ans. Page 39 of the cash book, and pages 40 and 114.

Ques. Did you make those entries?

Ans. I made those entries; yes sir.

Mr. Grey: I offer in evidence the ledger, cash book and journal referred to.

Mr. Armstrong: I object to them as immaterial.

The Court: You cannot put in evidence these books to prove cash items or that Mr. Brown had this money—this is not competent.

10 By Mr. Grey:

Ques. Who were the directors at this time—during the years 1897, 1898 and 1899?

Mr. Armstrong: I object to that—the best way to prove that is by the list filed with the Secretary of State.

The Court: The witness is looking at the book and he can state it.

20 Ans. On May 13th, 1897, or rather May 6th, 1897, Peter Ballingall, Albert Beyer, James Brown, Edward H. Earley, Alfred Wilkinson, W. S. Laumaster, J. F. Ryan and John Gray, they were present.

Ques. How long had Mr. Brown been a director?

Ans. That I could not tell you. It will show who was present at the different meetings.

30 Mr. Grey: I offer in evidence this minute book for the purpose of showing who were the directors and who were present at the time of these various meetings.

Mr. Armstrong: I object to the offer. He cannot offer the minutes for the purpose of showing who were the directors, and I object to the offer of that book; he must prove just exactly what parts of that minute book he wants to use or refer to.

Mr. Grey: I cannot designate now the particular pages in this book referring to the election of the directors.

The Court: Does it not sufficiently appear that Mr. Brown was a director?

Mr. Grey: Yes; but that may be denied, and I shall have to prove it I suppose.

The Court: So far as the case has gone now, I think it is shown that Mr. Brown was a director at that time. **10**

By Mr. Grey:

Ques. Can you refer to any later minute kept by you, at which Mr. Brown appears to be a director?

Ans. The last minute kept by me as secretary James Brown was a director, October 16th, 1899; that was the annual meeting of the stockholders when he was elected a director, and I presume he held that office for one year. **20**

Ques. What page was that on?

Ans. Page 51.

Ques. Look at the meeting prior to that, October 16th, 1899, the prior annual meeting.

Ans. It was on May 12th, 1898.

Ques. Was that minute kept by you?

Ans. Yes, sir.

Ques. Was Mr. Brown elected a director at that meeting, so far as the minutes show?

Ans. Yes, sir; Mr. Brown was a director at that time. **30**

Ques. What page do you refer to?

Ans. May 12th, 1898, page 39.

By the Court:

Ques. During the time you were secretary, from 1896 to 1899, was Mr. Brown a director during all that period?

Ans. Yes, sir; I should say he was.

Ques. Well, do you know?

Ans. Yes, sir; he was.

10 Mr. Grey: I offer this book in evidence again, and I offer the private ledger, journal and cash book in evidence, containing the items relating to Mr. Brown's account, as it appears that they are items kept by the corporation by its own officer, with the minute in the minute book, showing that the mortgage should be given to him.

Mr. Armstrong: I object.

Offer overruled.

By Mr. Grey:

Ques. Turn to page 46 of the ledger?

20 Ans. Which ledger?

Ques. Private ledger—does that page indicate whom that account on that page was kept with?

Ans. I cannot answer that; I might say who it was kept by—

Ques. Whose account it is?

Ans. James Brown, special loan account.

Ques. Was that page kept in your own handwriting?

Ans. Part of it; yes, sir.

Ques. And some of it kept by some one else?

Ans. Yes, sir.

30 Ques. Who by?

Ans. I cannot tell you.

Ques. Do you know the handwriting?

Ans. It looks to me like a Mr. Jones' handwriting.

Ques. What Jones?

Ans. A man by the name of Jones, the bookkeeper succeeding me.

Ans. What was his full name?

Ans. I can tell you by referring to the books.

Ques. You don't know his full name?

Ans. No, sir.

Ques. Turn to page 47 in the same book, the private ledger; with whom does that page of account show it was kept?

Ans. The title to this account is, "James Brown, rebuilding account."

Ques. Do the two account kept on those pages appear on any other pages in the ledger, any transfer of the account? **10**

Ans. No, sir; there is no transfer.

Ques. Refer to the books containing the original entries from which you made up pages 46 and 47 in the private ledger.

The Court: I have already ruled that you cannot put in evidence this account as in any way binding Mr. Brown. It is very different where you have the sale of merchandise, and where you cannot recollect the items or show the items without reference to a book; then the law has allowed books to be evidence against parties, but in this case I cannot admit it. **20**

Mr. Grey: I make the same offer to prove from the books of this corporation the resolutions and matters leading up to or referring to the creation of the mortgage to Bessie Lisle Ballingall.

Offer overruled. **30**

Mr. Grey: I also offer to prove the account of Peter Ballingall up to and prior to September 13th, 1899, and to show that that account was transferred to Bessie Lisle Ballingall's account before the making of the mortgage to her.

The Court: You can go into that and prove that—the books of account were no evidence against these parties for the moneys which the company has charged up.

PETER BALLINGALL, recalled in behalf of the defendant, saith:

10

Examined by Mr. Grey.

Ques. Do you know James Brown?

Ans. I do.

Ques. Did you act with him in any capacity in 1897 and 1898 and 1899, or in 1896, either?

Ans. No, sir; I was employed up to December, 1896, as bookkeeper for C. A. Furbush, and I left them in the latter part of 1896.

20

Ques. Do you know what moneys, if any, the Citizens' Ice and Cold Storage Company owed Mr. Brown, for which they gave him a \$10,000 mortgage?

Mr. Armstrong: I object to the question as immaterial.

The Court: The question is, "does he know?"—he can answer that.

30

The Court: All I intended to rule upon was to limit the defendant from using an account against Mr. Brown in the general books of account of the company for the purpose of binding Mr. Brown to that account. Now, do you by this question intend to prove that the money obtained from Mr. Brown had not been expended so as to make this mortgage good in law. If that is your intention, then that is another question.

Mr. Grey: I do not deny that the money was advanced by Mr. Brown to the corporation. All I offered the books for was, first to show that they are the books of the corporation, and then, after I got the books in evidence, I intended to show how the money advanced by Mr. Brown was expended.

The Court: Do you think you can prove that by the books?

Mr. Grey: Yes, sir; he was a director. If Mr. Brown had not been a director, and if the thing was entirely outside of any trust relation, then it might be a different thing. 10

The Court: Well, then, understand that my rulling is entirely confined to that one point, that you cannot bind Mr. Brown by any account of moneys which he might have have had from the company, or paid to the company, by any entries in their own books; there must be some other proof than that. I do not rule at all as to whether the money they borrowed on that mortgage had been so expended as to make it, as you contend, not a good mortgage. They may offer the book, or you may offer the books, but that makes no difference, you cannot bind Mr. Brown by those books. Now, then, if you will ask the specific question I will rule on it and thus save time. 20

Mr. Grey: Then I offer again in evidence the cash book, the journal and the ledger, showing the various accounts with Mr. Brown. I cannot state all that there is in these accounts out of my head off-hand. I think I have already proved that these books do contain the entries relating to Mr. Brown's account. In the first place, I want to have the books in evidence, and then I shall produce a witness, a gentleman who is an expert in that line, who will go through the books and show just exactly what these accounts apply to. 30

The Court: I think I will allow you to prove the disposition made of this money, which was borrowed from Mr. Brown by the corporation.

Mr. Armstrong: I object to the offer made by Mr. Grey on the ground that the charge or discharge, shown in the company's books here, cannot in any way affect or bind Mr. Brown.

10 Mr. Grey: I offer in evidence the books of account and refer particularly to the pages containing the accounts of this company with Mr. Brown.

The Court: I will admit that.

By Mr. Grey:

Ques. Will you refer to the ledger, pages 44, 46, 47—that is, the private ledger?

Ans. Yes, sir.

Ques. Do you know Mr. Grey's handwriting?

20 Ans. I do.

Ques. Turn to page 46 of that private ledger, and say whose handwriting is on that page?

Ans. It is in the handwriting of Mr. Jones.

Ques. What is his full name?

Ans. Luther Jones.

Ques. Do you know where he is?

Ans. No, sir.

Ques. Where did he reside the last you heard of him?

Ans. In Atlantic City, which was some years ago.

30 Ques. Do you know whether he is living or not?

Ans. I don't know whether he is living or dead or anything about it.

By the Court:

Ques. You testified in another case here, that of the \$10,000 borrowed in September, \$9,164 was spent towards the building of a plant?

Ans. I testified that \$10,000 —

Ques. Was that \$10,000 the same sum represented by this mortgage?

Ans. No, sir; it is different.

By Mr. Grey:

Ques. You testified this morning that of the \$10,000 given to Mr. Brown \$2,640 of the \$10,000 was for interest money to Mr. Brown for coupons on the prior mortgage?

10

Mr. Armstrong: I object to the question as immaterial.

Question allowed.

Ans. It is true that I so testified this morning.

Ques. Is that the fact?

Ans. It is not a fact. The amount that I stated this morning was based on computing the amount of three coupons on each six monthly periods, that is, three times twelve hundred would be thirty-six hundred, and deducting \$960, leaving \$2,640; but I find that that is not so.

20

Ques. Wherein is it incorrect?

Ans. The coupons of the \$40,000 that was included in that \$10,000 mortgage, was \$1,200 on December 1st, 1897—

Ques. Any more?

Ans. \$232, May 25th, 1898; that was an adjustment of interest on coupons, taking place at the time when the \$8,000 was paid off; and June 1st, 1898, \$960; that is a total of \$2,392 instead of \$2,640, as I stated before.

30

Ques. This latter amount, \$2,392, was included in the \$10,000 mortgage to Mr. Brown, was it?

Ans. It was.

JOHN GRAY, recalled in behalf of the defendants, saith :

Examined by Mr. Grey :

Ques. Turn to the minute, in the minute book of May 1st, 1901; whose handwriting is it in?

Ans. My own.

Ques. Who was the secretary at that time?

Ans. Joseph F. Ryan.

10 Ques. At that time?

Ans. Yes, sir.

Ques. Read the minute?

Ans. "W. S. Laumaster moved, seconded by Joseph F. Ryan, that in accordance with a resolution passed at a meeting of stockholders on February 12th, 1901, that a mortgage of \$7,235 be executed and delivered to Bessie Lisle Ballingall, that sum being due her on this date, as shown by the books. So ordered.

On motion adjourned.

20

Attest,

JOSEPH F. RYAN,
Secretary."

Ques. Turn to the journal of May 1st, 1901, page 27—did you keep that book?

Ans. I made these entries; yes, sir.

Ques. On page 27?

Ans. Yes, sir.

Ques. What does the book show on the top?

30 Ans. Page 27, May, 1901. Date, May, 1st. Bessie Lisle Ballingall, debtor to Mortgage No. 3, \$7,235—

Mr. Armstrong: I object to that.

Objection sustained.

By Mr. Grey:

Ques. Is there any other item on the page?

Ans. There is an item prior to that, "interest to Bessie Lisle Ballingall of \$285.18."

Mr. Grey: I ask to have that in evidence.

The Court: I will allow it.

Ques. What other place is that entry made in the books, if any? **10**

Ans. It is made in the ledger to the three accounts that were mentioned, interest, Bessie Lisle Ballingall, mortgage account.

Ques. What page is that?

Ans. The interest is on page 26. The Bessie Lisle Ballingall account is page 14, and the mortgage account is on page 4 in the ledger.

Ques. Are those pages in your handwriting? **20**

Ans. I cannot tell you—the mortgage No. 3 entry, \$7,235, was in my handwriting.

Ques. What page of the ledger?

Ans. Page 4, and entered in the ledger to Bessie Lisle Ballingall's account, page 14; that is an entry from the journal.

Ques. What are the entries on page 14 of the ledger, about, all of them?

Ans. The B. L. Ballingall loan account.

Ques. Who was "B. L. Ballingall"?

Ans. Bessie Lisle Ballingall, Mr. Peter Ballingall's wife. **30**

Ques. Is there any other place in the ledger referring to any account with her, loan accounts or otherwise?

Ans. No, sir; that is the only account in the name of B. L. Ballingall.

Ques. Did you refer to pages 4 and 14?

Ans. Yes, sir.

Ques. Turn to cash book please, for January 26th, 1899, page 212; is that page in your handwriting?

Ans. Yes, sir.

Mr. Grey: I offer in evidence the item of January 26th, 1899, "cash, \$5."

Ques. What is on the top of the page?

10

Ans. "Cash."

Ques. Refer to item, February 2d, on page 214?

Ans. "\$5.00 B. L. Ballingall."

Ques. Refer to item March 3d, on page 216.

Ans. "Bessie L. Ballingall, \$18.35."

By the Court:

Ques. These are items paid to her?

Ans. No; paid by her to the corporation.

20

Mr. Grey: I shall have to prove each item in these accounts, and then I shall put an expert on the stand and show how the money was used.

Mr. Armstrong: I object to it for the reasons heretofore given.

The Court: It seems to me that this Mrs. Ballingall was given this mortgage to balance her account.

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Mr. Armstrong: It says so on the books, and I do not deny it.

The Court: You may go on then.

By Mr. Grey:

Ques. March 14th, an item on the same page—

Adjourned to Thursday, June 29th, 1905, at 10.30 A.
M.

IN CHANCERY OF NEW JERSEY.

Between

JAMES BROWN,

Complainant,

and

CITIZENS' ICE AND COLD STORAGE

COMPANY, ET AL.,

Defendants.

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Transcript of stenographer's notes of evidence taken in the above entitled cause, before his Honor, James J. Bergen, Vice Chancellor, at the Chancery Chambers, State House, Trenton, New Jersey, on the 29th day of June, A. D. 1905, at 10.30 A. M.

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Appearances :

MR. E. A. ARMSTRONG, MR. JOHN DICKEY, JR.,
and MR. J. S. WESTCOTT, for complainant.

MR. NORMAN GREY, for the defendants,

PETER BALLINGALL, recalled in behalf of the defendants, saith :

Examined by Mr. Grey :

Ques. What is your business?

Ans. I am a certified public accountant.

Ques. How long have you been that?

Ans. I have been an accountant in this country for
 10 fifteen years.

Ques. During the time you were president and director of the Citizens' Ice and Cold Storage Company did you exercise any personal supervision over the books?

Ans. I did.

Ques. What?

Ans. Well, during the summer months, when the business was at its height, I was there daily directing the bookkeepers in making entries and seeing that they made them correctly, &c., and in the winter season I was there
 20 once or twice a week.

Ques. And the same thing during the winter season?

Ans. Oh, yes, sir; I saw that the entries were made and I directed the entries to be made, and saw that they were made correctly.

Ques. I direct your attention to the books, which I believe are known as "private ledger, cash books Nos. 1 and 2, journal No. 1, general ledger No. 1, and this cloth backed ledger?"

Ans. Yes, sir.

Ques. Are those the books to which you refer as
 30 having exercised supervision over, and directing the bookkeeper as to the entries to be made?

Ans. They are; together with other books of the company.

Ques. Do the books that I have indicated contain the accounts with James Brown?

Ans. They do.

Ques. And with Bessie Lisle Ballingall?

Ans. They do.

Mr. Grey: I offer these books in evidence.

Mr. Armstrong: I object to the offer as immaterial, so far as any of the issues here are made.

The Court: What do you understand the issues to be?

Mr. Armstrong: I do not know what he proposes to do with these books, or what use he intends to make of these books. My understanding of the issues is, that this mortgage was executed, the money for which was received by the corporation,—that I understand is all admitted. Now, payment is the only thing that can come against that as I understand it. **10**

The Court: Mr. Grey's contention is that this mortgage, as a lien, is absolutely void, because it is ultra vires of the corporation. Now, he wants to show by these books of the corporation—(interrupted) **20**

Mr. Armstrong: But your Honor, these are not the books of the defendant here in interest, and my contention is, that you cannot prove anything by these books as against us, or use them in any way to defeat the complainant in the collection of his just debts—

The Court. Mr. Grey wants to show and expects to show that the money which was received was not applied to the purposes for which you were authorized to execute a mortgage. Now, it seems to me that that question ought to be settled now; I think it will save a great deal of time. If we have to take a lot of evidence which he may want to use on an appeal, it will take considerable time, and it may not be neces- **30**

sary. I understand, Mr. Grey, that you base your defense on the claim that the company under its charter had no power to issue the bonds and secure their payment by mortgage.

10 Mr. Grey: I want these books in evidence to show what Mr. Brown did with his own money, acting in his own corporation. Now, if a stranger had taken this bond and mortgage, that would have made an entirely different thing of it, but Mr. Brown is different; he is not a stranger; he is a director of the corporation—then it comes down to what evidence shall be taken by the Court to indicate whether or not Mr. Brown's mortgage is subject to the criticism, that the money was not applied as it should have been applied, as indicated under the charter of the corporation. Now, the proof of that is in the books, his own books, or the books of his own corporation, and I contend that he is bound by those books, by whatever they show.

20 The Court: What have you to say upon the view of the case last presented, that if these bonds were held by a stranger the defense might not be good, but being held by a person who was a member of the corporation, and for whom these books were kept, that he is bound by the evidence contained in the books.

30 Mr. Armstrong: Well, your Honor, just assume that that evidence was being taken to show what counsel desires to show. Of course, I object to all this, but waiving for the moment all the objections, I contend that these books are no evidence whatever against us. The authorities he cites show that. Now, when I am dealing with a corporation, the books must be against me, but when I am dealing as a third party in any shape, then they are not. But here they are undertaking to make and to take as evidence to themselves these books

kept by this corporation, and they say we own stock in it and we are directors of it. True. But this is a hostile adverse action and claim against the corporation. They cannot use these books as against us—that they cannot do. Now, if there was any claim against us as a stockholder, or some right of that description, then these books would bind us, but they do not bind us in any other or different position. There are any number of cases that say that. Our Courts have said that all the time, they constantly distinguish between the individual and the member of the corporation. Now, that is my objection to these books. Of course, I have very strong objections on other grounds, that we are not in anywise bound to show anything as to the application of the fund. I understood your Honor to indicate that you might allow him to show the application of these moneys to other purposes. Now, if the books are offered in evidence, then they would speak for themselves. They will show both the charge and the discharge. They will show everything; you cannot pick out just one, two or three accounts, but if the books go in at all, they go in for all purposes. The entries made in the books were made by themselves and they are estopped from making any further explanation, and I submit that the minute book, the journal and the other books, and cash book of this corporation can only be put in evidence as against the corporation; of course, they cannot be accepted as evidence against strangers. Suppose that instead of being the Citizens' Ice and Cold Storage Company, it was Smith, and the man who had superintended his books came here and offered those books in evidence to show that Smith had received certain moneys, and had used the somewhere else—just the cash items—that would have some effect; that would amount to something if that could be shown. But would it be competent for these books to be produced, to show that against Brown? Certainly not. How

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much more can be done just because Brown happens to be a part owner in the shape of a stockholder in the Citizens' Ice Company—of course, it cannot be done. Certainly, your Honor, these books are not admissible. If they go in, they prove whatever is in them, but they cannot in any way be binding against us.

- 10 The Court: Well, as the witness is here, and the books are here, and the question as to how far the books bind the complainant here, he having been a director of the company at the time the entries were made, I will allow the evidence to be taken, but I will hold for further consideration the question as to its admissibility. If I should find out on reflection that I am wrong in admitting it, I will have it all stricken out. But otherwise if the witnesses were all gone away and the books taken we might be put to the trouble of recalling them. My opinion of it is that mere cash entries in books do not prove anything—what you may be able to show by the examination of this witness as to the entries in the books I do not
- 20 know, but, as I said before, I will take the evidence and admit the books in evidence, reserving the question of their admissibility.

Books offered in evidence and marked as follows:

- Private ledger, marked Exhibit D2.
 Cash book No. 1, marked Exhibit D3.
 Cash book No. 2, marked Exhibit D4.
 Journal No. 1, marked Exhibit D5.
 Ledger No. 1, marked Exhibit D6,
 30 Cloth backed ledger, marked Exhibit D7.

By Mr. Grey:

Ques. Of the \$10,000 mortgage how much of the loan made by Mr. Brown, for which that mortgage was given, went for interest, or was an item of interest?

Mr. Armstrong: I object to the question, unless it is further identified. For instance, this might be interest on the lease on the plant, and if so, that would be a proper entry.

The Court: I think that objection is well taken.

Mr. Grey: The witness could indicate when he answers the question as to what the amount was interest on.

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By Mr. Grey:

Ques. You have already said, as I recollect it, that items aggregating \$2,392 was for coupons on the \$35,000 mortgage?

Ans. On the \$40,000 mortgage.

Ques. For coupons on the \$40,000 mortgage, was it?

Ans. Yes, sir.

Ques. Was any more interest paid to Mr. Brown—that was on the \$40,000 mortgage?

20

Ans. Yes, sir; that was on the \$40,000 mortgage.

Ques. Indicate what other interest and from what accounts were credited to Mr. Brown and included in the \$10,000 mortgage?

Ans. On February 4th, 1897, Mr. Brown was credited with \$75 of interest on the Heinz mortgage, which he paid.

Ques. What mortgage was that?

Ans. That was one of the original \$2,500 mortgages. On June 1st Mr. Brown was credited, "by interest on his holdings on original issue of bonds, \$2,100."

30

By Mr. Armstrong:

Ques. Those are the \$35,000 of bonds?

Ans. Yes.

Ques. How much was that?

Ans. \$2,100.

By Mr. Grey :

Ques. Go on.

Ans. On July 1st, 1897, he was credited with interest on the Wilkinson mortgage of \$75. That was one of the original \$2,500 mortgages. On the same date, July 1st, 1897, Mr. Brown was credited with \$80, being interest on the Heinz mortgage of \$2,500 to that date.

10 Ques. What other items was Mr. Brown credited with, or what payments were made by him to the company, which did not go into the complainant's account, and which were included in the \$10,000 mortgage?

(Question withdrawn.)

By Mr. Grey :

20 Ques. Was there any other interest money credited to Mr. Brown or anything—that is, was there any interest on his joint account credited to him?

Ans. Yes, sir; there was interest on his account, being the last item credited to him of \$385.97.

Ques. And that was included in the \$10,000 mortgage?

Ans. It was; it was on the items that went to make up the \$10,000.

Ques. Was that interest on the \$35,000 or the \$45,000?

Ans. No, sir; that was the interest on these interest items; on the other items that went to make up the \$10,000.

30 Ques. What other items was Mr. Brown credited with, or what payments were made by him to the company, which did not go into the complainant's account, and which were included in the \$10,000 mortgage?

Mr. Armstrong: I object to the question on the ground that that is an exclusion. I presume he would have to show what they did go into.

Question withdrawn.

By Mr. Grey:

Ques. What other items made up that account of \$10,000?

Ans. Prior to answering that question, I will say that there is another small item of interest credited to Mr. Brown on April 1st, 1897, interest on loan account, \$5.87. 10

Ques. What other items?

Ans. On June 30th, 1896, Mr. Brown is credited with \$500.

Ques. For what was that expended?

Ans. For wages and freight, paid to the Atlantic City Railroad Company, and some other sundry items.

Ques. What other items, if any, entered into the \$10,000?

Ans. March 4th, 1897, Mr. Brown is credited with \$194.28. 20

Ques. For what was that?

Ans. It was applied in payment of a note due on that date.

Ques. To whom and for what?

Ans. I will have to refer to the bills payable tickler; there is nothing in the cash book to indicate.

Ques. Do you know for what item that paid?

Ans. If I saw the bills payable tickler, I probably might.

Ques. Refer to that book please?

Ans. I should say that that is a note given to Kreff and Sullivan, to pay insurance premiums. 30

By Mr. Armstrong:

Ques. Explain what this insurance was—do you know what policy of insurance the note was given to pay the premium for?

Ans. It was given to pay the premium on policies deposited with the Camden Safe Deposit and Trust Company, as called for in that trustee mortgage.

By Mr Grey:

Ques. What is the next item?

- Ans. There is an item of April 22d, 1897, \$500, that was advanced by Mr. Brown, or applied to reimburse
10 Mr. James for a similar sum that he had advanced, and the money that Mr. James had advanced was originally applied in making the payments to John C. Dietrich, who had erected a grain elevator on the company's property.

Ques. How much was that?

Ans. \$500.

Ques. The Dietrich amount?

Ans. Dietrich's bill was \$400.

Ques. How about the other \$100?

- 20** Ans. Well, \$100 was applied in part payment of a note to myself.

Ques. Given for cash?

Ans. Given for cash, certainly, but as to its application I cannot say.

Ques. What is the next?

Ans. On June 5th, 1897, Mr. Brown was credited with \$197.61, which represented a payment to Kraff & Sullivan, on account of fire insurance premiums, of a similar nature to which I have already referred.

- 30** On July 1st, 1897, Mr. Brown paid the West Jersey Title and Guarantee Company \$104.10, which was credited him, and which represented the expenses incurred in connection with the \$40,000 bond issue.

Ques. What kind of expenses; who were they paid to?

Ans. It represented the insurance of the title.

Ques. And it was paid to the Title Company?

Ans. Yes, sir.

Ques. The West Jersey Title and Guarantee Company?

Ans. Yes, sir.

Ques. What is the next item?

Ans. On June 24th, 1897, Mr. Brown is credited with \$859.13—that money was disbursed in the payment of taxes, freight and payroll.

Ques. How much was for freight?

Ans. The freight was \$212.60.

Ques. And the payroll how much?

Ans. The tax was \$396.53, and the balance was payroll. 10

Ques. What is the next item?

Ans. On June 28th, 1897, Mr. Brown is credited with \$320.15.

Ques. And that was for what?

Ans. It represented payments to Supplee Brothers for feed, feed for the horses, feed and counsel fee to Samuel E. Perry and other sundry items.

November 19th, 1897, Mr. Brown is credited with payment to Kraff & Sullivan of the sum of \$544.28, which represents insurance premiums on policies deposited with the Camden Trust and Safe Deposit Company, trustee on the mortgage. 20

Ques. What is the next item?

Ans. On March 5th, 1898, Mr. Brown is credited with \$50.

Ques. Do you find any item of \$220 about August 16th, 1897, or do you know of any such item?

Ans. Yes, sir; he is credited with \$230 on that date.

Ques. Is that included in the \$10,000 mortgage? 30

Ans. No; that was refunded to him, it was simply a temporary loan.

Ques. It is not included in the \$10,000 mortgage?

Ans. No, sir; it is not.

Ques. What is the next?

Ans. March 5th, 1898, Mr. Brown is credited with \$50 and that was on disbursements to various people for wages and other sundry bills. March 5th, 1898, again, Mr. Brown is credited with \$50.20—that was applied on account of rebuilding.

Ques. That is the plant account?

Ans. Yes, sir.

Ques. What is the next?

10 —that was expended in behalf of hardware for rebuilding. March 12th, 1898, again Mr. Brown is credited with \$100, also expended in behalf of rebuilding. March 19th, 1898, Mr. Brown is credited with \$240, also expended in behalf of rebuilding. March 26th, 1898, Mr. Brown is credited with \$203, also expended in behalf of rebuilding. March 26th, 1898, again Mr. Brown is credited with \$70, expended in behalf of freight in connection with rebuilding.

Ques. Freight for what?

20 Ans. Freight on lumber or sand or something in connection with the rebuilding.

Ques. What is the next?

Ans. April 2d, 1898, he is credited with \$255—that money was expended in behalf of rebuilding. April 9th, 1898, Mr. Brown is credited with \$250—that money was also expended in behalf of rebuilding. July 29th, 1898, Mr. Brown is credited with \$75, but that money was repaid to him on July 30th. July 30th, 1898, he is credited with \$40—

Ques. What is that for?

30 Ans. That was money paid to the Western Title and Guarantee Company; it was a further insurance of the title. On January 1st, 1899—that is not correct. On December 1st, 1898, he is credited with \$1,200 of interest on bonds, but I have already referred to that. On January 1st, 1898, he is credited \$225.06, being a note paid to the Wilkinson Manufacturing Company; that was the

Wilkinson Manufacturing Company that installed a part of the fire-room equipment, what they called stokers, a kind of equipment put underneath the boilers, doing away with the putting of coal in by hand, automatic feeders of coal to the fires.

Ques. An attachment to the boilers?

Ans. Yes, sir.

Ques. Go on; what is the next?

Ans. July 18th, 1898, Mr. Brown is credited with \$75 paid to J. M. Watson—that is for supplies and findings. **10**

Ques. What do you mean by "supplies?"

Ans. Belting and such things; they were a sundry furnishing house, and supplied things of that description.

Ques. What is next?

Ans. That is all the items that go to make up the \$10,000 mortgage.

Ques. As to the other mortgage, \$7,235, which was assigned to Mr. Brown to Mrs. Ballingall—please detail the items which went to make up that account and state what they were expended for?

Ans. That mortgage was given— **20**

Ques. For a pre-existing account?

Ans. Yes, sir; it was given for a pre-existing account.

Ques. And the account was in the name of Bessie Lisle Ballingall?

Ans. It was.

Ques. What did that account cover—did it cover only the items of Mrs. Ballingall or was it an aggregation of accounts?

Ans. It represented transfers from Peter Ballingall's account, and that in turn represented transfers from Joseph R. James' account, which originally came from the account of C. A. Furbush joint account. **30**

Ques. And the Furbush joint account represented what?

Ans. Moneys loaned to us on notes that he had discounted for us, and finally taken up, independent of any item referred to in my testimony on Monday.

Ques. Was Mr. Brown interested in the joint account?

Ans. Yes, sir; I beg your pardon, that account was \$21,000, which was transferred to Joseph R. James' account, and my own account, I think, represented mostly items that Mr. Furbush alone was interested in.

Ques. So far as the joint account went, was Mr. Brown interested in that account?

Ans. He was a half owner in that account.

10 Ques. How far back do the items finally included in the Bessie L. Ballingall account—how far back do they go—when do they begin?

Ans. The latter part of 1896. There was a credit of "C. A. Furbush loan account of \$21,362.03," and that was transferred as follows: To Peter Ballingall, loan account, \$14,387.51; and to Joseph R. James' loan account, \$6,974.52. Thus cleaning out the C. A. Furbush loan account.

Ques. Now, please give us the items which finally went to make up the consideration of the Bessie L. Ballingall mortgage?

20

Ans. In that amount that was credited to C. A. Furbush of \$21,362.03, there was two notes that was originally made on May 31st and June 11th, 1894, of \$5,000 each. These notes were renewed from time to time, and when this transfer was made to Peter Ballingall and Joseph R. James, those notes were current, otherwise they were held in a bank discounted, and they were included in the amount that was transferred to me of \$14,387.51. When they matured Mr. Furbush took them up and they were assigned to him, those notes

30 were, so that they became part of the amount that the company was indebted to him. Those two items of \$5,000 each, the proceeds of the notes were used entirely in payment of the buildings or in payments made to the contractors in June and July, 1894. One of these notes of \$5,000 was assigned by him to my wife, Bessie Lisle Ballingall, and the account was transferred to

her, and it was surrendered by her on May 1st, 1901, when she received this mortgage from the company.

By the Court:

Ques. And that \$5,000 note was part of the \$7,235 mortgage?

Ans. It was.

By Mr. Grey.

10

Ques. What made up the balance?

Ans. The balance was made up as follows:

On May 13th, 1897, they were owing me \$18,740.60, which included that \$14,387.51 transferred from the C. A. Furbush account, which I have already referred to. And they were owing me some other items in addition to that, but I surrendered due bills for a number of small items representing loans I had made to them from time to time and other items Mr. Furbush transferred to me, and took in return from it \$15,000 of preferred stock, which was authorized on May 13th, 1897. I did not surrender one of these notes of \$5,000, but I surrendered the other one, and took a due bill from the company for the balance which they owed me, in addition to the \$5,000, at the time.

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By Mr. Armstrong:

Ques. How much was that balance, if you please?

Ans. I think they owed me between \$7,000 and \$8,000; the balance would be between \$2,000 and \$3,000 of that second \$5,000 note.

30

By Mr. Grey:

Ques. What was that balance expended for?

Ans. It was the balance of that second \$5,000 note, and, as I have already testified, the total proceeds of those two notes—

Ques. What other items went into this Bessie Lisle Ballingall mortgage?

The Court: There was a \$5,000 and the balance due him of between two and three thousand dollars.

10 By Mr. Grey:

Ques. Did any other items go into that mortgage; if so, what?

Ans. Well, in my account, prior to its transfer to Bessie L. Ballingall, there were numerous short loans, and the repayment of those short loans, as the account will show, from time to time, and they thus speak for themselves in the books—and then Bessie Lisle Ballingall—

20 Ques. What do those loans amount to?

Ans. They were numerous; I would loan them \$50 or \$100—sometimes \$50 and sometimes \$100 or more, and I would get it back again from them a few days later.

Ques. They did not go into the mortgage?

Ans. No, sir; I only referred to the account.

Ques. Was there any money due to Bessie L. Ballingall on her own account, when this mortgage was given?

Ans. Yes, sir; she loaned money from time to time and received payment back, and there were some other

30 accounts between them—(interrupted)

Ques. Had she made any loan to the company which had not been paid back?

Ans. She made one or two loans which probably cannot be identified as having been paid back, but most of the loans had been paid back, I think.

Ques. Was there any balance due her on her loan account, included in the mortgage?

By the Court:

Ques. What made up the balance between the \$5,000 and the \$7,235?

Ans. On December 24th, 1900, Bessie Lisle Ballingall advanced to the company \$100 to pay a bill of the refining company, and H. W. Kirkbride, the plumber—

By Mr. Grey:

Ques. How much went to the plumber, and how much to the refining company? 10

Ans. I am referring to another book which is not offered in evidence.

Ques. What does it state—what book is it?

Ans. It is marked "Cash book," and begins in October, 1899.

Ques. Is that one of the books of the company?

Ans. It is.

Mr. Grey: I offer the book in evidence. 20

Mr. Armstrong: I make the same objection to that book as has been made to the others.

The Court: I will admit it.

(Marked Exhibit D8.)

The Witness: There was \$75.20 paid to the Atlantic Refining Company, \$70.28 paid to Kirkbride, and \$40 paid to a carpenter for work done in the cottage. 30

Ques. What was the money paid to the Refining Company for—for oil or vinegar?

Ans. It must have been oil, but I cannot recall why the company should pay so much for oil.

Ques. What other items entered into the amount for which the mortgage was given?

Ans. March 14th, 1900, \$5.20. There was a bill that she paid to William Heil Company.

Ques. For what?

Ans. For horse feed.

Ques. What is next?

Ans. And on January 10th, 1900, \$200.50, money that she advanced to pay a note of the Atlantic City Flour and Feed Company, for \$200, that they had loaned to the Citizens' Ice and Cold Storage Company.

10

Ques. What was done with the proceeds?

Ans. The money was expended in carpenter work at the cottage; we were just extending the cottage and putting on a new roof.

By Mr. Armstrong:

Ques. A cottage on the grounds of the company?

20

Ans. Yes, sir.

By Mr. Grey:

Ques. What other items have you?

Ans. There is another credit of \$752.34.

Ques. What is that for?

Ans. That was three notes that I held and endorsed over to her, money that I had advanced to the company, and I received these notes in return, and it would appear that the moneys that I had advanced to the company was used in making a payment to William F. Mead & Son.

30

Ques. What for?

Ans. Coal supplied to the Citizens' Ice and Cold Storage Company.

Ques. What is the next item?

Ans. There are no other items with the exception of the balance due on the \$5,000 note, and the balance on the other note to which I have already referred.

Ques. As I understand you, the items making up the \$7,235 for the mortgage so given to Bessie L. Ballingall, was a balance due on a note for \$5,000, which you held and transferred to Mrs. Ballingall; is that correct?

Ans. Yes, sir.

Ques. That amounted to about how much?

Ans. \$5,643.51; that was the balance on September 10
30th, 1899.

Ques. And there was a balance due on the note of \$5,643.41?

Ans. Yes, sir; one note was \$5,000, and there was a balance of \$643.51 due on the other note.

Ques. And in addition to that there was \$752.34 due to Mrs. Ballingall on the three notes given for coal?

Ans. Yes, sir.

Ques. And there was \$200.50 to the Atlantic City Flour and Feed Company?

Ans. Yes, sir. 20

Ques. Which was all spent for plant?

Ans. Yes, sir; there was carpenter work at the cottage, putting on a new roof, and then there was an item of \$5.20 for horse feed; I have given you that already.

Ques. Was there any item of \$285.18?

Ans. That I think is for interest due May 1st, 1901.

Ques. Interest on what?

Ans. Interest on these different items I have referred to, to May 1st, 1901. 30

By Mr. Armstrong:

Ques. There was another \$100, which was made up on a part payment, was there not?

Ans. Yes, sir.

Ques. So that there was more than \$100 paid at the time that \$100 was advanced for the plant?

Ans. Yes, sir.

Cross examination.

By Mr. Armstrong:

10 Ques. This tax that you spoke of having been paid by Mr. Brown, they were taxes on the mortgaged premises, were they not?

Ans. Yes, sir; they were.

Ques. The freight that was paid was freight for materials that came there and went into the plant, was it not?

Ans. The item of freight, \$70, on March 26th, 1898, that was freight on material that came there to rebuild the premises.

20 Ques. There was another item of freight, \$213.60, June 1st, 1897, that was freight on material, was it not?

Ans. It might have been; I could not say just exactly. They were rebuilding a portion of the plant that had been destroyed by fire, and there is no doubt in my mind but that it was, but unless I had the freight bill before me I cannot say positively.

Ques. You cannot identify it any more than generally?

Ans. That is all.

30 Ques. There is a payment of \$500 of June 30th, 1896, for wages, freight and sundries—what was that—can you tell generally whether that was generally freight for material that went into the plant or not?

Ans. No, sir, I do not think so; I think that would be freight on coal and other items—we were not receiving any material to rebuild or improve the property at that time.

Ques. It was all in the general work, however?

Ans. Yes, sir.

Re-direct by Mr. Grey:

Ques. When was the insurance paid—there was a fire, was there not?

Ans. Yes, sir; there was a fire.

Ques. How much money did you receive from that?

Mr. Armstrong: I object to that as immaterial.

(Question allowed.)

10

Ans. A little over \$11,000.

By Mr. Grey:

Ques. And that \$11,000; of that you paid \$8,000 to the Camden Trust and Safe Deposit Company on account of the mortgage, didn't you?

Ans. In extinguishment of eight bonds, and the balance was applied wholly to the rebuilding and was not sufficient to rebuild the premises.

20

By the Court:

Ques. Do you know what the total construction account amounted to?

Ans. I can tell you from the statement of assets and liabilities; I think it was considerably over \$100,000.

Ques. Can you tell me how it was made up generally?

Ans. Yes, sir. The original contract for the ice refrigerating machinery was \$26,500. Then there was \$3,600 for the well that brought it to \$30,000; and then there were the boilers and the pumps, those of course we had to purchase, which probably would bring it up to \$35,000, and the ground cost us \$9,000; that brings it up to \$44,000; and there would probably be \$50,000 in buildings.

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Ques. That you put up?

Ans. Yes, sir; we had a very fine grain elevator, a five-story cold storage plant, and refrigerating plant, and a nice cottage on the premises; we spent some money overhauling the cottage, and we had a very fine equipment, and about thirty head of horses and fifteen wagons.

Ques. Where did you get the money to pay for this land and these improvements, beyond the \$40,000 mortgage?

10 Ans. Well, we got something in excess of \$20,000 in subscriptions to capital stock, and we borrowed money from parties.

Mr. Grey: I offer in evidence the mortgage made by the Citizens' Ice and Cold Storage Company and the Purity Ice Company.

(Marked Exhibit Dg.)

20 By Mr. Grey:

Ques. I show you a mortgage made by the Citizens' Ice and Cold Storage Company to the Pennsylvania Iron Works, which has just now been marked Exhibit Dg, did the Citizens' Ice and Cold storage Company pay anything on that mortgage?

Ans. They did not.

Defendant rests.

30 Case closed.

CERTIFICATE OF INCORPORATION OF "THE
CITIZENS' ICE AND COLD STORAGE
COMPANY."

This is to certify that we, Charles A. Furbush, William Martin, Peter Ballingall, James S. Cochran, Winfield S. Laumaster, Louis Kuehnle, David J. Fow, Zachary T. Baldwin and Horace J. Keller, do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning corporations," approved April 7th, 1875, and the several supplements thereto, for the purposes hereinafter mentioned, and to that end we do by this, our certificate, set forth:

First. That the name which we have assumed to designate such company and to be used in its business and dealings is "The Citizens' Ice and Cold Storage Company."

Second. That the place in this State where the business of said company is to be conducted, and its principal office, is Atlantic City, in the county of Atlantic, and any other city or cities of the United States or Territories in which the company may require from time to time to transact its business. And the objects for which the company is formed are the purchase, manufacture and sale of ice, distilled water, hay, straw, feed, grain, coal, kindling wood, and all other articles of fuel and the maintenance of a plant for these purposes, and also for cold storage purposes; including the acquisition by purchase, lease or otherwise, of all necessary lands and buildings thereon, equipments thereof and machinery and other articles necessary or convenient for the use in connection with the carrying on of the business of manufacturing and selling as aforesaid; and in general the engaging in any and all other business whatever necessary or convenient in con-

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nection with the business of said company, and the doing of any other act or acts, thing or things, incidental to, growing out of or connected with, said business or any part or parts thereof; to issue bonds secured by a mortgage or mortgages upon the property and franchises of said company, and to sell the same for the purpose of raising money with which to erect buildings and machinery, and otherwise to improve said lands.

10 Third. That the total amount of the capital stock of said company is sixty thousand dollars; the number of shares into which the same is divided is twenty-four hundred shares, and the par value of each share is twenty-five dollars; the amount with which the said company will commence business is five thousand seven hundred and twenty-five dollars, which is divided into two hundred and twenty-five shares of a par value of twenty-five dollars each.

Fourth: The names and residences of the stockholders and the number of shares held by each are as follows, to wit:

20	Name.	Residence.	No. of Shares.
	Charles A. Furbush,	Philadelphia, Penna.	40
	Winfield S. Laumaster,	Atlantic City, N. J.	40
	William Martin,	Philadelphia, Penna.	40
	Peter Ballingall,	Philadelphia, Penna.	40
	David J. Fow,	Philadelphia, Penna.	20
	James S. Cochran,	Philadelphia, Penna.	20
	Louis Kuehnle,	Atlantic City, N. J.	10
	Horace J. Keller,	Atlantic City, N. J.	10
30	Zachary T. Baldwin,	Atlantic City, N. J.	5

Fifth. The period at which said company shall commence is the twenty-sixth day of April, A. D. 1894, and the period at which it shall terminate is the twenty-sixth day of April, Anno Domini nineteen hundred and forty-four.

In witness whereof, we have hereunto set our hands and seals this twenty-fifth day of April, eighteen hundred and ninety-four.

C. A. FURBUSH.	[SEAL.]	
WILLIAM MARTIN.	[SEAL.]	
PETER BALLINGALL.	[SEAL.]	
JAS. S. COCHRAN.	[SEAL.]	
W. S. LAUMASTER.	[SEAL.]	
LOUISE KUEHNLE.	[SEAL.]	
DAVID J. FOW.	[SEAL.]	10
Z. T. BALDWIN.	[SEAL.]	
HORACE J. KELLER.	[SEAL.]	

Signed, sealed and delivered in the presence of

As to Laumaster, Kuehnle, Baldwin and Keller,
CLIFTON C. SHINN.

As to remainder,

JAS. GOODWIN. 20

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

Be it remembered, that on this twenty-fifth day of April, eighteen hundred and ninety-four, before me, one of the Masters in Chancery of the State of New Jersey, personally appeared Winfield S. Laumaster, Louis Kuehnle, Horace J. Keller, and Zachary T. Baldwin, who I am satisfied are the subscribers mentioned in the above certificate, and having first made known to them the contents thereof, they severally acknowledged that they severally signed, sealed and delivered the same as their and each of their voluntary act and deed. All of which is hereby certified. 30

CLIFTON C. SHINN,
M. C. C. of N. J.

STATE OF PENNSYLVANIA, } ss.
 CITY OF PHILADELPHIA, }

10 Be it remembered, that this twenty-seventh day of April, eighteen hundred and ninety-four, before me, one of the Masters in Chancery of the State of New Jersey, personally appeared Charles A. Furbush, William Martin, Peter Ballingall, David J. Fow and James S. Cochran, who I am satisfied are the subscribers mentioned in the above certificate, and having first made known to them the contents thereof, they severally acknowledged that they severally signed, sealed and delivered the same as their and each of their voluntary act and deed. All of which is hereby certified.

THOMAS B. HARNED,
 M. C. C.

20 Endorsed, "Recd. April 28, A. D. 1894, & Recorded in the Clerk's office of Atlantic Co., at May's Landing, N. J., in Book No. 1, Certificates of Incorporations, folio 91, &c.

LEWIS EVANS,
 Clk."

"Filed, May 2, 1894.
 HENRY C. KELSEY,
 Secretary of State."

IN CHANCERY OF NEW JERSEY.

Between

JAMES BROWN,

Complainant,

and

CITIZENS' ICE AND COLD STORAGE

COMPANY, ET ALS.,

Defendants.

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 MR. E. A. ARMSTRONG, for complainant.

 MR. NORMAN GREY, for defendant, Pennsylvania Iron
 Works.

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 BERGEN, V. C.

The defendant company gave two mortgages, one for \$10,000 to the complainant, another for \$7,235 to Annie Lisle Ballingall, which she assigned to the complainant.

There is no dispute about the amount of the loans, nor that they represent debts due by the company, but the defendant insists that under the terms of defendant's charter, as expressed in the following words:

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"And the doing of any other act or acts, thing or things, incidentally to grow out of, or connected with said business or any part or parts thereof; to issue bonds secured by mortgage or mortgages upon the property

and franchises of said corporation, and to sell the same for the purpose of raising money with which to erect machinery, and otherwise to improve said lands,"

the corporation had no authority to mortgage its property, other than for the purposes above stated, and as the money, to secure which the two mortgages were given, was not applied to the payment of debts due for "machinery and otherwise to improve said lands," the mortgages are ultra vires, and cannot stand as encum-

- 10** brances on the land. In my opinion, the general power given a corporation under our act, "to mortgage its property," is not restricted by the terms of the charter invoked. That clause has reference alone to the issuing of bonds in the usual commercial form, of a negotiable character, to be sold and passed by delivery, and was not intended to, and does not, prevent the corporation from securing to a creditor its debt by way of mortgage, in common form, and the power to do so is fully conferred by the clause in the charter which
- 20** authorizes the company "to do any act or thing incidentally to grow out of or in connection with said business," implying the right to borrow money and pledge its property as security. The complainant is entitled to a decree.

