INDEX TO VOLUME III.

	Offered at Page	Printed at Page
Exhibit R-118. First Consolidated Mortgage of Dec., 1895.....	674	1428
Exhibit R-119. Penn. Collateral Indenture, Feb. 1, 1901.....	674	1505
Exhibit R-120. Erie R. R. Co. General Mortgage, April 1, 1903.....	674	1560

New Jersey State Library

Exhibit R-118.

EXHIBIT R-118.

FIRST CONSOLIDATED MORTGAGE DEED

ERIE RAILROAD COMPANY

TO

THE FARMERS' LOAN AND TRUST COMPANY

TRUSTEE

Dated December 10, 1895.

STETSON, TRACY, JENNINGS & RUSSELL
GENERAL COUNSEL
15 Broad Street, New York

Exhibit R-118.

This Indenture, made this tenth day of December, in the year one thousand eight hundred and ninety-five, between

ERIE RAILROAD COMPANY, a corporation created by, and existing under, the laws of the State of New York, hereinafter called the "Railroad Company," party of the first part, and

THE FARMERS' LOAN AND TRUST COMPANY, of New York, a corporation created by and existing under the laws of the State of New York, hereinafter called the "Trustee," party of the second part.

WHEREAS, the Railroad Company, party of the first part, owns, possesses, controls or leases divers lines of railway together with franchises, rights, privileges, lands, tenements and hereditaments thereunto belonging or appertaining, on which lines of railway or various portions thereof and of the equipment thereof, bonds, secured by mortgages, and other liens are now outstanding;

AND WHEREAS, the Railroad Company owns various stocks and bonds, including stock and bonds of the Chicago and Erie Railroad Company, a corporation of Indiana;

AND WHEREAS, all such railroads, properties, leaseholds, stocks and bonds have been received by the Railroad Company by, under or in pursuance of a certain plan of reorganization of the New York, Lake Erie and Western Railroad Company and subordinate companies, and of the transfer to it, or for its benefit, of various stocks, bonds and other properties so transferred to or for its benefit by Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas the Committee named in the Certificate of Incorporation of the Railroad Company, upon the express promise and agreement of the Railroad Company, among other things, to make, execute, issue and use its bonds as herein provided, including a limited issue thereof from time to time to be made to the said Coster, Fitzgerald and Thomas, jointly and not severally, or their survivors or successors, and further issues thereof to be made for the redemption and acquisition of bonds and stocks, and equipment liens and for new acquisitions, construction and betterments, all as herein provided;

Exhibit R-118.

AND, WHEREAS, the Board of Directors of the Railroad Company, at a meeting thereof held at New York on the nineteenth day of November, in the year eighteen hundred and ninety-five, adopted a resolution in the following words; that is to say:

> *Resolved,* That the President and the Secretary of the Erie Railroad Company be, and they are hereby, authorized and directed, in its behalf and under the corporate seal, when approved by the stockholders, and in form substantially that now submitted to this Board, to execute and deliver a mortgage or deed of trust upon the property and franchises of the corporation to be known as its "First Consolidated Mortgage Deed," to The Farmers' Loan and Trust Company, as Trustee, to secure two issues of bonds, one to the aggregate amount of $35,000,000, to be called "Prior Lien Bonds," and the other and remaining issue of bonds, to the aggregate amount of $140,000,000, to be called "General Lien Bonds," the principal of both such issues of bonds to be payable in gold coin of the United States, of the present standard of weight and fineness, at the office or agency of this Company in the City of New York, on the 1st day of January, 1996, with interest thereon at the rate of four per cent. per annum, except that for two years from July 1st, 1896, the General Lien bonds shall bear interest at the rate of three per cent. per annum; all interest to be payable semi-annually in like gold coin at the said office or agency on the first days of January and July in each year; such bonds to be issued and disposed of, on the terms and conditions, for the purposes and in the manner set forth in said form of mortgage.

AND WHEREAS, it was also resolved by the Board of Directors of the Railroad Company at said meeting that the President, or any Vice-President, and the Secretary, or any Assistant Secretary of the Railroad Company or of any railroad company being lawful and sole successor to the Railroad Company for the time being, should from time to time, as directed by the Board of Directors of the Railroad Company or of its said successor, execute, in the behalf and name of the Railroad Company, and under its corporate seal, the two issues of bonds, to be secured by the said mortgage to the aggregate amount of one hundred and seventy-five million dollars ($175,000,000), the said two issues to be respectively: "Prior Lien Bonds," for an aggregate principal amount of $35,000,000, and "General Lien Bonds," subordinate and subject in lien to the Prior Lien Bonds,

for an aggregate principal amount of $140,000,000; such bonds to be substantially of the following tenor, to wit:

[FORM OF PRIOR LIEN BOND.]

No. $1,000.

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

PRIOR LIEN FOUR PER CENT. GOLD BOND.

Secured by First Consolidated Mortgage Deed.

KNOW ALL MEN BY THESE PRESENTS, That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder, One Thousand Dollars in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, N. Y., with interest at the rate of four per cent. per annum from January 1, 1896, payable semi-annually at said office or agency in like gold coin on the first days of January and July in each year, but only upon surrender of the annexed coupons therefor as they severally mature.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom, under or by reason of any present or future law, the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon and registered bonds of the Railroad Company, known as "Prior Lien Bonds," duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such Prior Lien Bonds at any one time outstanding shall never exceed the total sum of $35,000.000. All of such Prior Lien Bonds are equally secured by a mortgage deed dated December 10th, 1895, executed by said Railroad Company to the Farmers' Loan and Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and

franchises mortgaged and the nature and extent of the security and the rights of the holders of said bonds under the same.

This bond may be registered as to principal in the owner's name on the Company's books, at its office or agency in the City of New York, such registry being noted on the bond by the Company's transfer agent, after which no transfer shall be valid unless made on the Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored; but it may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons by delivery merely. This bond is also exchangeable for registered bonds without coupons, as provided in said mortgage or deed of trust.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed of the Trustee under said mortgage deed.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or Assistant Secretary, and coupons for said interest with the engraved signature of its Treasurer to be attached hereunto this tenth day of December, 1895.

ERIE RAILROAD COMPANY,

By

Attest:

President.

Secretary.

Exhibit R-118.

[FORM OF INTEREST COUPON, OF WHICH THE FIRST IS TO BE PAYABLE JULY 1, 1896.]

On the first day of , , Erie Railroad Company will pay the bearer at its agency in the City of New York, N. Y., twenty dollars in gold coin, without deduction for taxes, being six months' interest then due on its Prior Lien Bond No. .

Treasurer.

[FORM OF REGISTERED PRIOR LIEN BOND.]

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

PRIOR LIEN FOUR PER CENT. REGISTERED GOLD BOND.

Secured by First Consolidated Mortgage Deed.

No. P. R. $

KNOW ALL MEN BY THESE PRESENTS: That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay or assigns, the sum of dollars, in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, and to pay interest thereon from the first day of January or July, as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, payable semi-annually in like gold coin, at said office or agency, on the first days of January and July in each year, until payment of said principal sum.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom under or by reason of any present or future law; the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon bonds and registered bonds of the Railroad Company, known as Prior Lien bonds,

duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such Prior Lien bonds, both coupon and registered, at any one time outstanding, shall never exceed the total sum of $35,000,000. All of such Prior Lien bonds are equally secured by a Mortgage Deed, dated December 10th, 1895, executed by said Railroad Company to the Farmers' Loan and Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged, and the nature and extent of the security and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the Company's books at its office or agency in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage deed.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage deed.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or Assistant Secretary this

day of

ERIE RAILROAD COMPANY,

By

President.

Attest:

Secretary.

Exhibit R-118.

[FORM OF GENERAL LIEN BOND.]

No. $1,000.

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

GENERAL LIEN GOLD BOND.

Secured by First Consolidated Mortgage Deed.

KNOW ALL MEN BY THESE PRESENTS, That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder, One Thousand Dollars in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, N. Y., with interest from July 1, 1896, at the rate of three per cent. per annum for two years and at the rate of four per cent. per annum thereafter, payable semi-annually at said office or agency in like gold coin on the first days of January and July in each year, but only upon surrender of the annexed coupons therefor as they severally mature.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom, under or by reason of any present or future law, the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon and registered bonds of the Railroad Company, known as "General Lien Bonds," duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such General Lien Bonds at any one time outstanding shall never exceed the total sum of $140,000,000.

All of such General Lien Bonds are equally secured by a mortgage deed dated December 10th, 1895, executed by said Railroad Company to The Farmers' Loan & Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged and the nature and extent of the security and the rights of the holders of said bonds under the same.

Exhibit R-118.

This bond may be registered as to principal in the owner's name on the Company's books, at its office or agency in the City of New York, such registry being noted on the bond by the Company's transfer agent, after which no transfer shall be valid unless made on the Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored; but it may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons by delivery merely. This bond is also exchangeable for registered bonds without coupons, as provided in said mortgage or deed of trust.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by a certificate hereon endorsed, of the Trustee under said mortgage deed.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or Assistant Secretary, and coupons for said interest with the engraved signature of its Treasurer to be attached hereunto, this tenth day of December, 1895.

ERIE RAILROAD COMPANY,

By

President.

Attest:

Secretary.

[FORM OF INTEREST COUPON, OF WHICH THE FIRST IS TO BE PAYABLE JANUARY 1, 1897.]

On the first day of ERIE RAILROAD COMPANY will pay the bearer at its agency in the City of New York, N. Y., Dollars in gold coin, without deduction for taxes, being six months' interest then due on its General Lien Bond No.

Treasurer.

Exhibit R-118.

[FORM OF REGISTERED GENERAL LIEN BOND.]

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

GENERAL LIEN REGISTERED GOLD BOND.

Secured by First Consolidated Mortgage Deed.

No. G. R. $

KNOW ALL MEN BY THESE PRESENTS: That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay

or assigns, the sum of dollars in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, and to pay interest thereon from the first day of January or July, as the case may be, next preceding the date hereof, at the rate of three per cent. per annum from July 1st, 1896, to June 30th, 1898, and four per cent. per annum thereafter, payable semi-annually in like gold coin, at said office or agency, on the first days of January and July in each year, until payment of said principal sum.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay, or to retain therefrom under or by reason of any present or future law; the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon bonds and registered bonds of the Railroad Company, known as General Lien Bonds, duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such General Lien Bonds, both coupon and registered, at any one time outstanding, shall never exceed the total sum of $140,000,000. All of said bonds are equally secured by the Mortgage Deed, dated December 10th, 1895, executed by said Railroad Company to the Farmers' Loan and Trust Company of New York, as Trustee, of all the property

and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged, and the nature and extent of the security and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the Company's books at its office or agency in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage deed.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage deed.

In witness whereof, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or Assistant Secretary, this day of

ERIE RAILROAD COMPANY,

By

President.

Attest:

Secretary.

AND, WHEREAS, The coupons to be attached to said bonds of both issues are to be authenticated by the engraved signature of the present Treasurer or of any future Treasurer of the Railroad Company, or of any successor company, it being intended that the Railroad Company and any such successor company may adopt and use for that purpose the engraved signature of any such Treasurer, notwithstanding the fact that such person

may have ceased to be such Treasurer at the time when any such bonds shall be actually certified and delivered;

AND, WHEREAS, It was further resolved that there shall be endorsed on each of such bonds of both issues a certificate of the Trustee, which certificate shall be the conclusive and only evidence that such bonds are entitled to the security of the mortgage or deed of trust therein mentioned, and that no bond shall be valid or obligatory for any purpose until such certificate shall have been executed by the Trustee, such certificate, in respect of said two issues severally and respectively, to be substantially of the following tenor, viz.:

I.

[FORM OF TRUSTEE'S CERTIFICATE AS TO PRIOR LIEN BONDS.]

This bond is one of the series of Prior Lien Bonds described in the within-mentioned Mortgage Deed, executed by the Erie Railroad Company to the undersigned.

THE FARMER'S LOAN AND TRUST COMPANY,
Trustee.

By

Vice-President.

II.

[FORM OF TRUSTEE'S CERTIFICATE AS TO GENERAL LIEN BONDS.]

This bond is one of a series of General Lien Bonds, described in the within-mentioned Mortgage Deed, executed by the Erie Railroad Company to the undersigned.

THE FARMER'S LOAN AND TRUST COMPANY,
Trustee.

By

Vice-President.

AND WHEREAS, subsequently, to wit, on the 19th day of November, 1895, all the stockholders of the Railroad Company, owning and holding every share of its capital stock, namely, three hundred thousand shares of first preferred stock, one hundred and sixty thousand shares of second preferred stock, and one million shares of the common stock of said corporation,

did, in the manner and form provided by and in Section 2 of the Stock Corporation Law of the State of New York, consent to the issue of this mortgage, which consent is in writing, and has been filed and recorded in the office of the Clerk of the City and County of New York, and also in the office of the Register of the City and County of New York, that being the County in which the Railroad Company has its principal place of business.

AND WHEREAS, the printed form of mortgage submitted to and approved by the Board of Directors at their said meeting, and submitted to the stockholders of the corporation at the time of the execution of their consent as aforesaid, was in the form of this indenture.

AND, WHEREAS, In pursuance of said resolutions and consent and of all and every legal power and authority in it vested, the Railroad Company proposes to make and execute, and from time to time to issue and deliver bonds of both the issues secured hereby.

Now, therefore, this indenture witnesseth:

That in order to secure the payment of the principal and interest of all such bonds at any time outstanding and lawfully issued, as provided in such bonds and in this indenture, and the performance of all the covenants and conditions herein contained,

THE RAILROAD COMPANY, party of the first part,

In consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents with all the covenants and conditions thereof, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto

THE TRUSTEE, party of the second part, its successors and assigns forever:

ALL THE ESTATE, RIGHT, TITLE AND INTEREST of the Railroad Company of, in and to:

Exhibit R-118.

ALL AND SINGULAR the railway of the Railroad Company, from and including Piermont, on the Hudson River, in the State of New York, to and including the terminus of the said railway on Lake Erie at or near Dunkirk, in said State, and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway extending from Hornellsville to Attica, in the State of New York, also that part of the railway known as the Newburgh and New York Railroad, extending from Turners on the main line to Vail's Gate on the Newburgh branch; also the railway formerly belonging to the Lockport and Buffalo Railroad Company and extending from Lockport to Black Rock, both in the State of New York; also the railway formerly belonging to the Erie International Railway Company, and extending from a point of connection with Suspension Bridge and Erie Junction Railroad in Niagara County to International Bridge in Erie County, both in the State of New York; and also all other railways now belonging to the Railroad Company in the States of New York, Pennsylvania and New Jersey, or any of them; also, all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action of whatsoever name or nature in law or in equity conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, or to the New York, Lake Erie and Western Railroad Company, by the Union Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Buffalo, New York and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the Bergen County Railroad, a corporation existing under the laws of the State of New Jersey; by the Buffalo, Bradford and Pittsburg Railroad Company, a corporation existing under the laws of the States of New York and Pennsylvania; by the Rochester and Genesee Valley Railroad Company, a corporation existing under the laws of the State of New York; by the Long Dock Company, a corporation existing under the laws of the State of New Jersey; by the Goshen and Deckertown Railroad Company, a corporation existing under the laws of the State of New York; by the Hoboken Land and Improvement Company, a corporation existing under the laws of the State of New Jersey; by the New York and Fort Lee Railroad Company, a corporation existing

under the laws of the State of New Jersey, and the New Jersey Junction Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Jefferson Railroad Company, a corporation existing under the laws of the State of Pennsylvania; by the Montgomery and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the New York, Lake Erie and Western Docks and Improvement Company, a corporation existing under the laws of the State of New Jersey; by the Paterson, Newark and New York Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Pennsylvania Coal Company, a corporation existing under the laws of the State of Pennsylvania; by the Newark and Hudson Railroad Company, a corporation existing under the laws of the State of New Jersey, and by the Suspension Bridge and Erie Junction Railroad Company, a corporation existing under the laws of the State of New York.

And also all the railroad formerly of the Buffalo and Southwestern Railroad Company, extending from Jamestown, in Chautauqua County, to Buffalo, in Erie County, both in the State of New York, subject only to two mortgages thereon prior to the lien of this indenture; *the first* to secure an issue of bonds for $1,500,000, *the second* executed November 19th, 1895, by the Railroad Company to secure an issue of its bonds for $1,000,000.

And also all the estate, right, title and interest of the Railroad Company in and to certain real estate situate in Hudson County, in the State of New Jersey, known as the Penhorn property, and to two certain other parcels of real estate situate in the County of Passaic, in the State of New Jersey, and known respectively as the Post farm and the Fredericks farm. And also to a certain parcel of land lying west of the Bergen Tunnel, in Hudson County, State of New Jersey, known as the Laundry property. And also all other real estate of the Railroad Company, situate in the State of New Jersey, of every kind and description, and wherever in the said State the same may be situate. Also a tract of land, being about four acres, situate in the Township of Texas, County of Wayne, in the State of Pennsylvania.

And also all the estate, right, title and interest of the Railroad Company of, in and to certain piers, bulkheads and water fronts in the said City of New York, that is to say: Piers 29,

30, 31 and 32, North River, with bulkheads between Piers 30 and 31, 31 and 32, and half the bulkhead between Piers 32 and 33; also the pier at the foot of West Twenty-third street, and the bulkhead between Twenty-second and Twenty-third streets; also the Piers 7 and 8, East River, and the bulkhead between them.

And, also, all tracts of land or interest therein of the Railroad Company lying and being in the following States and counties, namely: counties of Rockland, Orange, Sullivan, Delaware, Broome, Tioga, Chemung, Steuben, Alleghany, Livingston, Wyoming, Genesee, Erie, Niagara, Cattaraugus, Chautauqua and Monroe, in the State of New York; counties of Hudson, Essex, Bergen and Passaic, in the State of New Jersey; counties of Susquehanna, Jefferson, Pike and McKean, in the State of Pennsylvania.

Also all the right, title and interest of every name and nature hereafter acquired by the Railroad Company in or to the property, railroad and franchises now of the New York, Pennsylvania and Ohio Railroad Company, or any branch, extension or leased or operated line thereof or therefrom (except certain lands and interests in lands not immediately appurtenant to said railroad, of which lands and interests the description is on file in the possession of the party of the second part) or in any bonds, stocks or other security of such Railroad Company, or of any successor company or companies, subject to the terms upon which any such acquisition may have been made; provided, however, that nothing herein is intended or shall be construed to affect or limit the reserved right of the Railroad Company at its option to modify from time to time or to elect not to continue the agreement dated November 18th, 1895, under which it is now operating the said New York, Pennsylvania and Ohio Railroad.

Also, all the right, title, estate, interest, property and franchises of the Railroad Company of, in and to any and all other lines of railway, extension and branches now owned, leased or held by the Railroad Company or in which it has any interest whatsoever, wherever located, notwithstanding the same may not be particularly set forth or described in this indenture.

Also all the right, title, estate, interest and property of the Railroad Company in and to any and all lines of railway, extensions and branches, including the franchises appurtenant

thereto, and any and all bonds, stocks and other property of every kind or description (notwithstanding that the same are not now particularly set forth in this indenture), which, from time to time, in the manner hereinafter provided, shall be designated in the verified certificates to be furnished by the Railroad Company to the Trustee whenever it shall make any call for any of the $5,000,000 "Prior Lien Bonds" reserved under the provisions of this indenture for enlargement and improvement of terminal facilities, including elevation of tracks at Jersey City, Buffalo and elsewhere, additional wharf facilities at New York, reducing grades, constructing double track and purchasing additional equipment; or whenever it shall make any call for any of the $17,000,000 "General Lien Bonds" reserved under the provisions of this indenture for construction, equipment, additions to or improvements or purchases of property; and also any and all franchises and rights of any kind relating to any and all lines of railway, extensions, branches and other property constructed or acquired from the use of any such Prior Lien bonds or General Lien bonds or their proceeds.

INCLUDING any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine-houses, freight-houses, wood-houses, machine shops and other shops, turn-tables, water-stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind in anywise or at any time belonging or appertaining to any and every line of railway at any time subject to the lien of this indenture, or to any branch or operated line thereof, or provided for use thereon, or in connection therewith; and any and all lands designed for depots, warehouses or other structures at any terminus, or on or along such lines of railway, or upon or along any such branch or operated line; and any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels now or hereafter acquired or provided for use upon such lines of railway or branches, or upon any other line or branch or upon any operated line; and any and all lease-holds, leases, rights under lease, or contract, covenants and agreements, terms or parts of terms; and any and all property, real or personal, of every kind and description, now or hereafter

acquired for use upon, or in connection with, or for the purpose of, such lines of railway, or any such branch, or operated line; and any and all corporate rights, privileges and franchises which the Railroad Company now has, or hereafter can or shall acquire, possess or exercise in, to, upon, or in any respect of such lines of railway or branches or any operated line, or any part thereof, necessary for, or appertaining to, the construction, maintenance or operation of such lines of railway or any such branch or operated line, or any part thereof; and any and all the rents, issues, profits, tolls and other income of such lines of railway, and of any and all branches and operated lines; and also any and all the rights, privileges, franchises, properties, real or personal, rights and things which the Railroad Company may or shall hereafter possess, or become entitled to possess, for the purposes of, or in connection with, such lines of railway or any such branch or operated line.

TOGETHER with all and singular the franchises, rights and privileges now or hereafter appurtenant to or used in connection with, the lines of railway above mentioned, or any branch or operated line thereof.

ALSO the following shares of stock, to be transferred to the Trustee as hereinafter provided:

Exhibit R-118.

Name of Company.	Par Value Per Share.	No. of Shares.
Buffalo, New York and Erie Railroad Company	$100	8,238
Jefferson Railroad Company	50	41,909
Buffalo, Bradford and Pittsburgh Railroad Company	100	21,899
Bergen County Railroad Company	100	2,000
Middletown and Crawford Railroad Company	50	1,600
Newark and Hudson Railroad Company	100	2,500
Paterson, Newark and New York Railroad Company	50	5,000
Bergen and Dundee Railroad Company	100	400
Long Dock Company	100	8,000
New York, Lake Erie and Western Docks and Improvement Company	100	6,040
Suspension Bridge and Erie Junction Railroad Company	100	4,992
Buffalo Creek Railroad Company	100	1,250
Chicago and Erie Railroad Company	100	1,000
Pavonia Ferry Company	100	1,000
Hillside Coal and Iron Company	100	10,000
Northwestern Mining and Exchange Company	100	5,000
Blossburg Coal Company	100	10,000
Tioga Railroad Company, Preferred Stock	50	3,794
Tioga Railroad Company, Common Stock	50	7,818
Elmira State Line Railroad Company	100	610
Arnot and Pine Creek Railroad Company	100	2,550
Union Steamboat Company	100	10,000
Union Dry Dock Company	500	300
Conesus Lake Railroad Company	50	375

Also the following bonds, to be delivered to the Trustee as hereinafter provided:

$185,000 bonds of the Buffalo, Bradford and Pittsburgh Railroad Company, secured by its mortgage dated January 1st, 1865, to Dorman B. Eaton, as Trustee.

$57,200 bonds of the Middletown and Crawford Railroad Company, secured by its mortgage dated April 1st, 1871, to Jonathan M. Matthews, Ambrose S. Murray and Alexander Crawford, as Trustees.

$250,000 bonds of the Newark and Hudson Railroad Company, secured by its mortgage dated September 20th, 1871, to H. N. Otis, as Trustee.

$499,000 bonds of the Paterson and Newark Railroad Company, secured by its mortgage dated January 1st, 1868, to W. C. Rushmore and C. Walsh, as Trustees.

$604,000 bonds of the New York, Lake Erie and Western Docks and Improvement Company, secured by its mortgage dated June 1st, 1883, to The Farmers' Loan and Trust Company, as Trustee, as modified by the supplemental contract dated

$1,900,000 bonds of the New York, Lake Erie and Western Coal and Railroad Company, secured by its mortgage dated May 15th, 1882, to the Metropolitan Trust Company of the City of New York and J. Lowber Welsh, of the City of Philadelphia, as Trustees.

$35,000 bonds of the Suspension Bridge and Erie Junction Railroad Company, secured by its mortgage dated June 1st, 1870, to Horatio N. Otis, as Trustee.

$9,776,000 Income bonds of the Chicago and Erie Railroad Company, secured by its mortgage dated August 21st, 1890, to New York Security and Trust Company and John B. Elam, as Trustees.

Also, all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company or any one in its behalf to the Trustee, which is hereby authorized to receive any property, at any and all times as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of bonds issued or to be issued hereunder, and to hold and apply any and all such property subject to the terms hereof.

It being intended to include within the grant of this indenture all lines of railway, extensions, branches, real estate and railroad property conveyed to or acquired by, or for the benefit of, the Railroad Company, party of the first part hereto, under or in pursuance of the decree confirming the sale, and the deeds of the Special Master and others executed or to be executed pursuant to such decree, in the suit of Trenor Luther Park against The New York, Lake Erie and Western Railroad Company and The Farmers' Loan and Trust Company; The Farmers' Loan and Trust Company against The New York, Lake Erie and Western Railroad Company and Trenor Luther Park; Consolidated cause, in equity, in the Circuit Court of the

United States for the Eastern District of New York, and in the various decrees ancillary thereto, wherein also foreclosure was had of the second consolidated mortgage made by the New York, Lake Erie and Western Railroad Company, dated October 5th, 1878, to the Farmers' Loan and Trust Company, of New York, Trustee.

To have and to hold, the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stock and bonds hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee, its successor or successors and assigns forever:

But in trust, nevertheless, as to each of the said two issues of bonds respectively, viz., *primarily* the $35,000,000 "Prior Lien Bonds" as one issue, and *secondarily* the $140,000,000 "General Lien Bonds," as a separate, subordinate and subject issue, for the equal, proper and proportionate benefit and security severally and respectively of all and every the present and future holders, *first,* of any and every "Prior Lien Bond," and, *second,* and subject thereto, of any and every "General Lien Bond" issued under and secured by this indenture, as well all those now issued as all hereafter issued in addition thereto or by way of substitution or exchange, in accordance with the terms of this indenture, and for enforcing payment thereof when payable, in accordance with the true intent and meaning of the stipulations of this indenture, and of the said bonds and interest obligations respectively, so that the "Prior Lien Bonds," without regard of time of actual issue, shall have priority and preference, as to both principal and interest, over the "General Lien Bonds," and that the General Lien bonds shall all be subject to the prior and superior lien of the Prior Lien bonds; but without preference, priority or distinction as to lien or otherwise, of any one bond of either of such two issues over any other bond of the same issue, by reason of priority in the execution, delivery or negotiation thereof, and so that each and every bond of either of such two issues, issued and to be issued as aforesaid, shall have, under and by this indenture, the same right, lien and privilege as every other bond of that issue, and the principal and interest of every such bond of either issue shall, subject to the terms hereof, be secured hereby equally and proportionately with every other bond of that issue, as though all had been made,

executed, delivered and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of all such bonds shall take effect from the day of the date of this indenture, without regard to the date of actual issue, sale or disposition thereof; and so that the lien and security of this indenture, and of all bonds issued hereunder, shall take effect from the day of the date hereof as though upon such day, actually issued, sold and delivered to, and in the hands of, innocent holders for value.

AND IT IS HEREBY EXPRESSLY COVENANTED that all such bonds and the coupons for interest thereon are to be issued, certified, delivered, received and negotiated, and that the mortgaged properties and franchises are to be held by the Trustee subject to the following further covenants, conditions and provisions, viz.:

ARTICLE ONE.

All bonds hereby secured shall, from time to time, by the Railroad Company be executed and delivered for certification to the Trustee, which shall thereupon certify and deliver the same as provided in this Article. Only such bonds as shall bear the Trustee's certificate duly endorsed thereon and duly signed shall be secured by this indenture or shall be entitled to any lien or benefit hereunder; and every such certificate of the Trustee upon any bond executed in behalf of the Railroad Company shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created. Such certificates may be made and bonds may be delivered hereunder in advance of registration or record of this indenture.

The bonds and certificates for shares hereby pledged as specifically enumerated in the granting clauses hereof, shall, prior to the certification of any bonds hereunder, be assigned and delivered to The Farmers' Loan and Trust Company, Trustee under this indenture.

Before certifying or delivering any coupon bond, the Trustee shall cut off and cancel all coupons thereof then matured: and the Trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

Exhibit R-118.

A.

Of the bonds authorized to be issued under and secured by this indenture thirty-five million dollars ($35,000,000) shall be PRIOR LIEN BONDS.

SECTION 1. Of the Prior Lien bonds authorized to be issued under and secured by this indenture, bonds to the amount of fifteen million six hundred thousand dollars ($15,600,000) shall be certified by the Trustee, and upon a resolution of the Board of Directors of the Railroad Company shall be delivered to Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, or their survivors or successors, the Committee named in the certificate of incorporation of the Railroad Company, immediately upon the execution and delivery hereof, or as soon as may be thereafter.

SEC. 2. Out of and from the remainder of such authorized issue of Prior Lien bonds there shall be reserved, not immediately to be executed or certified by the Trustee, bonds to the amount of fourteen million four hundred thousand dollars ($14,400,000).

Said fourteen million four hundred thousand dollars ($14,400,000) of such Prior Lien bonds shall be certified by the Trustee and delivered to the Railroad Company, from time to time hereafter, as and when called for by resolution of the Board of Directors of the Railroad Company, stating, in effect, that the same are to be used from time to time to acquire railroad and railroad equipment, now of the New York, Pennsylvania and Ohio Railroad Company (substantially as covered by its so-called "First Mortgage of May 6, 1880," to the Farmers' Loan and Trust Company, Trustee), subject to "Prior Lien" bonds of said New York, Pennsylvania and Ohio Railroad Company, Equipment obligations and rentals now resting thereon, or to acquire securities of the New York, Pennsylvania and Ohio Railroad Company, or of a successor Company or Companies, in amounts and to an extent which in the opinion of the Board of Directors of the Railroad Company shall give to the Railroad Company, or enable it to acquire, satisfactory control of the operation and management of said railroad.

If said Prior Lien Bonds hereby secured shall be used to acquire securities of the New York, Pennsylvania and Ohio Railroad Company, the Trustee shall certify and deliver said

$14,400,000 of Prior Lien Bonds hereby secured from time to time only at the rate of one thousand dollars par value of such Prior Lien Bonds for each five thousand dollars par value of said so-called first mortgage bonds, which shall be acquired and pledged hereunder. If securities of a successor company or companies shall be acquired, then the Trustee shall reserve out of said $14,400,000 of Prior Lien Bonds hereby secured, an amount equal at par to the aggregate amount of all the secured and unsecured indebtedness of such successor company or companies that shall not be acquired and pledged hereunder, other than the said New York, Pennsylvania and Ohio Prior Lien Bonds and equipment obligations and liens upon or for the benefit of properties leased or controlled by said New York, Pennsylvania and Ohio Railroad Company and ordinary operating accounts; and the bonds so reserved shall from time to time be certified and delivered by the Trustee when and as a like amount of such secured or unsecured indebtedness shall be discharged or acquired by the Railroad Company, and assigned to the Trustee hereunder.

As to the existence and amount of any such secured or unsecured indebtedness of a successor corporation, the written opinion of the Counsel of the Railroad Company shall, according to its terms and to any action pursuant thereto, be sufficient evidence and authority to the Trustee.

When delivering any bonds under this section the Trustee shall require either the immediate subjection of the property acquired to the lien thereof (excepting, however, certain lands and interests in lands of the New York, Pennsylvania and Ohio Railroad Company hereinbefore mentioned), or, if this be not reasonably practicable, shall deliver the bonds upon such trusts as are, in its judgment, calculated to accomplish such subjection within a reasonable period, but the Trustee shall not be liable for any error of judgment in this respect.

SEC. 3. Out of the remainder of such authorized issue of Prior Lien bonds there shall be reserved, not immediately to be executed or certified by the Trustee, bonds to the amount of five million dollars ($5,000,000).

Said five million dollars of such Prior Lien bonds shall be certified by the Trustee and delivered to the Railroad Company from time to time hereafter, when and as called for by resolution of the Board of Directors to the effect that the bonds so

called for and their proceeds are to be used, upon lines or property now or hereafter owned by the Railroad Company, and subject to the lien of this indenture or upon lines or property of any company of which a majority of the capital stock shall be subjected to the lien of this indenture, only for the following purposes, or some one or more of them, viz.: (1) enlargement and improvement of terminal facilities, including elevation of tracks or other improvement of crossings at Jersey City, Buffalo and elsewhere, (2) additional wharf facilities at New York or Jersey City, (3) purchasing additional equipment, (4) reducing grades and constructing double track, or to reimburse the Railroad Company for outlays made subsequent to the date hereof for the purposes aforesaid or some one or more of them.

At any time or times, upon any such resolution, and with the written consent of the Voting Trustees (under the voting trust authorized in the certificate of incorporation of the Railroad Company), or the greater number of those then acting as such Voting Trustees, such Prior Lien bonds shall be so delivered to the amount specified in every such resolution, not in any one instance exceeding $1,000,000, but, in every instance after the first delivery of such bonds (before delivering any additional amount of such bonds) the Trustee shall require the Railroad Company to furnish, in addition to such resolution of the Board, the verified certificate or certificates of some person or persons cognizant of the facts, stating

(*a*) that all such bonds and the proceeds of all such bonds certified and delivered on or subsequent to the date of the last preceding resolution, or resolution and verified certificate, as the case may be, have been used for such purposes, or for some one or more of them, or to reimburse the Railroad Company as above provided;

(*b*) the amount of such bonds so certified and delivered, which, or the proceeds of which, on or subsequently to the date of the last preceding resolution, or resolution and verified certificate (as the case may be), shall have been actually used for any such purpose, or to reimburse the Railroad Company, as above provided, and specifically indicating each and every such acquisition or construction, and also stating in detail the amount of bonds, or proceeds of bonds, used or expended for each and every such purpose.

(*c*) that the price paid in bonds or their proceeds for such construction or acquisition was not in excess of the fair value of the work done or property acquired, and that the bonds included in such verified certificate were sold, disposed of or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition or accounting.

(*d*) that of the expenditures for which such certificate shall state that Prior Lien Bonds or their proceeds have been used, no part has been provided by the use of General Lien Bonds; and that of the expenditures for which reimbursement shall be claimed, no part has been obtained by the Railroad Company out of the General Lien Bonds or their proceeds.

Every such verified certificate shall be accompanied by the written statement of the President or of one of the Vice-Presidents, and of the Auditor or Treasurer of the Railroad Company that they believe such certificate to be true, and that such bonds have been used and the expenditures therein certified have been made only for purposes properly chargeable to capital account of the Railroad Company, and that no part thereof has been used for ordinary maintenance of the lines of railway or other property owned or in any way controlled by the Railroad Company or for replacements or other purposes ordinarily treated by railroad companies as a part of their operating expenses.

Such written consent of Voting Trustees, resolutions, statements and verified certificates shall be deemed and taken as plenary authority to the said Trustee for its certification of such Prior Lien bonds or of any one or more of them.

B.

Of the bonds authorized to be issued under and secured by this indenture, one hundred and forty million dollars ($140,000,000) shall be GENERAL LIEN BONDS.

SEC. 4. Of the General Lien bonds authorized to be issued under and secured by this indenture, bonds to the amount of Thirty million nine hundred and twenty-seven thousand dollars ($30,927,000) shall be certified by the Trustee and shall be delivered to Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas or their survivors or successors, the Committee named in the certificate of incorporation of the Railroad Company, immediately upon the execution and delivery of this indenture, or as soon as may be thereafter.

Exhibit R-118.

SEC. 5. Out of and from the remainder of such authorized issue of General Lien bonds there shall be reserved, not immediately to be executed or certified by the Trustee, bonds to the amount of Seventy-nine million nine hundred and eighteen thousand dollars ($79,918,000), for the purpose of providing for the purchase, redemption and acquisition by the Trustee, as hereinafter provided, of bonds secured by the thirty-six following mortgages (such mortgages being stated and described with substantial accuracy and as generally known):

I.

The first mortgage or charge created by an Act of the Legislature of the State of New York, passed May 14, 1845, entitled "An Act in relation to the Construction of the New York and Erie Railroad," to secure an issue of bonds of said New York and Erie Railroad Company, bearing interest at the rate of seven per cent. per annum and payable on July 1st, 1867, which bonds have been duly extended until May 1, 1897, at interest at the rate of 7 per cent. per annum, and of which $2,482,000 are now outstanding and unpaid.

The second mortgage made by said New York and Erie Railroad Company, dated March 1, 1849, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable March 1, 1859; which bonds have been duly extended until September 1, 1919, at interest at the rate of 5 per cent. per annum, payable in gold, and of which $2,149,000 are now outstanding and unpaid.

The third mortgage made by said New York and Erie Railroad Company, dated March 1, 1853, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable on March 1, 1883, which bonds have been duly extended until March 1, 1923, at interest at the rate of 4½ per cent. per annum, payable in gold, and of which $4,617,000 are now outstanding and unpaid.

The fourth mortgage made by said New York and Erie Railroad Company, dated August 15, 1857, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable on October 1, 1880, which bonds have been duly extended until October 1, 1920, at interest at the rate of 5 per cent. per annum, payable in gold, and of which $2,926,000 are now outstanding and unpaid.

The fifth mortgage made by said New York and Erie Railroad Company, dated June 1, 1858, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable on June 1, 1888, which bonds have been duly extended until June 1, 1928, at interest at the rate of 4 per cent.

per annum, payable in gold, and of which $709,500 are now outstanding and unpaid.

The mortgage made by the Buffalo branch of the Erie Railway and the Erie Railway Company, dated July 1, 1861, to secure a certain issue of bonds bearing interest at the rate of 7 per cent. per annum and payable on July 1, 1891, which bonds have been duly extended until July 1, 1931, at interest at the rate of 4 per cent. per annum, payable in gold, and of which $182,600 are now outstanding and unpaid.

The mortgage made by said Erie Railway Company, dated September 1, 1870, to secure a certain issue of its bonds (commonly called "First Consolidated Mortgage Bonds"), bearing interest at the rate of 7 per cent. per annum and payable September 1, 1920, and of which $16,891,000 are now outstanding and unpaid.

Also, $3,705,977.10 First Consolidated Mortgage Funded coupon Bonds of the New York, Lake Erie and Western Railroad Company, dated September 1st, 1878, bearing interest at the rate of 7 per cent. per annum, payable September 1st, 1920, and secured by a pledge of coupons for interest on the First Consolidated mortgage bonds of the Erie Railway Company, all of which are now outstanding and unpaid.

The mortgage made by the Newburgh & New York Railroad Company, dated August 1st, 1868, to Jay Gould, as Trustee, to secure an issue of bonds of said Company and payable January 1st, 1889, which bonds have been duly extended until January 1, 1929, with interest at the rate of 5 per cent. per annum in gold, and of which $250,000 are now outstanding and unpaid.

The mortgage made by the Buffalo and Southwestern Railroad Company, dated December 17, 1877, to Elbridge G. Spaulding, as Trustee, to secure an issue of bonds of said Company bearing interest at the rate of 6 per cent. per annum, payable December 1, 1907, of which $1,500,000 are now outstanding and unpaid.

The mortgage made by the Lockport and Buffalo Railroad Company, dated October 1st, 1877, to Matthias H. Arnot, as Trustee, to secure bonds bearing interest at 7 per cent. per annum, and due October 1st, 1897, of which $140,000 are now outstanding and unpaid.

II.

The mortgage made by the Long Dock Company, dated November 16, 1885, to Anthony J. Thomas and Charles Edward Tracy, as Trustees, to secure an issue of gold bonds of said Company, bearing interest at the rate of 6 per cent. per annum and payable October 1, 1935, of which $7,500,000 are now outstanding and unpaid.

The mortgage made by the Jefferson Railroad Company, dated January 1st, 1889, to the Fidelity Insurance, Trust and

Safe Deposit Company, as Trustee, to secure an issue of gold bonds of said Company, bearing interest at the rate of 5 per cent. per annum and payable January 1, 1909, of which $2,800,000 are now outstanding and unpaid.

The mortgage made by the Jefferson Railroad Company on its Honesdale Branch, dated July 1st, 1867, to John Torrey, Z. H. Russell and Coe F. Young, as Trustees, to secure an issue of bonds of said Company, payable July 1, 1927, of which $204,000, bearing interest at 4½ per cent. per annum, are now outstanding and unpaid.

The mortgage made by the Jefferson Railroad Company on its Honesdale Branch, dated January 1st, 1869, to John Torrey, Z. H. Russell and Coe F. Young, as Trustees, to secure an issue of bonds of said Company, payable July 1st, 1927, and bearing interest at the rate of 6 per cent. per annum, of which $96,000 are now outstanding and unpaid.

The mortgage made by the Buffalo, Bradford and Pittsburgh Railroad Company, dated January 1st, 1865, to Dorman B. Eaton, as Trustee, to secure an issue of gold bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable January 1, 1896, which bonds other than those pledged hereunder are now outstanding and unpaid to the amount of $395,000.

The mortgage made by the Bergen County Railroad, dated March 1st, 1881, to the Farmers' Loan and Trust Company, as Trustee, to secure an issue of bonds of said Company bearing interest at the rate of 6 per cent. per annum and payable April 1, 1911, of which $200,000 are now outstanding and unpaid.

The mortgage made by the New York, Lake Erie and Western Coal & Railroad Company, dated May 15, 1882, to the Metropolitan Trust Company of New York and John Lowber Welsh, of the City of Philadelphia, as Trustees, to secure an issue of gold bonds of said Company, bearing interest at the rate of 6 per cent. per annum, and payable May 1, 1922, which bonds, other than those pledged hereunder, are now outstanding and unpaid to the amount of $1,100,000.

The mortgage made by the New York, Lake Erie and Western Docks & Improvement Company, dated June 1, 1883, to the Farmers' Loan and Trust Company, Trustee, as modified by the supplemental contract dated February 8th, 1890, to secure an issue of bonds of said Company, bearing interest at the rate of 6 per cent. per annum, and payable July 1, 1913, which bonds, other than those pledged hereunder, are now outstanding and unpaid to the amount of $3,396,000.

The mortgage made by the Suspension Bridge and Erie Junction Railroad Company, dated July 1st, 1870, to Horatio N. Otis, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable July 1, 1900, of which bonds, other than those pledged hereunder, $965,000 are now outstanding and unpaid.

Exhibit R-118.

The mortgage made by the Tioga Railroad Company, dated April 24th, 1852, to Theodore Dehon, Alfred S. Fraser and Watts Sherman, as Trustees, to secure an issue of bonds of said Company, bearing interest at the rate of 5 per cent. per annum, and payable November 1, 1915, of which $239,500 are now outstanding and unpaid.

The mortgage made by the Tioga Railroad Company, dated October 1st, 1875, to George M. Diven, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable October 1, 1905, of which $265,000 are now outstanding and unpaid.

The mortgage made by the Tioga Railroad Company, dated November 1st, 1876, to Myron P. Bush,, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum and payable November 1st, 1896, of which $125,000 are now outstanding and unpaid.

The mortgage made by the Elmira and State Line Railroad Company, dated October 1st, 1875, to Matthias H. Arnot, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable October 1, 1905, of which $160,000 are now outstanding and unpaid.

The mortgage made by the Chicago and Atlantic Railroad Company, dated November 1st, 1888, to Central Trust Company of New York, as Trustee, to secure an issue of bonds of said Company, known as "Terminal Bonds," bearing interest at the rate of 5 per cent. per annum, and payable July 1, 1918, of which $300,000 are now outstanding and unpaid.

The mortgage made by the Chicago and Erie Railroad Company, dated August 21st, 1890, to the Central Trust Company of New York and Edward Daniels, as Trustees, to secure an issue of bonds of said Company, bearing interest at the rate of 5 per cent. per annum, and payable May 1, 1982, of which $12,000,000 are now outstanding and unpaid.

The mortgage made by the Blossburg Coal Company, dated January 1st, 1878, to Amaziah S. Kendall, as Trustee, to secure an issue of bonds of said Company, payable January 1st, 1893, which bonds have been duly extended until November 1, 1915, with interest at the rate of 5 per cent. per annum, payable in gold, and of which $400,000 are now outstanding and unpaid.

The mortgage made by the Buffalo, New York and Erie Railroad Company, dated June 1st, 1876, to John A. C. Gray, as Trustee, to secure bonds, bearing interest at 7 per cent. per annum, due June 1, 1916, of which $2,380,000 are now outstanding and unpaid.

Exhibit R-118.

III.

The mortgage made by the Montgomery and Erie Railroad Company, dated May 1st, 1866, to William Murray, Nathan C. Sanford and Henry Merriam, as Trustees, to secure bonds bearing interest at 5 per cent. per annum and due May 1st, 1926, of which $130,000 are now outstanding and unpaid.

The mortgage made by the Montgomery and Erie Railroad Company, dated October 1st, 1867, to John M. Quackenbos and Bartow Wright, as Trustees, to secure bonds bearing interest at 5 per cent. per annum, and due October 1st, 1927, of which $40,500 are now outstanding and unpaid.

The mortgage made by the Goshen and Deckertown Railroad Company, dated July 1st, 1868, to Ambrose S. Murray, Robert H. Berdell and John Stewart, as Trustees, to secure bonds bearing interest at 6 per cent. per annum, due July 1, 1928, of which $186,500 are now outstanding and unpaid.

The mortgage made by the Goshen and Deckertown Railroad Company, dated November 1st, 1869, to Ambrose S. Murray and Robert H. Berdell and John Stewart, as Trustees, to secure bonds bearing interest at 6 per cent. per annum, due November 1, 1929, of which $60,000 are now outstanding and unpaid.

The mortgage made by the Middletown and Crawford Railroad Company, dated April 1st, 1871, to Jonathan M. Matthews, Ambrose S. Murray and Alexander Crawford, as Trustees, to secure bonds bearing interest at 4½ per cent. per annum, due April 1, 1921, of which bonds, other than those pledged hereunder, are now outstanding and unpaid to the amount of $8,800.

IV.

The mortgage made by the New York, Pennsylvania and Ohio Railroad Company, dated May 5, 1880, to the Farmers' Loan and Trust Company, as Trustee, to secure an issue of gold bonds of said Company, payable March 1st, 1895, which bonds have been duly extended to March 1st, 1935, at 4½ per cent. per annum interest, and of which $8,000,000 are now outstanding and unpaid.

V.

The mortgage made by the Cleveland and Mahoning Valley Railroad Company, dated January 1st, 1888, to Central Trust Company of New York, as Trustee, to secure an issue of $3,000,000 bonds of said Company, bearing interest at the rate of 5 per cent. per annum, and payable January 1st, 1938, and now or hereafter outstanding and unpaid.

Exhibit R-118.

The mortgage made by the Sharon Railway Company, dated June 1st, 1889, to Farmers' Loan and Trust Company, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 4½ per cent. per annum, payable June 1st, 1919, of which $164,000 are now outstanding and unpaid.

The mortgage made by the Newcastle and Shenango Valley Railroad Company, dated July 1st, 1887, to the Farmers' Loan and Trust Company, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 6 per cent. per annum, and payable July 1st, 1917, of which $250,000 are now outstanding and unpaid.

SEC. 6. The said $79,918,000 General Lien bonds hereby secured and reserved for the redemption, purchase or acquisition of a like amount of bonds (hereinafter called "old bonds") severally and respectively secured by the mortgages mentioned in the last above section, shall from time to time be issued, certified and delivered when authorized by resolution of the Board of Directors of Railroad Company only as follows, viz.:

(*a*) Whenever and as often as the Railroad Company shall tender or cause to be tendered any such old bonds, or bonds issued in exchange therefor under the provisions of Article Two, Section 2 hereof, together, in either case, with all unmatured interest obligations thereunto belonging, the Trustee forthwith shall receive the same, and in exchange therefor shall certify and deliver to the Railroad Company, or upon its order, a like amount at par of the said bonds hereby secured and reserved.

(*b*) Whenever and as often as the Railroad Company, on or after the maturity of any such old bonds, or of bonds issued in exchange therefor, as above, or on or after a date eight months prior to the maturity of such old bonds, or of bonds issued in exchange therefor, as above, shall tender or cause to be tendered, cash sufficient to purchase or to pay the same at par (and shall also provide to the satisfaction of the Trustee for any interest due upon such bonds or accruing before their maturity), the Trustee forthwith shall receive such cash, and in consideration thereof shall certify and deliver to the Railroad Company or upon its order an equivalent amount at par of the said bonds hereby secured and reserved.

All cash so received by the Trustee shall be by it held and applied to the purchase at par, or, if such purchase be impracticable, to the payment at par of an equivalent amount of the old bonds, or of bonds issued in exchange therefor, as above,

for the purchase or payment of which such case shall have been deposited.

Each and every old bond, or bond issued in exchange therefor, as above, received by the Trustee, shall be by it stamped with the words "Not negotiable, but held in trust for the purposes declared in the First Consolidated Mortgage Deed of the Erie Railroad Company, dated December 10th, 1895," and shall be by it held without extinguishment as additional security for the payment of this mortgage debt until at least ninety-nine per cent. of all bonds of the issue of which such bond is one, shall either have been paid and canceled, or shall have been received by the Trustee hereunder, whereupon in its discretion it may cancel and surrender to the Railroad Company all bonds of such issue then in its possession.

Provided, however, that no bond of any of the issues enumerated under II. III. IV. and V. of Section 5 of this article shall be canceled, unless or until all of the property mortgaged to secure the issue to which such bond belongs, shall have been lawfully vested free from other encumbrance in the Railroad Company, its successors or assigns, whereupon such property so mortgaged for such issue of old bonds forthwith, *ipso facto,* and without further conveyance, shall become and be part of the premises hereby mortgaged, and shall be hereby conveyed, as though herein expressly and specifically conveyed, mortgaged and pledged. Nevertheless, the Railroad Company, its successors and assigns, may, and shall, execute any and all transfers, assignments or conveyances, from time to time, desired by the Trustee in order expressly and specifically to subject to the lien of this indenture any property so acquired. Upon every such conveyance of the property mortgaged for any one of such issues, the Trustee may cancel and surrender to the Railroad Company all of the bonds of such issue then held by it, if not more than one per cent. of the total issue shall then remain outstanding and unsatisfied.

If at the time of the maturity of any such bonds, the holder thereof shall decline to sell and to deliver the same at par and accrued interest, but shall require the payment and cancellation thereof, then upon such payment and cancellation the Trustee shall certify and deliver to the Railroad Company, or upon its order, a like amount at par of said bonds reserved hereunder as though said matured bonds had been purchased

and had been received by the Trustee; but in every such case, if such matured bonds shall be of any one of the issues enumerated in II., III., IV., or V., of Section 5 of this article, and the Railroad Company shall not as above provided have acquired the property mortgaged to secure such bonds, the Railroad Company shall take and execute and shall cause the Company owning such property to take and execute such action, proceedings and instruments as in the opinion of the Trustee may reasonably be required to subrogate the Trustee to all the claim and security of the holder of such bonds, or else the Railroad Company shall cause to be issued and deposited with the Trustee an amount of renewal or other bonds upon the same property at least equivalent thereto at par.

So long as the Railroad Company shall not be in any default under this indenture in respect of which some request, proceeding or action herein authorized shall have been made or taken by the Trustee or by holders hereby secured, the Trustee shall not collect or be entitled to collect, except with the assent of the Railroad Company, the interest on any old bond at any time held by it hereunder or on any bond now or hereafter pledged with the Trustee under any provision of this indenture. Any sums so collected by it with the assent of the Railroad Company, unless it shall then be in default as aforesaid, shall at once be paid over to the Railroad Company except as hereinafter expressly otherwise provided.

The Railroad Company shall provide and maintain books wherein it shall register as the property of the Trustee all such old bonds received by the Trustee; and except as herein expressly provided no such old bond shall be canceled, unless the holder thereof, at time of maturity, shall require cancellation as a condition of surrender.

SEC. 7. Out of the remainder of the authorized issue hereunder, there shall be reserved, to be executed and to be certified by the Trustee, not immediately, but from time to time only when and as called for by resolutions of the Board of Directors, to the effect that the bonds so called for and their proceeds are to be used for such purpose, bonds to the amount of eight million and sixty-three thousand dollars ($8,063,000) for the purchase and acquisition by the Railroad Company and simultaneous pledge hereunder to the Trustee, as hereinafter pro-

vided, of valid certificates of shares of stock issued by the following companies (other than the shares of some of such companies deliverable to the Trustee at the time of execution hereof), viz.:

Name of Company.	Par.	Shares.	Limit of Exchange per Share.
Buffalo, New York and Erie Railroad Company	$100	700	$150
Montgomery and Erie Railroad Company	10	15,000	7
Goshen and Deckertown Railroad Company	10	9,619	7
Jefferson Railroad Company	50	12	50
Rochester and Genesee Valley Railroad Company	100	4,058	100
Buffalo, Bradford and Pittsburgh Railroad Company	100	965	10
Middletown and Crawford Railroad Company	50	844	10
Suspension Bridge and Erie Junction Railroad Company	100	8	100
Tioga Railroad Company	50	6	10
Elmira State Line Railroad Company	100	292	100
Newcastle and Shenango Valley Railroad Company	50	2,915	5
Sharon Railroad Company	50	9,067	62½
Cleveland and Mahoning Valley Railroad Company	100	30,000	225

From time to time as and when the Trustee shall receive from the Railroad Company any such shares, it shall in exchange therefor and when and as called for by resolution of the Board of Directors of the Railroad Company certify and deliver to it bonds reserved under this Section in an amount not exceeding the value of such shares then so received at the limit of exchange above stated, which shares shall simultaneously be transferred into the name of the Trustee.

Whenever it shall make any delivery of bonds reserved as provided in this section, the Trustee shall require and receive from the Railroad Company in addition to such resolution of the Board of Directors the affidavit of one of its officers

cognizant of the facts, stating the amount in bonds actually requisite for the express purpose of enabling the Railroad Company to acquire such shares then to be received by the Trustee. In no event shall any bonds be delivered by the Trustee in excess of the amount so stated; but if such amount be less than that in this section limited as the price of such shares, the surplus so left in possession of the Trustee, may thereafter be by it certified and delivered to the Railroad Company when and as necessary to enable it so to acquire other shares above mentioned, at prices exceeding those in this section stated; *provided*, that such necessity and the reasons therefor shall also be stated in such affidavit of the officer of the Railroad Company; and that, except as to such surplus bonds, deliveries shall not be made in excess of the limits imposed by this section; *and provided further*, that the Trustee shall not certify or deliver any such bonds in exchange for shares of the Newcastle and Shenango Valley Railroad Company, the Sharon Railroad Company, or the Cleveland and Mahoning Valley Railroad Company, until after the Railroad Company shall have acquired, as provided in Section 2 of this Article, the New York, Pennsylvania and Ohio Railroad or the control thereof, and shall have subjected the same to the lien of this indenture.

SEC. 8. Out of the remainder of the authorized issue of General Lien Bonds hereunder there shall be reserved, to be executed and to be certified by the Trustee, not immediately, but from time to time only when and as called for by resolution of the Board of Directors to the effect that the bonds so called for and their proceeds are to be used for such purpose, bonds to the amount of four million and ninety-two thousand dollars ($4,092,000) for retiring or acquiring, as hereinafter provided, equipment-bonds and equipment-trust certificates, warrants, notes or obligations, which shall mature as hereinafter set forth, and to reimburse the Railroad Company for such of them as from time to time hereafter it shall acquire.

I.

Equipment Trust Certificates, Warrants, Notes and Obligations of, or affecting certain equipment formerly of the New York, Lake Erie and Western Railroad Company and now of the Erie Railroad Company, maturing after November 1st, 1898, viz.:

Baldwin Locomotive Works	$ 282,147 72
Car Trust of New York, Series C, D, E, F and G	1,859,515 00

Exhibit R-118.

II.

Equipment Trust obligations of and affecting certain equipment of the New York, Pennsylvania and Ohio Railroad Company, viz.:

Bonds of the New York, Pennsylvania and Ohio Railroad Company, known as London Equipment Trust bonds of 1888, of which about £181,400 are now outstanding and unpaid.

Bonds of the New York, Pennsylvania and Ohio Railroad Company, known as Equipment Trust bonds of 1890, of which about £208,600 are now outstanding and unpaid.

In determining the value of sterling bonds, the Trustee shall treat one pound sterling as the equivalent of five dollars.

From time to time, and only when and as the Trustee shall receive from the Railroad Company, in addition to such resolution of the Board of Directors, the certificate of its President, or one of its Vice-Presidents and of its Treasurer or Auditor, and also (if the Trustee so desire) any additional evidence necessary to satisfy the Trustee (1) that such equipment bonds, certificates, warrants, notes or obligations have been paid to the amount specified in such certificate, and (2) that such payment has not been stated or included in any prior certificate hereunder, the Trustee shall certify and, upon the written order of the Railroad Company, shall deliver such reserved bonds at par to an amount equal to the payment of such outstanding obligations shown to have been made, by such certificate or other evidence, if any, required by the Trustee, provided; however, that the Trustee shall not certify or deliver any such bonds on account of "London Equipment Trust Bonds of 1888" or "Equipment Trust Bonds of 1890," until after the Railroad Company shall have acquired, as provided in Section 2 of this Article, the New York, Pennsylvania and Ohio Railroad, or the control thereof, and shall have subjected the same to the lien of this indenture.

Sec. 9. Out of the remainder of the authorized issue hereunder, there shall be reserved, to be executed, and to be certified by the Trustee, not immediately but only when and as called for by resolution of the Board of Directors as next hereinafter provided, bonds to the amount of seventeen million dollars ($17,000,000), which from time to time, on and after January 1st, 1898, the Trustee shall certify upon resolutions of the Board of Directors of the Railroad Company, stating that such bonds, to the amount stated in such resolutions, or

the proceeds thereof, are to be set aside separate and apart from all other assets and funds of the Railroad Company, and are to be used only for the construction or acquisition of branch lines or extensions subsequent to December 31st, 1897, or for the acquisition of stocks or bonds thereof, subsequent to said date; or for the purchase or construction of rolling stock subsequent to said date; or for construction or betterments, subsequent to said date, or for purchase of additional property subsequent to said date, all such construction, betterments or property purchased to be upon, along or appurtenant to lines of railway of the Railroad Company, at the time of such use subject to the lien of this Indenture, or upon, along or appurtenant to the lines of railway or the terminal properties of some one or more of the companies mentioned in the schedule of stocks in the granting clauses hereof (other than the Buffalo Creek Railroad Company, the Hillside Coal and Iron Company, the Northwestern Mining and Exchange Company or the Blossburg Coal Company), or of other companies of whose capital stock, at least a majority in amount at the time of such use shall be pledged hereunder; or to reimburse the Railroad Company for outlays made subsequent to the thirty-first day of December, eighteen hundred and ninety-seven, for the purposes aforesaid or some one or more of them.

From and out of the $17,000,000 General Lien bonds reserved under this section, the Trustee shall certify and shall deliver to the Railroad Company, or upon its order, bonds as follows, viz.:

Upon January 1, 1898, or upon any day thereafter, but prior to December 31st, 1898, upon such resolution or resolutions of the Board of Directors of the Railroad Company, such amount of such General Lien bonds not exceeding $1,000,000 bonds, par value, as specified in such resolution, shall be so certified and delivered.

In each and every calendar year after December 31, 1898, there shall be so certified and delivered such additional amount of such General Lien bonds, not exceeding $1,000,000, par value in any calendar year, as from time to time shall be specified in similar resolutions; but in every instance, before certifying and delivering any of the $17,000,000 General Lien bonds reserved under this section (except the $1,000,000 deliverable in the year 1898), the Trustee shall require the Railroad Com-

pany to furnish, in addition to such resolution of the Board, the verified certificate or certificates of some person or persons cognizant of the facts, stating

(*a*) that all such General Lien bonds and the proceeds of all such General Lien bonds certified and delivered on or subsequent to the date of the last preceding resolution, or resolution and verified certificate, in respect of General Lien bonds, as the case may be, have been used for such purposes, or for some one or more of them, or to reimburse the Railroad Company as above provided;

(*b*) the amount of such General Lien bonds so certified and delivered, which, or the proceeds of which, on or subsequently to the date of such last preceding resolution, or resolution and verified certificate (as the case may be), shall have been actually used for any such purpose, or to reimburse the Railroad Company, as above provided, and specifically indicating each and every such acquisition or construction of any railroad, track, structure, betterment, rolling stock or other property, and each and every acquisition of the bonds or stock of any Company owning or controlling any railroad or other property (which stock shall be acquired only when a majority of the total capital stock of such Company can and shall have been or shall be thereby obtained unless such majority shall theretofore have been acquired and pledged hereunder) and also stating in detail the amount of bonds, or proceeds of bonds, and cash used or expended for each and every such purpose;

(*c*) that the price paid in General Lien bonds or their proceeds for such construction or acquisition was not in excess of the fair value of the work done or property acquired, and that the bonds included in such verified certificate were sold, disposed of or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition or accounting;

(*d*) that of the expenditures for which such certificate shall state that General Lien bonds or their proceeds have been used, no part has been provided for by the use of Prior Lien bonds: and that of the expenditures for which reimbursement shall be claimed no part has been obtained by the Railroad Company out of Prior Lien bonds or their proceeds.

No new property shall be acquired by the use of any such General Lien bonds or their proceeds in any one calendar year

upon which property there shall be any lien or charges prior to this indenture (excepting any of the mortgages specified in Sections 5 and 8 of this Article which may attach thereto and any undetermined liens or charges incidental to construction and ordinary operating accounts) in excess of one million dollars; and, in case of the acquisition hereunder of any new property, every such verified certificate shall further state whether the property so acquired is known or believed to be subject to any lien or charge prior to this indenture (excepting any of the mortgages specified in Sections 5 and 8 of this Article, and any undetermined liens or charges incidental to construction and ordinary operating accounts), and shall specify the amount of any such prior lien or charge (other than as aforesaid) known or believed to exist; and in case any bonds or any shares of the capital stock of any other Company shall have been acquired by the use of such bonds or their proceeds, every such verified certificate shall state whether the property of such other company whose bonds or stock shall have been so acquired is known or believed to be subject to any lien or charge prior to that securing such bonds of such company, and whether the company, whose capital stock shall have been so acquired, is known or believed to be indebted (except to the Railroad Company) in any amount (except for ordinary operating accounts) and whether its property is known or believed to be subject to any lien, charge or indebtedness, and in each instance specifying the amount of any such debt, lien or charge known or believed to exist. In every case of any such lien, charge or indebtedness (except indebtedness to the Railroad Company or undetermined liens or charges incidental to construction or the lien of any of the mortgages for which a reservation of bonds is made in Sections 5 and 8 of this Article or for ordinary operating accounts), and during the continuance of such lien, charge or indebtedness, the Railroad Company shall, by appropriate instrument or instruments, reserve out of the $17,000,000 General Lien bonds set apart by this section an amount at par equivalent to all such liens, charges or indebtedness (except as aforesaid) affecting such property hereafter acquired, and the bonds so reserved shall be taken from the $1,000,000 bonds deliverable under this section in such calendar year, or in the next succeeding calendar year, and shall be executed, certified, delivered and used only

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for the retirement or acquisition of such liens, charges or indebtedness in amounts equivalent at least to the par of the bonds delivered therefor, and all the liens, charges or indebtedness so retired or acquired shall be canceled or held by the Trustee as, in its judgment, shall best protect the holders of the bonds hereby secured.

Every such verified certificate shall be accompanied by the written statement of the President or of one of the Vice-Presidents, and of the Auditor or Treasurer, of the Railroad Company that they believe such certificate to be true, and that such bonds have been used and the expenditures therein certified have been made only for purposes properly chargeable to capital account of the Railroad Company, and that no part thereof has been used for ordinary maintenance of the lines of railway or other property owned or in any way controlled by the Railroad Company or for replacements or other purposes ordinarily treated by railroad companies as a part of their operating expenses. Together with such statements and verified certificates, there shall be delivered to the Trustee certificates for all shares of stock and all bonds so acquired, and such further instruments and conveyances as may be necessary to vest in the Trustee all new property so acquired, and, so far as may be, any and all obligations taken up or acquired with, or by, the said bonds or their proceeds; and also the written opinion of counsel for the Railroad Company to the effect that such instruments and conveyances are sufficient for that purpose, or that no additional instrument or conveyance is necessary. The certificates for all shares of stock so acquired shall be duly transferred into the name of the Trustee, and any bonds so acquired shall, if practicable, be transferred in like manner, or, if not susceptible of such transfer, they shall be plainly endorsed as the property of the Trustee hereunder. Such resolutions, statements, verified certificates and opinions shall be deemed and taken as plenary authority to the said Trustee for its certification of such General Lien bonds or of any one or more of them.

Except to retire or acquire liens, charges or indebtedness for which bonds so used shall have been reserved as hereinbefore provided, General Lien Bonds in excess of an aggregate amount of $1,000,000 shall not be issued or certified under this section in any one calendar year; *provided,* however, and the appro-

priation of such $17,000,000 bonds in and by this Section 9 is in all respects subject to the condition, and it is hereby expressly declared, that if the beforementioned Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, jointly but not severally, the survivors or survivor of them, from time to time, on or before January 1, 1898, by writing addressed to the Railroad Company and to the Trustee, shall require the delivery to them jointly, or upon their joint order or orders, of the whole or any part of $2,000,000 of said bonds, the Railroad Company shall execute, and the Trustee shall certify and deliver to them jointly, or upon their joint order or orders, bonds to the amount specified in such several requisitions to an aggregate amount not exceeding $2,000,000 of such bonds; but no such delivery shall impair the preceding provision for delivery of the residue of the $17,000,000 of bonds to the Railroad Company at various dates subsequent to December 31st, 1897, and shall be in addition to any deliveries under the foregoing provisions of this Article.

C.

SEC. 10. The Railroad Company shall not and will not issue, negotiate, sell or dispose of any bonds hereunder, in any manner other than in accordance with the provisions of this indenture, and the agreements in that behalf herein contained, and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it shall and will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for purposes herein described, and to and for no other or different purpose.

SEC. 11. The Railroad Company will make all lawful effort to pledge with the Trustee hereunder the bonds above specified in Section 5, III. and V., at the several dates when the same shall respectively mature: provided that it shall not be required to pay more than par for any such bonds.

SEC. 12. Nothing in this indenture expressed or implied is intended, or shall be construed, to confer upon, or to give to, any person or corporation, other than the parties hereto and the holders of bonds issued under and secured by this indenture, any right, remedy or claim upon, under or in respect of this indenture, or any covenant, condition or stipulation thereof; all its covenants, conditions and stipulations being intended to

be, and being for the sole and exclusive benefit of the parties hereto and of the holders of bonds hereby secured.

SEC. 14. Whenever any coupon bond or bonds amounting to $1,000 or to any multiple of $1,000, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds without coupons, the Railroad Company shall issue, and the Trustee shall thereupon certify and deliver in exchange for such coupon bond or bonds, a like amount of registered bonds (without coupons), which registered bonds shall be for $500, or such convenient multiples thereof as the Railroad Company from time to time may establish, and shall bear interest at the same rate as the coupon bonds surrendered and from the date of the last matured coupon thereof. In every such case the Trustee shall forthwith cancel the bond or bonds and coupons surrendered, and deliver the same to the Railroad Company. The interest on such registered bonds without coupons shall be paid only to the several registered holders of such bonds, or upon their written orders.

Whenever any such registered bonds shall be surrendered for transfer, the Railroad Company shall issue, and the Trustee shall certify and deliver to the transferee, a like amount of new registered bonds, upon surrender and cancellation of the bond or bonds transferred. For any such transfer of registered bonds without coupons the Railroad Company, at its option, may make a charge not exceeding one dollar for each new registered bond issued in exchange for any surrendered bond or bonds.

In case any bond issued hereunder shall become mutilated or shall be destroyed, upon the surrender of any such mutilated bond to the Trustee, or upon filing with the Trustee satisfactory evidence of such destruction, the Railroad Company upon receiving indemnity satisfactory to it, may in its discretion, issue, and the Trustee in its discretion may certify, a new bond, bearing the same serial number, in lieu, substitution or exchange for, and upon cancellation of, the bond so mutilated, or in lieu of the bond destroyed.

SEC. 15. Any act or proceeding required or provided by any term of this indenture of any bond or resolution herein recited, to be done or performed by any board or officer of the Railroad Company, shall and may, in event of any change in its existence, be done and performed with like force and effect by the like board or officer of any railroad corporation that shall at the time be lawful sole successor of the Railroad Company.

Exhibit R-118.

ARTICLE TWO.

SECTION 1. The Railroad Company will well and truly pay and discharge, or will acquire and pledge hereunder, all of the old bonds mentioned in Article One, Section 5, I., II. and IV., and Section 8, I. and II., at or before the several dates of maturity thereof, provided it shall then be lawfully authorized to issue bonds hereunder for that purpose as provided in Article One hereof, and it will duly, punctually and regularly pay the interest on all such old bonds until the same shall be paid and discharged or acquired and pledged hereunder, excepting, however, that the payment of the bonds of the New York and Erie Railroad Company, secured by the mortgage or charge created by the Act of the Legislature of the State of New York passed May 14, 1845, and amounting to the principal sum of $2,482,000, may be extended or renewed by the Railroad Company at or before maturity without impairment of the lien or the security of said bonds, for any period or periods, at not over four per cent. per annum interest, principal and interest payable in gold, and that the lien hereof on the property embraced in the mortgage securing such bonds shall be subordinate to the lien of such bonds as so extended; and excepting further that neither the covenants nor restrictions of this section shall apply in respect of any bonds now or hereafter issued by the New York, Pennsylvania and Ohio Railroad Company, or of any corporation (other than the Railroad Company) successor to said Company, unless or until the railroad now of said Company, or securities of said Company or of a successor Company, shall have been acquired and subjected to the lien hereof pursuant to the provisions of Article One, Section 2, hereof.

SEC. 2. As and when, but no further than, expressly required by the terms of any of the old mortgages, the Railroad Company will from time to time cause to be issued thereunder bonds for delivery in exchange for other old bonds for which reservation is made in Article One, Section 5; but no issue shall be made thereunder that shall increase the aggregate old indebtedness of $79,918,000, or that, except for such exchange, shall increase the indebtedness as stated in said Article One, Section 5, secured by any one or more of said old mortgages; *provided,* however, that neither the covenants nor the restrictions of this paragraph shall apply in respect of any bonds now or hereafter issued by any of the Companies enumerated in Article One,

Section 5, III. and V., unless all the stock of any such Company shall have been duly pledged hereunder, and then only in respect of the Company of which all the capital stock shall have been so pledged.

SEC. 3. Having possession of the railroad now of the New York, Pennsylvania and Ohio Railroad as aforesaid, or securities therefor acquired and subjected to the lien hereof pursuant to the provisions of Article One, Section 2 hereof, the Railroad Company shall not and will not suffer or permit any default permitting any of the several lessors to terminate any of the existing leases of the Cleveland and Mahoning Valley Railroad, the Sharon Railroad, the Westerman Railroad or the Newcastle and Shenango Valley Railroad, or any lease hereafter made to it, or for its benefit, of any franchises or property now or hereafter belonging to any of the said Railroad Companies.

In case and whenever it shall make default in paying any sum stipulated to be paid in any such present or future lease of any of the said railroads, the Trustee, without affecting any of its rights hereunder, from time to time, in its discretion, may itself pay any sum so in default, and thereupon shall have and forthwith may assert a lien for such advances upon the premises hereby mortgaged and the proceeds thereof, which lien shall be entitled to priority in rank and payment from the income and profits of the mortgaged premises over any bonds hereby secured.

SEC. 4. The Railroad Company will (excepting as otherwise provided in its Buffalo and Southwestern Second Lien Mortgage in respect of that railroad) duly and punctually pay all lawful claims and demands not hereinbefore enumerated, which, if unpaid, might take precedence over this indenture, and each and every company (except the Buffalo Creek Railroad Company), of whose capital stock the greater part is now pledged hereunder or hereafter shall be acquired and pledged hereunder as provided in Section 9 of Article One, at all times during the continuance of such pledge, will duly and punctually pay all lawful claims and demands, which, if unpaid, might take precedence of any mortgage securing bonds of such company, or which might, in any wise, impair the value of such capital stock of such company if pledged hereunder; and the Railroad Company will enforce any and all of its claims and demands against any such company only in such manner as not to prejudice or affect the bonds secured by this indenture.

The Railroad Company will also at all times take all such action as from time to time may be proper to preserve the corporate rights of every company of whose capital stock the greater part shall be pledged hereunder.

SEC. 5. The Railroad Company shall and will, from time to time, pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the lines of railroad and other premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved; and if any company of whose capital stock the greater part is now pledged hereunder or hereafter shall be acquired and pledged hereunder as provided in Section 9 of Article One (excepting the Buffalo Creek Railroad Company or any Coal Company in respect of lands upon which mining shall have been abandoned) shall, at any time during the continuance of any such pledge, fail to pay all such taxes, assessments and charges lawfully imposed upon the property of such company or upon the income and profits thereof, it will itself pay and discharge the same.

SEC. 6. Except as herein otherwise expressly provided, the Railroad Company will not sell any bond or share of stock now or hereafter pledged by it under this indenture nor pledge or agree to pledge or hypothecate the same, except subject to the prior lien hereof; it will not by any voluntary act part with the ownership and title of such bonds or stock, or of any part of such bonds or stock, or its equity of redemption therein or the voting power thereof; it will, subject to the lien hereof, hold all and singular such stock (other than the shares of the Buffalo Creek Railroad Company) of any company of whose capital it may control the major part, and exercise its voting power thereon in such manner that it shall retain in itself the rights and powers of a majority shareholder in the capital stock of every such company; and as such holder of such stock it will not by affirmative vote, or by abstaining from voting, sanction or permit any increase of the capital stock of any such company or the creation of any mortgage or other lien upon the railroad or property of any such company, unless effective provision be made that all bonds secured by any such additional mortgage and all additional shares of such stock (which shares shall be fully paid and non-assessable) shall, at the time of their issue,

be delivered and pledged to the Trustee, to be by it held, subject to all the trusts of this indenture, with the same effect as if such bonds and shares had been delivered and pledged to it herein and at the time of the making hereof. This provision, however, shall not apply to any increase of stock or to the creation of mortgages or other liens by the Buffalo Creek Railroad Company. But nothing herein contained shall prevent the extension at maturity of any bonds now or hereafter pledged to or held by the Trustee under this indenture, and at the time of such pledge secured by any mortgage of any company, or prevent the issue and substitution therefor of other bonds for equivalent amount, adequately secured by similar mortgage; it being distinctly understood that the time for the payment of the principal of any bonds so pledged hereunder may, at or before their maturity, be extended by the Railroad Company (not then being in default hereunder), with the consent of the company which, at the time of such consent, shall own or control the property upon which such bonds so to be extended may be a lien, and also that other bonds for an equivalent amount, adequately secured by similar mortgages, may be issued in substitution therefor, and that in every such case such new bonds shall forthwith *ipso facto* come under the lien and grant of this indenture, and shall forthwith be delivered to the Trustee.

ARTICLE THREE.

SECTION 1. The Railroad Company shall and will well, duly and punctually pay, or cause to be paid, to every holder of any bond issued hereunder and secured hereby, the principal and interest accruing thereon, at the dates and rates and in the manner mentioned therein, or in the coupons thereto belonging, according to the true intent and meaning thereof; without deduction from either principal or interest for any tax or taxes which it may be required to pay or retain therefrom under or by reason of any present or future law; and it shall and will pay every such tax. All coupons when paid shall forthwith be canceled.

SEC. 2. All lines of railway and property of every kind, and all interest therein, when and as and to the extent hereafter acquired, as above provided, out of, or from bonds, or the proceeds of bonds, secured by this indenture, or otherwise pursuant to the provisions hereof, shall, without any further con-

veyance or assignment, immediately upon such acquisition, and subject to the terms and conditions of such acquisition, become and be subject to the lien of this indenture as fully and completely as though now owned by the Railroad Company, and expressly and specifically conveyed by, and embraced in, the granting clauses of this indenture; and the Railroad Company at all times will execute and deliver any and all such further assurances or conveyances as the Trustee may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture.

SEC. 3. Upon demand of the Trustee from time to time the Railroad Company will grant, convey, confirm, assign, transfer and set over unto the Trustee all real and personal estate, corporate rights and franchises which in any way or manner it shall acquire as appurtenant to, or in, or for use upon, or for the business of, any railroad hereby mortgaged, or as appurtenant to, or in, or for use upon, or for the business of, any leasehold estate hereby mortgaged (including all railroads and leasehold estates which shall hereafter become subject to the lien of this mortgage), or of any railroad of which any stocks or bonds are or shall be pledged hereunder; and it shall and will also make, do, seal, execute, acknowledge and deliver, or cause to be made, done, sealed, executed, acknowledged and delivered all and every such further acts, matters, things, deeds, conveyances, bills of sale and transfers, and assurances in the law, for the better assuring, conveying and confirming unto the Trustee all and singular the hereditaments and premises, estates and property hereby conveyed, or intended so to be, or which are hereby covenanted and agreed hereafter to be conveyed to the Trustee, as it, or its counsel learned in the law, shall reasonably require for better effectuating and carrying out the provisions objects and purposes of this indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured; all which estates shall be held by the Trustee in, under and upon the trusts, and for the uses and purposes, and subject to the powers herein mentioned, declared, given, implied or expressed; and, it will endeavor to procure from all companies, of which the capital stock or bonds or any part of either is, or shall be, pledged hereunder, all conveyances or assurances in law necessary to bring under the lien of this indenture any and all property connected with or appurtenant to the

property of any such company, that shall have been constructed or acquired with the proceeds of any of the bonds set apart by Article One, Section 3 and Section 9.

But nothing expressed or implied in this indenture is intended, or shall be construed, to limit the right or power of the Railroad Company, hereby distinctly reserved, by the use of its credit or in any manner other than by the use of such reserved bonds, to construct or acquire, other lines of railway, branches or extensions, or interests therein, free from the lien hereof.

SEC. 4. The Railroad Company shall and will, at its office or agency in the City of New York, keep a sufficient register or registers of bonds issued hereunder, which registers at all reasonable times shall be open to the inspection of the Trustee; and, upon presentation for such purpose, it will register therein any coupon bonds issued under the provisions hereof; and it shall and will register therein all bonds without coupons issued under the provisions hereof. As to all bonds so registered, the person in whose name the same shall be registered shall for all purposes be deemed and regarded as the owner thereof, and thereafter payment of or on account of the principal sum in such bond mentioned shall be made only to such registered holder or upon his order, but such registration may be changed as hereinafter provided. All such payments so made shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

Upon presentation of any coupon bonds which shall have been registered as aforesaid, with the order or assignment of the registered holder, the same shall be transferred upon such register to the person named in such written order or assignment, and thereafter such transferee or transferees of such bond shall be held to be the owner or owners thereof with all incidental rights and powers, and from time to time such transfers may be made as the registered holder of any such bond for the time being may direct as aforesaid. The registered holder of any such coupon bond shall also have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal thereof shall be payable to any person presenting the same. Any holder of a coupon bond registered to bearer may cause such bond to be registered in the name of such holder

with the same effect as a first registration thereof; and successive registrations as aforesaid may be made from time to time as desired. Such registration of any coupon bond shall not restrain the negotiability of any coupon thereto belonging but every such coupon shall continue to pass by delivery merely.

ARTICLE FOUR.

SECTION 1. Neither any coupon belonging to any bond hereby secured, nor any interest obligation in respect of any registered bond which in any way on or after maturity shall be transferred or pledged separate and apart from its bond, shall be entitled to any benefit of or from this indenture, except after the prior full payment of the principal of all bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

SEC. 2. Until default shall have been made in the due and punctual payment of any interest, or in the due and punctual payment of any principal sum, of any bond hereby secured, or in the due and punctual performance and observance of any covenant or condition hereof obligatory upon the Railroad Company, and, until any such default continuing beyond the period of grace, if any, herein provided in respect thereof, shall have become the subject of some action hereunder by the Trustee or by the bondholders as hereinafter authorized, or until a Receiver shall have been appointed, or until the Railroad Company voluntarily shall have surrendered possession to the Trustee as hereinafter permitted, the Railroad Company, its successors and assigns, shall be suffered and permitted in any manner, and to any extent, not affecting the lien of this indenture, to retain actual possession of all and every the premises hereby mortgaged (other than bonds and certificates of stock) and the same and every part thereof, with the rights and franchises appertaining thereto, and the tolls, income, rents, issues and profits thereof, to manage, operate, collect, receive, use and enjoy in the same manner and to the same extent as if this indenture had not been made.

SEC. 3. In case default shall be made in the payment of any interest on any Prior Lien bond or on any General Lien bond at any time isued under and secured by this indenture, or on any bond secured by any mortgage recited in Article One,

Section 5, I., II. and IV., or in Section 8, and such default shall continue for a period of six months; or in case default shall be made in the due and punctual payment of the principal of any Prior Lien bond or of any General Lien bond secured hereby, or when and as the same shall be demanded in the due and punctual payment of the principal of any bond secured by any mortgage recited in Article One, Section 5, I., II. and IV., or in Section 8; or in case default shall be made by the Railroad Company in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the mortgaged property and premises, or the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee or from holders of five per cent. in amount of the bonds hereby secured; or in case the Railroad Company shall make default in the due observance and performance of its covenant of further assurance, or any other covenant, promise or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured; then, and in each and every such case of default (provided, however, in respect of each of the three cases so indicated that it shall have continued for six months as aforesaid), the Trustee personally, or by its agent or agents, attorney or attorneys, may enter into and upon all or any part of the railways, property and premises, lands, rights, interests and franchises hereby conveyed or intended so to be, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys, to the best advantage, as well of the public as of the holders of the bonds hereby secured in accordince with law and with any statute relating to said railways and other premises or any part thereof, or to the operation thereof; and, upon every such entry, the Trustee, at the expense of the trust estate, from time to time, by either purchase, repairs or construction, may maintain and restore, and insure or keep insured, the rolling stock, tools and

machinery and other property, buildings, bridges and structures erected or provided for use on connection with said railways and other premises, and whereof it shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with railway companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements and useful alterations, additions, betterments and improvements thereto and thereon, as well in respect of the rolling stock or equipments as in respect of the railways and appurtenances and other subject matters as to it may seem judicious; and it may collect and receive all tolls, freights, incomes, rents, issues and profits of the same and every part thereof, and also the income from stocks and bonds pledged hereunder, and after deducting the expenses of operating said railways, and other premises and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property, or any part thereof, as well as just and reasonable compensation for its own services and for all agents, clerks, servants and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

in case the principal of the Prior Lien bonds hereby secured shall not have become due, to the payment of the interest remaining in default in the order of the maturity of the installments of such interest, first, upon any and all "Prior Lien bonds," and, after satisfaction thereof, then upon any and all "General Lien bonds," and next, if the principal of the General Lien bonds shall have become due by declaration or otherwise, to the payment of the principal of all General Lien bonds; such payments in every instance to be made ratably to the persons or parties entitled thereto without discrimination or preference; but,

in case the principal of the Prior Lien bonds shall have become due by declaration or otherwise, first, to the payment of the accrued interest in the order of the maturity of the installments thereof, upon any and all Prior Lien bonds, and next to the payment of the principal of all Prior Lien bonds, and, after satisfaction thereof, to the

payment in like manner of the interest accrued upon any and all General Lien bonds, and finally to the payment of the principal of all General Lien bonds; in every instance such payments to be made ratably to the persons or parties entitled to such payment, without any discrimination or preference;

these provisions, however, not being intended in any wise to modify the provisions of Section 1 of this Article.

Upon and during such continuance of any such default, either with or without entry, the Trustees shall have, exercise, and enjoy the right to vote on all shares of stock pledged or agreed to be pledged hereunder, and for the benefit of the holders of bonds hereby secured to receive and collect all interest moneys and dividends maturing or payable upon all pledged bonds and stocks, and as holders of such shares of stock and of such bonds pledged or agreed to be pledged in this indenture, to perform any and all acts, or to make or execute any and all requests, requisitions or other instruments.

SEC. 4. In case default shall be made by the Railroad Company in the payment of any interest on any Prior Lien Bond, and such default shall continue for a period of six months, then and in every such case of continuing default, upon the written request of the holders of twenty-five per cent. in amount of the Prior Lien Bonds hereby secured then outstanding, the Trustee shall, by notice in writing delivered to the Railroad Company, declare the principal of all Prior Lien Bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary thereof in anywise notwithstanding.

In case default shall be made by the Railroad Company in the payment of any interest on any Prior Lien Bond or any General Lien Bond hereby secured at any time issued and outstanding, and such default shall continue for a period of six months, then and in every such case of continuing default, upon the written request of the holders of twenty-five per cent. in amount of the General Lien Bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railroad Company, shall declare the principal of all General

Lien Bonds hereby secured, then outstanding, to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary thereof in anywise notwithstanding.

Each and every provision of this section is, *however,* subject to the condition (as to each of said two issues of bonds respectively), that if at any time after the principal of either of said two issues shall have been so declared due and payable, all arrears of interest upon all bonds of such issue shall either be paid by the Railroad Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds of such issue hereby secured then outstanding, by like written notice to the Railroad Company and to the Trustee, may waive such default and its consequences as to such issue; but no such waiver shall extend to or affect any bonds of the other issue or any subsequent default as to either issue, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other lawful reason, or shall have been determined adversely to the Trustee, then and in every such case, the Railroad Company shall be restored to its former position and rights in respect of the mortgaged premises and the shares of stock and bonds, and other property, herein pledged or agreed to be pledged; and, upon the written request of the Railroad Company, the Trustee shall do, make, execute, acknowledge and deliver such acts, deeds, instruments and assurances in the law as may be required to effectuate such purpose; but, nevertheless, all rights, remedies and powers of the Trustee shall survive and continue as though no such proceedings had been taken.

SEC. 5. In case default shall be made by the Railroad Company in the payment of any interest on any Prior Lien bond or on any General Lien bond secured by this indenture, or on any bond secured by any mortgage recited in Article One, Section 5, I., II., and IV., or in Section 8, and such default shall continue for a period of six months; or in case default shall be

made by the Railroad Company in the due and punctual payment of the principal of any Prior Lien bond or of any General Lien bond secured hereby, or when and as the same shall be demanded in the due and punctual payment of the principal of any bond secured by any mortgage recited in Article One, Section 5, I., II. and IV. or in Section 8; or in case default shall be made by the Railroad Company in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the mortgaged property and premises or the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee or from holders of five per cent. in amount of the bonds hereby secured; or in case the Railroad Company shall make default in the due observance and performance of its covenant of further assurance, or any other covenant, promise or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured; then, and in each and every such case of default (provided, however, in respect of each of the three cases so indicated, that it shall have continued for six months as aforesaid), the Trustee, with or without entry, personally or by attorney, in its discretion (*a*) may sell to the highest and best bidder, in one lot and as an entirety, all and singular the mortgaged property and premises, bonds and stocks, rights, franchises and interests, lands, and appurtenances, and all right, title and interest, claim and demand therein, and right of redemption thereof; which sale shall be made at public auction at such place in the City of Elmira, in the State of New York, or at such other place on the railroad hereby mortgaged, at such time and upon such terms, as may be specified in the notice of sale to be given as herein provided; or (*b*) may proceed to protect and enforce the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and to enforce any of its rights or duties hereunder.

Upon either (*c*) the written request of the holders of twenty-five per cent. in amount of the General Lien bonds, in case of any such continuing default, or (*d*) the written request of the holders of twenty-five per cent. in amount of the Prior Lien bonds at the time outstanding, in case of any such continuing default other than in the payment of the principal or interest of the General Lien bonds, it shall be the duty of the Trustee upon being indemnified as hereinafter provided to take all needful steps for the protection and enforcement of its rights and the rights of the bondholders secured hereby, and to exercise the powers of entry and sale herein conferred, or both, or to take appropriate judicial proceedings according to such request, or in default of specific instructions by such bondholders to proceed by action, suit or otherwise, as the Trustee being advised by counsel learned in the law shall deem most expedient in the interest of the holders of the bonds hereby secured.

Provided, nevertheless, that no foreclosure of this mortgage or sale of the mortgaged premises pursuant to judicial proceedings or under the powers of sale conferred upon the Trustee hereunder, shall affect any right or lien of the holders of the Prior Lien bonds or accelerate or precipitate the maturity thereof, unless such foreclosure or sale be had upon the written request of the holders of twenty-five per cent. in amount of the Prior Lien bonds then outstanding; it being the intention that the lien and rights of such Prior Lien bonds shall continue unaffected by any sale or foreclosure hereunder unless made upon such request of holders of Prior Lien bonds; but that in case of any default the Trustee, in its discretion, may make, and such holders of twenty-five per cent. in amount of General Lien bonds may require, a sale or foreclosure subject to the Prior Lien bonds, and not otherwise, unless a sale or foreclosure shall have been requested by the holders of twenty-five per cent. in amount of the Prior Lien bonds as above authorized.

Notice of any sale pursuant to any provision of this indenture, shall state the time and place, when and where, and the terms upon which the same is to be made, and shall contain a brief description of the property to be sold, and shall be sufficiently given if published once in each week for six successive weeks prior to such sale in one newspaper at that time published in each of the cities of New York, N. Y.; Buffalo, N. Y.;

Newark, N. J.; Susquehanna, Pa.; Cleveland, O.; Indianapolis, Ind.; and Chicago, Ill.

Upon the completion of any sale or sales under this indenture, the Trustee shall make, execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, of conveyance, for the property and franchises sold.

In case the mortgaged and pledged premises shall be sold upon a default hereunder and such sale shall be made not subject to the lien of the Prior Lien bonds, hereby secured, the whole of the principal sum of all the bonds of both issues hereby secured, if not previously declared due, shall at once become due and payable, anything in said bond or bonds or herein contained to the contrary notwithstanding.

In case of any sale or sales made subject to the lien of the Prior Lien bonds, the whole of the principal of all the General Lien bonds, if not previously declared due, shall at once become due and payable, anything in said bond or bonds herein contained to the contrary notwithstanding; but no such sale made subject to the lien of the Prior Lien bonds, shall in anywise affect the maturity or lien of the Prior Lien bonds or any right or remedy in respect thereof.

SEC. 6. None of the remedies provided in the preceding Sections 3 and 5 shall apply, nor shall they be enforced, by reason of any default, in respect of any of the old bonds or obligations specified in Article One, Section 5, IV., and Section 8, II., until after the Railroad Company shall have acquired, as provided in Section 2 of Article One, the New York, Pennsylvania and Ohio Railroad, or the control thereof, and shall have subjected the same to the lien of this indenture.

SEC. 7. For all purposes and within the meaning of the preceding Sections 3, 4 and 5, and also of Sections 13 and 16 of this Article, any default in payment of principal or interest of any Prior Lien bonds shall constitute a default entitling the holders of General Lien bonds to all rights and remedies hereunder as though such default were in respect of Genral Lien bonds.

SEC. 8. Any sale or sales completed under or by virtue of this indenture, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the

Railroad Company of, in and to the premises hereby mortgaged, and shall be a perpetual bar both at law and in equity against the Railroad Company, its successors and assigns, and against any and all persons claiming or to claim the mortgaged premises, or any part or parcel thereof, by, from, through or under the Railroad Company, its successors and assigns, or any of them; *provided,* however, that in case of a foreclosure or sale hereunder made subject to the lien of the Prior Lien bonds, then and in such event the lien of the Prior Lien bonds shall continue unimpaired, and the holders thereof through the Trustee, or otherwise as in this indenture provided, shall have and may thereafter assert all their rights and remedies to the same extent as though there had been no foreclosure or sale hereunder.

Any sale pursuant to any provision hereof, because of any default of the Railroad Company, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or some judgment or decree of foreclosure and sale made by any Court of competent jurisdiction, shall be made subject to the lien of any mortgage or mortgages prior to this indenture upon any property hereby conveyed to the extent of such lien or liens respectively.

SEC. 9. The Trustee may, from time to time, adjourn any sale to be made by it under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and, so adjourning such sale, it may without further notice or publication make sale of the mortgaged premises at the time and place to which the same shall be so adjourned.

SEC. 10. The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of the property, sold as aforesaid, for the purchase money, and no such purchaser or purchasers, or his, their or its representatives, vendees, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SEC. 11. The proceeds or avails of any sale under any provision of this indenture, and the purchase money paid thereon shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made and incurred by the Trustee in managing and maintaining the property hereby conveyed or so intended to be, and of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sales shall have been made subject.

Second. To the payment of the whole amount then owning or unpaid upon the bonds hereby secured for principal and interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and the accrued and unpaid interest subject, however, to the provisions of Section 1 of this Article; *provided,* that the Prior Lien bonds shall be first paid in full as to both principal and interest, before any payment shall be made on the General Lien bonds, unless such sale shall have been made subject to the continuing lien and rights of the Prior Lien bonds, in which event any arrears of interest in default on the Prior Lien bonds shall first be paid under this *Second* paragraph, and with this exception the entire payment under this *Second* paragraph shall go to the holders of the "General Lien Bonds" or the coupons thereof, as above provided.

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SEC. 12. The Railroad Company shall not and will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force in any locality where the mortgaged premises, or any part thereof, may or shall be situate, nor will it claim, take or insist on, any benefit or advantage from any law now or hereafter in force, providing for the

valuation or appraisement of the mortgaged premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by the Congress of the United States or by the Legislature of any State to redeem the property so sold, or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it agrees that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

SEC. 13. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or for the execution of any trust thereof, or for the appointment of a Receiver, or for any other remedy, hereunder, without first giving to the Trustee written notice of the fact that default has occurred and continued as hereinbefore provided, nor unless also the holders of twenty-five per cent. in amount of the issue of bonds hereby secured and affected by such default and then outstanding in respect of which such holder requests action, shall have made written request of the Trustee, and shall have afforded to it reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, nor unless also they shall have offered to the Trustee adequate security and indemnity against the cost, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this indenture and to any action, or cause of action, for foreclosure or for the appointment of a Receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, but that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein

provided and for the equal benefit of all holders of such outstanding bonds and coupons according to the tenor and terms of the two issues of bonds hereunder issued and hereby secured. A default in the payment of interest upon General Lien bonds only shall not be deemed a default affecting Prior Lien Bonds.

SEC. 14. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee or to the holders of bonds secured hereby is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.

SEC. 15. The personal property and chattels hereby conveyed, or intended so to be, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads and part thereof, and are to be used and sold therewith and not separate therefrom.

SEC. 16. Upon proper indemnity to the Trustee, the holders of a majority in amount of each of the two issues of bonds hereby secured and then outstanding (the holders of each issue being considered and counted as a separate class) in case of any subsisting default other than in the payment of the interest on or principal of the General Lien Bonds, or the holders of a majority in amount of General Lien Bonds if such default be only as to interest upon, or principal of, those bonds, anything in this indenture contained to the contrary notwithstanding, from time to time, shall have the right to direct and control any and all proceedings theretofore instituted for any sale of the premises hereby conveyed and pledged, or agreed or intended so to be, or for the foreclosure of this indenture, or for the appointment of a Receiver, or any other proceedings hereunder, and for that purpose to instruct the Trustee to continue or to discontinue any such proceedings hereunder; and no such action by the Trustee or by such majority shall extend to, or be taken to affect, any subsequent default or to impair any right resulting therefrom. But nothing herein is intended to limit any power of the Trustee to exercise any right or to apply or enforce any remedy under any of the provisions of this indenture, unless the Trustee be otherwise expressly directed, as in this section provided, by the requisite number and class of holders of bonds hereby secured.

Exhibit R-118.

SEC. 17. In case of any sale hereunder, any and all purchasers in making settlement or payment, shall be entitled to turn in any bonds and any matured and unpaid coupons hereby secured, estimating the value of such bonds and coupons for that purpose at the sum payable out of the net proceeds of such sale to the holder or holders of such bonds and coupons as his or their ratable share of such net proceeds, after allowing for the proportion of the total payment required to be made in cash for the cost and expenses of the sale or otherwise; and if such share of net proceeds shall be less than the amount then due upon such bonds and coupons, such purchaser or purchasers may make such settlement by receipting on each bond the amount to be credited thereupon; anl at any and every such sale any or all of the bondholders may bid for and purchase such property, and upon compliance with the terms of sale may hold and retain, and dispose of, such property without further accountability therefor.

SEC. 18. Any request in writing or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor and date, and may be signed or executed by such bondholders in person or by attorney in fact. Proof of the execution of any such request or other instrument, and of the holding by any person of any of said coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, if made in the following manner:

The fact and date of the execution by any person of any such request or other instrument, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution.

The amount of coupon bonds transferable by delivery, held by any person executing any such request or other instrument as the holder of bonds, and the amounts and issue numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate in writing executed by any trust company, bank, bankers or other depositary (wherever situated), whose certificate shall be deemed by the Trustee to be satisfactory, showing that such person had on

deposit with such depositary the bonds described in such certificate at the date therein mentioned. Such proof shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument.

SEC. 19. Upon filing a bill in equity, or upon commencement of any other judicial proceedings to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein and hereby conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default as hereinbefore provided, and as a matter of right, the Trustee shall be entitled to the appointment of a Receiver or Receivers of the premises hereby mortgaged, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment shall confer.

SEC. 20. No delay or omission of the Trustee or of any holder of bonds hereby secured to exercise any right or power arising from any default continuing as aforesaid shall exhaust or impair any such right or power, or be construed to be a waiver of any such default, or an acquiescence therein.

SEC. 21. The Railroad Company at any time hereafter before full payment of the bonds secured hereby, and whenever it shall deem expedient for the better security of such bonds, although there be then no default entitling the Trustee to enter into possession, may surrender and deliver to the Trustee full possession of the whole or any part of the property, premises and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery the Trustee, at its option, may enter into and upon the premises so surrendered and delivered, and may take and receive possession thereof, for such period fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or of any part thereof, the Trustee, from the time of its entry, shall and will work, use, manage, control and employ the same in accordance with the provisions of this indenture, and shall and will

receive and apply the income and revenues thereof as provided in Section 3 of this Article. Upon application of the Trustee, and with consent of the Railroad Company, if there be then no subsisting default hereunder, and without such consent if there shall then be a subsisting default, a Receiver or Receivers may be appointed to take possession of, and to operate and manage the whole or any part of said property, with all the rights, powers and duties by this section conferred upon the Trustee, and in every case when a Receiver of the whole or any part of the said property shall be appointed under this section or otherwise, the Trustee, shall be entitled to receive all the income and profits of such property for the benefit of the holders of bonds hereby secured.

SEC. 22. In the event of any sale, pursuant to any provision hereof, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale made by any Court of competent jurisdiction, the whole of the property hereby mortgaged and pledged shall be sold in one parcel and as an entirety, including all the rights, titles, estates, railroads, equipment, franchises, leases, leasehold interests, contracts, stocks, bonds and other real and personal property of every name and nature; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be. And the Trustee and its successors are hereby appointed the true and lawful attorney or attorneys, irrevocable, of the Railroad Company, in its name and stead to make all necessary deeds and conveyances of property and all necessary transfers of the shares of stock or bonds or other obligations thus sold, and for that purpose it and they may execute all necessary acts of assignment and transfer, and may substitute one or more persons with like power, the Railroad Company hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

SEC. 23. Until default shall be made by the Railroad Company in the payment of either the principal or interest of the bonds hereby secured, or otherwise, as set forth in Sections 3 and 5 of this Article or either of them, and until the Trustee, as herein authorized, shall have taken some proceeding in respect thereof, or until a Receiver shall have been appointed as here-

inbefore permitted, the Railroad Company shall be entitled to receive all interest payable, and dividends declared, in respect of any bonds or stocks by or pursuant to this Indenture pledged or transferred to the Trustee as collateral security for the payment of the bonds issued hereunder, the coupons for such interest from time to time to be delivered by the Trustee to the Railroad Company for such purpose, and immediately upon such delivery to be collected and canceled to the satisfaction of the Trustee; suitable orders, in favor of the Railroad Company, or its nominee, for the payment of such dividends from time to time to be executed and delivered by the Trustee to the Railroad Company.

SEC. 24. Until default be made as aforesaid, and some action in respect thereof shall have been taken by the Trustee, or by bondholders, as herein authorized, the Railroad Company shall have the right to vote upon all shares of stock pledged hereunder, for all purposes not inconsistent with the provisions or purposes of this indenture and with the same force and effect as though such pledge had not been made. From time to time the Trustee shall give to the Railroad Company, or its nominee, suitable proxies for such purposes.

SEC. 25. The Trustee may do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of any and all companies whose shares are pledged hereunder, and for such purposes from time to time it may sell or assign, transfer and deliver so many shares of the stocks of the several companies as may be necessary to qualify persons to act as Directors of, or in any other official relation to, said companies; provided, however, that no transfer under this provision shall be made which shall impair the Trustee's control of any corporation whose shares shall be so transferred; and subject to this limitation, the Trustee may make such other arrangements as it shall deem necessary for the protection of the trust hereunder.

SEC. 26. If at any time the obligors in any of the bonds at any time pledged hereunder shall fail to make payment of either the principal or interest thereof, according to the tenor of such bonds, then, unless the Trustee shall hold hereunder more than a majority of the stock of such obligor, (1) in any case where the Trustee holds more than eighty-five per cent. in amount of

any one or more issues of the bonds of such obligor, and (2) in other cases according to its discretion, the Trustee, upon the written request of the Railroad Company, and not otherwise, shall cause proper and apt proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose the mortgage, or mortgages, by which such bonds shall be secured, and if the property covered by such mortgage, or mortgages, shall be sold under foreclosure, it shall, if it hold more than eighty-five per cent. in amount of the bonds thereby secured cause such property to be purchased for and in the name or in behalf of the Railroad Company, if the amount bid at such sale shall not exceed the full amount due on the entire issue of such bonds, and the cost and expenses of such suit and sale, and the Railroad Company shall furnish the necessary cash to pay such cost and expenses, any claims having priority of lien or in equity over the mortgage foreclosed and the dividends accruing from such sale on any bonds not held by the Trustee. If such property shall not be bought by the Trustee, the Trustee shall receive out of the proceeds of such sale the dividend accruing on the bonds held by it, and shall apply the same as herein provided. When any railroad or railroad property shall be purchased by the Trustee, for and in the name of the Railroad Company, as above provided, the lien of this indenture immediately and *ipso facto* shall attach to, and bind, the property so purchased.

If at any time the obligors in any of the bonds at any time pledged hereunder shall fail to make payment of either the principal or interest thereof, according to the tenor of such bonds, and by reason thereof foreclosure or other proceedings shall be taken, otherwise than at the instance of the Trustee, the Trustee shall take such steps as in its discretion shall be best calculated to protect its interests hereunder in respect of such bonds, and for this purpose it may join in any plan or agreement of reorganization, and may accept its share of new securities under such plan.

No such action of the Trustee shall relieve the Railroad Company from any liability hereunder by reason of such default, nor from any of the consequences thereof.

When the Trustee shall receive moneys arising from the foreclosure of any mortgage executed to secure the payment of bonds pledged hereunder, or from any sale of any railroad

mortgaged to secure any such bond, it shall apply such moneys, whether principal or interest, in the manner provided in Section 29 hereof, for the application of money arising from the release of real property mortgaged hereunder.

In the event of the dissolution of any corporation of whose capital stock the greater part shall be held hereunder by the Trustee, such action may be taken and such power be exercised with reference thereto as the Trustee in its discretion shall deem most expedient for the conservation of the interest of the trust estate in such property, either through the agency of a successor corporation or otherwise.

SEC. 27. No assignment or pledge hereunder of any shares of stock of any company or companies now or hereafter deposited hereunder, shall prevent the consolidation or merger of any one or more of said companies with, or its sale to, the Railroad Company, but such consolidation, merger or sale may be made under any laws to which such companies may then be subject, anything in this indenture contained to the contrary notwithstanding: Provided, however, that such consolidation, merger or sale shall be made only upon such terms as shall be approved by the Trustee, or by the holders of a majority in interest of the bonds secured by this indenture. In the event of consolidation or merger of any one or more of the said companies with, or its sale to, the Railroad Company, this indenture immediately shall become and be a lien upon the property of the company so consolidated or merged with, or sold to, the Railroad Company, with the same force and effect as if expressly conveyed by this indenture, and the holders of the bonds hereby secured shall always have as full and complete a lien upon such property as that herein created by the pledge of the stock and bonds of such constituent companies to the Trustee hereunder.

Neither shall the assignment or pledge hereunder of any capital stock of any company or companies prevent the consolidation or merger of any such companies with each other; but such consolidation or merger may be made under any laws to which such companies may then be subject, anything in this indenture contained to the contrary notwithstanding: Provided, however, that such consolidation or merger shall be made only upon such terms as shall be approved by the Trustee or by the holders of a majority in amount of the bonds secured by this

indenture; and that the portion of the capital stock of any such consolidated or merging company (but never less than a majority thereof), issued for and in lieu of any stock previously pledged hereunder, shall always bear to the total capital stock a proportionate relation at least as high as that borne by such previously pledged stock to the total capital stock of such constituent companies. Such portion of such stock of such consolidated or merging company shall be assigned to and deposited with the Trustee, and shall become and be subject to the lien of this indenture with the same force and effect as if expressly pledged by this indenture; and the holders of the bonds hereby secured shall always have a lien upon such portion of such stock of such consolidated or merging company as full and complete as upon the stock and bonds of such constituent companies, by reason of the pledge thereof hereunder.

The Trustee may do any and all things proper to carry into effect the purposes of this section, and in order to facilitate the merger in whole or in part, as authorized by law, of any railroad the Trustee may transfer into the name of the Railroad Company, under such restrictions as it may deem sufficient for the protection of the holders of the bonds secured hereby, the shares of any Company about to be so merged, but the certificates in the name of the Railroad Company shall be forthwith delivered to and held by the Trustee hereunder, and the Railroad Company shall simultaneously execute such irrevocable instruments as the Trustee shall deem necessary in order to enable it to transfer such shares back into its own name if at any time it shall deem such a course expedient for the protection of the holders of the bonds hereby secured.

SEC. 28. In case of any default hereunder, if in order to preserve the franchises of the Railroad Company and to avoid foreclosure and sale involving the organization of a successor Company, any plan of reorganization shall be proposed with provisions for the modification of this mortgage, so far as to authorize and require the creation of new liens upon the mortgaged premises prior and superior to the lien hereof; then and in every such case registered holders of four-fifths in amount of all outstanding bonds hereby secured, by writing may direct the Trustee in behalf of all the holders of all bonds then or

thereafter issued hereunder, to acquiesce in the provisions of such plan: which plan also may determine and provide for the interests of other creditors and lienors and of the shareholders of the Railroad Company. This special power, however, is granted to the registered holders of four-fifths in amount of the bonds upon the express condition, that no bond hereby secured, and then outstanding, shall be changed as to amount or date of payment of principal or rate or dates of payment of interest. Thereupon, but not otherwise, the Trustee shall by writing acquiesce in such provisions of such plan, and such acquiescence by the Trustee shall constitute the irrevocable assent of all holders of bonds and coupons hereby secured to any such accepted modifications, as set forth in such plan and necessary to give effect to such provisions thereof. All such modifications so affecting this indenture and the bonds and coupons hereby secured, shall be reduced to a written agreement between the Railroad Company and the Trustee, and such agreement shall be recorded in New York County, New York; Passaic County, New Jersey; Susquehanna County, Pennsylvania; Marion County, Ohio; Huntington County, Indiana; Cook County, Illinois, and thenceforth shall be deemed to be part of this indenture, and thereafter the lien of this indenture, and of the bonds hereby secured, shall be deemed to be and shall be subordinate to such new and prior liens created pursuant to such plan, but only to the extent specified in such written agreement; *provided,* that the consent of the holders of four-fifths of the Prior Lien Bonds shall be requisite to the creation of any new lien or charge in priority to the Prior Lien Bond.

Registration for any purpose of this section shall be sufficient if then or theretofore made and then continuing in any manner permitted by Section 14 of Article One of this indenture.

SEC. 29. Provided there shall then be no continuing default in respect of which the Trustee shall have taken some proceedings herein authorized, the Trustee, upon request of the Railroad Company, at any time or times, in its discretion, may release from the lien and operation of this indenture and of the bonds hereby secured, any premises acquired, held or used by the Railroad Company for the purpose of stations, depots, shops or other buildings or erections, or for other uses not connected with the maintenance or operation of some part of the lines of railway then subject to the lien of this indenture, or any prem-

ises which may have been acquired or held for the supply of gravel, fuel and other materials for the purposes of such lines of railway; provided that in the judgment of the Trustee, at the time of such release such premises shall no longer be requisite for the purposes for which the same shall have been so acquired or used, or necessary or expedient to be retained for use in connection with such lines of railway, and likewise it may release any parts of the line of track or roadway, or of the depot grounds, buildings or accommodations connected therewith, which at the time of such release, may have been thrown out of use and have ceased to form part of such lines of railway by reason of the straightening, alteration or abandonment of such part of the lines of railway; but the power of release given by this article is to be exercised only in case the Railroad Company shall sell or contract to sell the property so to be released, because no longer required for the uses or purposes of such railways, and shall require the same to be released, in order to give good title to the purchaser or purchasers thereof. The proceeds of any and all such sales shall, unless some other disposition thereof be required by some prior mortgage, be invested in the purchase of other property, real or personal, which shall be conveyed in trust by the Railroad Company to the Trustee, subject to all the trusts hereby declared, or in the purchase of bonds hereby secured (which bonds shall forthwith be canceled and delivered to the Trustee); or in betterments or improvements, or in some other way, to the benefit of the mortgaged premises, and satisfaction of the Trustee. When such released premises shall have been thrown out of use or shall have ceased to be required, by reason of changes of the line of the road, on or along the routes aforesaid, or any of them, or change of depot grounds, buildings or other accommodations, the substitutes therefor acquired by the Railroad Company, *ipso facto,* shall become and be subject to the lien of this indenture, the same as though specifically mortgaged hereby, and as a condition of such release they shall be conveyed to the Trustee by appropriate deeds upon the trusts and for the purposes of this indenture. The Railroad Company, from time to time, shall also have full power, according to its discretion, to dispose of such portion of the machinery, equipments and implements, at any time held or acquired for the use of any lines of railway, as may have become unfit for such use, replacing the same by new machinery,

equipment or implements, which shall become subject to the operation of this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this article of this indenture be required to see to the application of the purchase money.

SEC. 30. In case at any time it shall become necessary, or in the judgment of the Trustee be for the interest of the bondholders hereby secured, or for the benefit of the mortgaged property, that the Railroad Company shall make changes or alterations in, or substitutions of, any leases, contracts or trackage rights by which the Railroad Company now secures access to any point or points, the Railroad Company, with the written consent of the Trustee, may make any such changes, alterations or substitutions.

The Railroad Company, with the written consent of the Trustee, may make, or to cause to be made, executed and delivered, all such instruments in writing as may be proper and necessary to carry out and perfect any and all changes, alterations or substitutions authorized in this section when and as the same may be made.

At the same time, ample provision shall be made by apt and sufficient instruments in writing, so that such modified, altered or substituted leases, contracts or trackage rights shall be, and forthwith become bound by, and subject to, the terms of this indenture in the same manner, as the then existing leases, contracts and trackage rights.

SEC. 31. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney be selected with reasonable care; or for anything whatever, in connection with this trust, except misconduct or gross negligence; the Trustee shall not be personally liable for any debts contracted by it or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trust hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the

bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder or to take any action in respect thereof except after written notice of such default from one or more of the holders of the bonds hereby secured, together with tender of the indemnity aforesaid, anything herein contained to the contrary notwithstanding; neither shall the Trustee in any event be responsible for the proper recording of this indenture or for the filing of the same as a chattel mortgage.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created.

SEC. 32. The terms or words "the Trustee," "said Trustee," and "the said Trustee," or any other equivalent term, as used in this indenture (except when otherwise clearly indicated), shall be held and construed to mean the Trustee or Trustees for the time being, whether original or successor, and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number, and the term "majority" shall signify "majority *in amount,*" whether or not so expressed.

SEC. 33. The Trustee, or any Trustee hereafter appointed, may resign and be discharged of the trusts created by this indenture by giving notice thereof to the Railroad Company and to the bondholders, by publication, at least twice a week, for six successive weeks, in one of the newspapers at that time published in each of the cities of New York, N. Y., and London, England, and by due execution of the conveyance herein required.

The Trustee may be removed at any time by an instrument in writing under the hands and seals of three-quarters in amount of the holders of the bonds secured hereby and then outstanding.

SEC. 34. In case a Trustee shall die, or shall resign or be removed as herein provided, a majority in amount of holders of the bonds then outstanding hereunder shall have the right and power by instrument in writing under their hands and seals to appoint a new Trustee to fill such vacancy, and, until such appointment be so made by a majority of the bondholders, the Board of Directors of the Railroad Company may appoint a new

Trustee to fill such vacancy for the time being, and in every such case the new Trustee so appointed, while he or it continues as such, shall have and possess and be subject to the like rights, powers, estates and duties as though originally Trustee hereunder. Should any vacancy be filled by the Railroad Company under the foregoing provision in that behalf it shall be competent for any Judge of the United States in and for the Second Circuit, or for any Court of competent jurisdiction in the premises, upon the application of a majority in amount of the bondholders, to annul such appointment, and to appoint as Trustee the nominee of such majority.

SEC. 35. If at any time or times in order to conform to any law of any State in which the Railroad Company now holds or at any time hereafter shall hold any property, the Railroad Company shall so request, the Trustee shall unite with the Railroad Company in the execution, delivery and performance of all instruments and agreements necessary or proper to constitute an additional Trustee or Trustees to have, enjoy and exercise in association and equally with the Trustee originally named herein or its successor appointed as hereinbefore provided, any and all powers, rights and estates hereunder, excepting only those specified in Article One and in Article Four, Sections 23, 24, 25 and 27, and the custody of the securities therein mentioned, which powers, duties and estates shall be possessed and exercised, and such custody retained by said original Trustee or such successor, notwithstanding the appointment under this section of any co-Trustee or co-Trustees.

SEC. 36. Should any deed, conveyance or instrument in writing, from the Railroad Company or from any resigning or removed Trustee, be required by any new Trustee, for more fully and certainly vesting in and confirming to him or it such estate, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged and delivered by the party from whom they may be required.

ARTICLE FIVE.

No recourse under any obligation, covenant or agreement of this indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company, or of any successor corpora-

tion, either directly or through the Railroad Company, by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any statute or otherwise, it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations and that no personal liability whatever shall attach to, or be incurred by the incorporators, stockholders, officers or directors of the Railroad Company, or of any successor corporation or any or either of them, under or by reason of any or either of the obligations, covenants or agreements in this indenture, or in any of the bonds or coupons hereby secured, expressed and contained or implied therefrom, and that any and all personal liability of every name and nature, either at common law or in equity, or by statute, of every such incorporator, stockholder, officer or director, is hereby expressly waived as a condition of, and consideration for, the execution and issue of this mortgage and such obligations.

ARTICLE SIX.

If the said Railroad Company shall well and truly pay, or cause to be paid, the principal and interest of all bonds hereby secured at the times and in the manner therein specified, and shall well and truly keep and perform all the things herein required to be kept and performed by it, according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or pledged shall revert to the Railroad Company, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void; otherwise, the same shall be, continue and remain in full force and virtue.

ARTICLE SEVEN.

All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railroad Company, shall bind and be binding upon its successors and assigns, whether so expressed or not.

Nothing contained in this indenture, or in any bond hereby secured, shall prevent the consolidation or merger of the Railroad Company with any other corporation; provided, however, that such consolidation or merger shall not impair the lien and security of this indenture, or any of the rights or powers of the

Trustee, or of the bondholders hereunder, and that, upon any such consolidation or merger, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the company formed by such consolidation or merger. In case the Railroad Company shall be consolidated or merged with any other corporation, the successor corporation formed by such consolidation or into which the Railroad Company shall have been merged, shall succeed to and be substituted for the Railroad Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part, and such successor corporation may cause to be signed and may issue in the name of the Erie Railroad Company any or all of such bonds as shall not theretofore have been signed by the Erie Railroad Company and delivered to the Trustee, and the Trustee shall certify and deliver, upon the order of said successor corporation and subject to all the terms, conditions and restrictions herein prescribed, any of such bonds which shall have been previously signed by the officers of the Railroad Company and delivered to the Trustee for certification, and any of such bonds as such successor corporation shall thereafter cause to be signed and delivered to the Trustee for that purpose. All the bonds so isued shall in all respects have the same legal rank and security as the bonds of like issue, viz.: Prior Lien or General Lien, as the case may be, theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof.

And it is also expressly understood and agreed that for every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms "Railroad Company" and "Erie Railroad Company" include and mean not only the New York corporation, but also any sole successor railroad corporation, formed by consolidation or otherwise under the laws of New York or of any State or States; and every such successor railroad corporation shall possess and from time to time may exercise each and every right and power hereunder of the Erie Railroad Company, in its name or otherwise.

Exhibit R-118.

ARTICLE EIGHT.

The Farmers' Loan and Trust Company, Trustee, the party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

ARTICLE NINE.

In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

In witness whereof, the Erie Railroad Company, the party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary; and the Farmers' Loan and Trust Company, the party of the second part, has caused its corporate seal to be hereunto affixed and attested by its Secretary, and these presents to be signed and acknowledged or proved by its Vice-President the day and year first above written.

ERIE RAILROAD COMPANY,

By

E. B. THOMAS,

[L. S.] President.

Attest:

J. A. MIDDLETON,

Secretary.

THE FARMERS' LOAN AND TRUST COMPANY.

By

R. G. ROLSTON,

[L. S.] President.

Exhibit R-118.

Attest:

E. S. MARSTON,
Secretary.

Signed, sealed and delivered in the presence of }

As to Erie Railroad Company,

EDWARD R. GREENE.
GEO. H. COREY.

Signed, sealed and delivered in the presence of }

As to Farmers' Loan and Trust Company,

EDWARD R. GREENE.
GEO. H. COREY.

Formal acknowledgments and certification of recording are omitted.

Exhibit R-119.

EXHIBIT R-119.

Erie Penn.
Indenture.
Complete.

ERIE RAILROAD COMPANY

TO

THE MERCANTILE TRUST COMPANY.

PENNSYLVANIA COLLATERAL INDENTURE

Dated February 1, 1901,

SECURING

$36,000,000,

FIFTY-YEAR 4% PENNSYLVANIA COLLATERAL GOLD BONDS.

Interest Payable February and August.

Exhibit R-119.

An Indenture, dated as of the first day of February, one thousand nine hundred and one, between

Erie Railroad Company (hereinafter termed the "Railroad Company"), a corporation organized and existing under the laws of the State of New York, party of the first part, and

The Mercantile Trust Company, of New York (hereinafter termed the "Trustee"), a corporation organized and existing under the laws of the State of New York, party of the second part.

Whereas, For the purpose of making payment for shares of the capital stock of the following companies acquired or to be acquired by the Railroad Company, namely:

Pennsylvania Coal Company, a corporation organized under the laws of the State of Pennsylvania;

Erie and Wyoming Valley Railroad Company, a corporation organized under the laws of the State of Pennsylvania, and

Delaware Valley and Kingston Railroad Company, a corporation organized under the laws of the State of New York;

and for the purpose of providing means for its other corporate purposes and business, the Railroad Company desires to make and to issue a series of Fifty-Year Four Per Cent. Pennsylvania Collateral Gold Bonds, limited in amount so that the aggregate principal sum of such bonds outstanding at any one time shall never exceed $36,000,000, all of which bonds at any time outstanding shall be equally secured as hereinafter provided; and

Whereas, Such bonds of the Railroad Company to be issued under and secured by this indenture, are to be coupon bonds, each for the principal sum of $1,000, numbered consecutively from 1 upwards, and registered bonds, each bearing a distinctive number or designation, of the denomination of $1,000 or such multiples of $1,000 as from time to time the Railroad Company, by resolution of its Board of Directors, may authorize; and all such coupon bonds and registered bonds, from time to time, as directed by the Board of Directors of the Railroad Company, are to be executed in the name and on behalf of the Railroad Company under its corporate seal by the President or a Vice-President and the Secretary or an Assistant Secretary of the Railroad Company, and are to be substantially of the following tenor:

Exhibit R-119.

[FORM OF COUPON FOUR PER CENT. GOLD BOND.]

No. $1,000.

UNITED STATES OF AMERICA.

Erie Railroad Company

Pennsylvania Collateral 4% Coupon Gold Bond.

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation, hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder of this bond, one thousand dollars, in Gold Coin of the United States of America, on the first day of February, 1951, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon at the rate of four per cent. per annum from February 1, 1901, payable semi-annually, at the said office or agency in like Gold Coin on the first day of February and the first day of August, in each and every year, until the payment of said principal sum, but only upon presentation and surrender, as severally they shall mature, of the coupons therefor annexed hereto; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed February 1, 1901.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom under any present or future law of the United States or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Thirty-six Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by a Collateral Indenture, dated February 1, 1901, executed by the Railroad Company to The Mercantile Trust Company, of New York, as Trustee, pledging all of the shares of the capital stock of the Pennsylvania Coal Company and of the Erie and Wyoming Valley Railroad Company and of the Delaware Valley and Kingston Railroad Company, now owned or hereafter acquired by the Railroad Company, and fifty-one per cent. of the capital stock of the New York, Susquehanna and Western Railroad Company, the certificates for which have been or shall be delivered to the Trustee pursuant to said Collateral Indenture, to which reference hereby is made for a statement of the property pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and of the terms and conditions upon which said bonds are secured and are to be used; the officers, directors and stockholders of the Rail-

road Company being expressly exempted, relieved and absolved from any and all personal liability in respect of said bonds, all such liability being hereby expressly waived.

As additional security for the retirement of every bond of this issue, at or before the stated maturity thereof, the Erie Railroad Company annually will appropriate and will pay to a sinking fund, the sum of ten cents for every ton of coal sold and delivered during the preceding year from the mines of the Pennsylvania Coal Company; and for the purposes of said sinking fund, this bond may be called in during the month of February or the month of August, in any year, at par, together with a premium of five per cent. thereof and all interest then accrued; all as is more fully stated in said Collateral Indenture.

This bond shall pass by delivery, unless registered in the owner's name on the books of the Railroad Company, at its office or agency in the City of New York, such registry being noted on the bond by the Bond Registrar of the Railroad Company. After such registration, no transfer shall be valid unless made on the Railroad Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder also, at his option, may surrender for cancellation this bond with the coupons for future interest thereon, in exchange for a registered bond without coupons, as provided in said Indenture.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed, of the Trustee under said Indenture.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, and coupons for such interest, with the engraved signature of its Treasurer, to be attached hereto, this first day of February, 1901.

ERIE RAILROAD COMPANY,

[L. S.] By

President.

Attest:

Secretary.

Exhibit R-119.

[FORM OF REGISTERED BOND WITHOUT COUPONS.]

No..... $

UNITED STATES OF AMERICA.

Erie Railroad Company

PENNSYLVANIA COLLATERAL 4% REGISTERED GOLD BOND.

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation hereinafter called the "Railroad Company," for value received, promises to pay to

or assigns,

dollars, in the Gold Coin of the United States of America, on the first day of February, in the year 1951, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon from the first day of February, or the first day of August, as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, payable semi-annually at said office or agency, in like Gold Coin, on the first day of February and the first day of August in each year, until the payment of said principal sum; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed February 1, 1901.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under any present or future law of the United States, or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Thirty-six Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a Collateral Indenture, dated February 1, 1901, executed by the Railroad Company to The Mercantile Trust Company, of New York, as Trustee, pledging all of the shares of the capital stock of the Pennsylvania Coal Company, and of the Erie & Wyoming Valley Railroad Company, and of the Delaware Valley and Kingston Railroad Company, now owned or hereafter acquired by the Railroad Company, and fifty-one per cent. of the capital stock of the New York, Susquehanna and Western Railroad Company, the certificates for which have been or shall be delivered to the Trustee pursuant to said Collateral Indenture, to which reference is hereby made for a statement of the property pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and of the terms and conditions upon which said bonds are secured, and are to be used; the officers, directors and stockholders of the Railroad Company being expressly exempted, relieved and absolved from

any and all personal liability in respect of said bonds all such liability being hereby expressly waived.

As additional security for the retirement of every bond of this issue, at or before the stated maturity thereof, the Erie Railroad Company annually will appropriate and will pay to a sinking fund, the sum of ten cents for every ton of coal sold and delivered during the preceding year from the mines of the Pennsylvania Coal Company; and for the purposes of said sinking fund, this bond may be called in during the month of February or the month of August, in any year, at par, together with a premium of five per cent. thereof, and all interest then accrued; all as is more fully stated in said Collateral Indenture.

This bond is transferable by the registered holder hereof, in person or by attorney duly authorized, on the books of the Railroad Company, at its office or agency in the City of New York, upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange therefor, as provided in said Indenture, and on payment, if the Railroad Company shall so require, of the charge therein provided for. This bond also, in the manner prescribed in said Indenture and upon payment of the charge therein provided for, is exchangeable for coupon bonds for the same aggregate principal sum.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said Indenture.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, this day of

ERIE RAILROAD COMPANY,

[L. S] By

President.

Attest:

Secretary.

AND, WHEREAS, There are to be attached to the said coupon bonds, at the time of the issue thereof, coupons representing the semi-annual instalments of interest which shall become due thereon to and including the first day of February, 1951, each of which coupons is to be substantially of the following tenor, viz.:

Exhibit R-119.

[FORM OF INTEREST COUPONS, OF WHICH THE FIRST IS TO BE PAYABLE AUGUST 1, 1901.]

No. $20.00.

On the first day of Erie Railroad Company will pay to bearer, at its office or agency in the City of New York, N. Y., twenty dollars, gold coin of the standard existing February 1, 1901, without deduction for taxes, being six months' interest then due on its collateral Four Per Cent. Gold Bond No.

Treasurer.

AND, WHEREAS, There is to be endorsed on each of said coupon bonds and registered bonds without coupons, a certificate of the Trustee that it is one of the bonds issued hereunder, and no bond shall be secured by this indenture or be obligatory for any purpose unless such certificate shall have been executed by the Trustee; such Trustee's certificate to be substantially of the following tenor, viz.:

[FORM OF TRUSTEE'S CERTIFICATE.]

This bond is one of a series of bonds described in the within-mentioned Indenture, executed by Erie Railroad Company to the undersigned as Trustee.

THE MERCANTILE TRUST COMPANY,
By

AND WHEREAS, Each of the coupons to be attached to such coupon bonds is to be authenticated by the engraved fac-simile of the signature of the present Treasurer, or of any future Treasurer, of the Railroad Company, and the Railroad Company may adopt and use for that purpose the engraved signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall actually be certified and delivered; and

WHEREAS, the execution and delivery of this indenture, and the execution and issue of said bonds, have been duly and unanimously authorized by all the stockholders and by the

Board of Directors of the Railroad Company, and in pursuance of such authority and of all and every legal power and authority in it vested, the Railroad Company proposes to make and execute, and from time to time to issue, the bonds secured hereby:

Now, therefore, this Indenture witnesseth:

That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture and the performance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the ensealing and delivery of these presents, the receipt whereof is hereby acknowldged.

The Railroad Company, party of the first part, has sold, assigned and transferred, and by these presents does sell, assign and transfer, unto the Trustee, party of the second part, its successors and assigns forever, the following shares of stock, the certificates for which in the name of the Erie Railroad Company but by it endorsed in blank have been delivered to the Trustee, namely:

98,212 shares, of the aggregate par value of $4,910,600 of the capital stock of the PENNSYLVANIA COAL COMPANY, out of the total outstanding capital stock of said company, consisting of 100,000 shares of the par value of $50 each;

30,000 shares of the aggregate par value of $1,500,000 of the capital stock of the ERIE AND WYOMING VALLEY RAILROAD COMPANY, being all the outstanding capital stock of said corporation;

2,500 shares of the aggregate par value of $250,000 of the capital stock of the DELAWARE VALLEY AND KINGSTON RAILROAD COMPANY, being all the outstanding capital stock of said corporation:

66,300 shares of the preferred stock, and **66,300** shares of the common stock of the NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY (a corporation existing under the laws of the State of New Jersey), such shares being of the par value of $100 each, and together constituting fifty-one per cent. of the outstanding capital stock of said company;

The Railway Company covenants and agrees that any and all additional shares of the capital stock of the said Pennsylvania Coal Company, the Erie and Wyoming Valley Railroad

Company, or the Delaware Valley and Kingston Railroad Company, and other property of any kind or description whatsoever, which hereafter shall be acquired by the Railway Company or by the Trustee, and which by any covenant or provision of this indenture the Railway Company has subjected or has agreed to subject to the lien hereof, immediately upon such acquisition, but subject to the terms and conditions of such acquisition thereof, and without any further assignment, transfer or conveyance, shall become and be subject to the lien of this indenture as fully and completely as though expressly and specifically assigned, transferred and conveyed to the Trustee under this indenture; but the Railroad Company covenants and agrees that at any and all times it will execute, and will deliver to the Trustee any and all further assignments, transfers or conveyances and instruments of further assurance, as the Trustee may reasonably direct or require for the purpose of expressly and specifically subjecting such additional shares, bonds, certificates of indebtedness and other property to the lien of this indenture, and will deliver to the Trustee the certificates for any such shares of stock, and such bonds or certificates of indebtedness.

It is further covenanted and declared, that any other or additional property of any kind, including bonds and other securities, claims and stocks, from time to time hereafter, may be conveyed, assigned, transferred or delivered by the Railroad Company, or by any one in behalf of the Railroad Company with its written consent or approval, to the Trustee hereunder, as and for additional security for the bonds issued and to be issued hereunder, and the Trustee shall receive, hold and apply any and all such property subject to the trusts of this indenture; but any such conveyance, assignment, transfer or delivery, pursuant to the provisions of this clause, as and for additional security, may be made subject to any reservations, limitations, conditions and provisions which shall be set forth in an instrument in writing, then executed by the Trustee and by the Railroad Company, respecting the use, management and disposition of such additional property and the proceeds thereof.

But it is hereby expressly declared that there is reserved to and by the Railroad Company the right to acquire any properties (including stocks, bonds and other securities), and to hold and to dispose of the same free from the lien of this in-

denture, provided that neither any bonds hereby secured and reserved under Section 3 of Article One hereof nor the proceeds of any such bonds so reserved, and no bonds, stocks, or other property or moneys held by the Trustee hereunder shall be used for such acquisition, or to reimburse the Railroad Company in respect thereof.

To have and to hold the said shares of stock hereby assigned and transferred, and also all additional property of any kind, including shares of stock, bonds and other securities, certificates of indebtedness and claims, which hereafter shall become subject to this indenture, unto the Trustee, its successors and assigns forever:

But in trust, nevertheless, for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations, when payable, and the performance of, and compliance with, the covenants and conditions of this indenture, without any preference, priority or distinction, as to lien or otherwise, of any one bond over any other bond by reason of priority in the issue or negotiation thereof; so that each and every bond, issued and to be issued as aforesaid, shall have the same right, lien and privilege under this indenture, and that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby as if all had been made, issued and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of this indenture shall take effect from the day of the date hereof, without regard to the date of actual issue, sale or disposition of said bonds, as though, upon such day, all of said bonds were actually issued, sold and delivered to holders for value.

And it is hereby covenanted and declared, that the property subject to this indenture is to be held by the Trustee, and that all such bonds, with the coupons for interest thereon, are to be issued and received, subject to the further covenants, conditions and trusts hereinafter set forth, to wit:

Exhibit R-119.

ARTICLE ONE.

Section 1. From time to time, the bonds to be secured hereby, shall be executed by the Railroad Company, and by it shall be delivered for certification to the Trustee, and thereupon, as provided in this Article, and not otherwise, the Trustee shall certify and shall deliver the same at the option of the Railroad Company, from time to time.

Any of such bonds, may be executed, certified and delivered originally either as coupon bonds or as registered bonds.

The amount of bonds hereby secured which may be executed by the Railroad Company and which may be certified by the Trustee is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding thirty-six million dollars ($36,000,000).

Before certifying or delivering any coupon bond hereby secured the Trustee shall detach and shall cancel all coupons thereof then matured; and every registered bond shall be dated on the day of the actual certification thereof.

Only such bonds as shall bear thereon a certificate, substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture, or shall be entitled to any lien or benefit hereunder. Every such certificate of the Trustee upon any bond executed by the Railroad Company, shall be the conclusive, and the only evidence that the bond so certified was duly issued hereunder and is entitled to the benefit of the trust hereby created.

Sec. 2. Of the bonds authorized to be issued under and secured by this indenture, bonds for the aggregate principal sum of $32,000,000 shall be certified by the Trustee and returned to the Railroad Company, or upon the order of its President, immediately upon the execution of this indenture, or as soon thereafter as may be. The Railroad Company hereby covenanting that it will use and issue such $32,000,000 bonds only in payment on account of the acquisition of shares of stock of the Pennsylvania Coal Company or of the Erie and Wyoming Valley Railroad Company or the Delaware Valley and Kingston Railroad Company all of which shares as and when acquired shall be pledged hereunder, and the certificates therefor delivered hereunder to the Trustee, which, however,

shall not be bound to see to such application or use of such bonds.

Sec. 3. Four million dollars ($4,000,000), par value of the bonds authorized to be issued under and secured by this indenture, shall be reserved to be executed by the Railroad Company, and to be certified and delivered by the Trustee, from time to time, for some one or more of the following purposes, but only as hereinafter provided and subject to the restrictions hereinafter stated:

I. The purposes for which such $4,000,000 of bonds shall be executed, certified and delivered and for which such bonds or their proceeds may be used are:

(*a*) To make betterments or improvements of or upon any property which at the time of issuing the bonds reserved under this Section 3 shall be subject to the lien of this indenture, and to construct or acquire additional mines, collieries, coal lands or coal leases, and additional lines of railway, extensions, branches, bridges, shops, depots, terminal properties, power houses, electrical plant, rolling stock or other additional property connected with, or for use in connection with, any of the mines or collieries or lines of railway, extensions, branches, shops, depots, terminal properties, power houses, electrical plant, rolling stock, bridges or other properties which at the time of such construction or acquisition either shall be subject to the lien of this indenture, or shall belong to any company of whose capital stock at least ninety per cent. shall be held by the Trustee under this indenture; and to provide the Railroad Company with funds for expenditures by it made or incurred, for any of the foregoing purposes;

(*b*) To furnish moneys, or to reimburse the Railroad Company for moneys furnished, to any other such company or companies of whose capital stock not less than ninety per cent. in amount shall then be held hereunder by the Trustee, to an amount not exceeding expenditures by such company or companies made or incurred for the construction or acquisition of betterments or improvements of, or additional, mines, collieries, coal lands or coal leases, or additional lines of railway, extensions, branches, bridges, shops, depots, terminal properties, power houses, electrical plant, rolling stock or other additional property connected with, or for use in connection with mines, collieries, coal lands or coal leases or any of the lines of

railway, extensions, branches, shops, depots, terminal properties, power houses, electrical plant, rolling stock, bridges or other properties which at the time of such construction or acquisition shall belong to such other company or companies; *provided,* that in every such case the Railroad Company shall require such other company or companies to issue, and shall pledge or shall cause to be pledged with the Trustee hereunder, bonds or certificates of indebtedness or paid-up shares of the capital stock of such other company or companies of a par amount at least equal to the amount of the moneys so furnished; and,

(*c*) To acquire, or to reimburse the Railroad Company for the acquisition of, the shares of the capital stock, bonds and indebtedness of any company which at the time of such acquisition shall own any mine or colliery, coal lands or coal leases, or any line of railway, extension, branch, bridge, terminal property, power house, electrical plant, connected with or available for use in connection with, any mine or colliery, coal lands or coal leaseholds, or any line of railway, owned by any company of whose capital stock the greater part shall then be held by the Trustees hereunder; *provided,* that thereby not less than ninety per cent. of all the shares of the capital stock of such company shall be obtained, or previously shall have been obtained and pledged hereunder; and *provided, further,* that no shares or bonds or indebtedness issued or created by any such company after a majority in amount of the outstanding shares of the capital stock of such company shall have been pledged hereunder shall be acquired under this clause (*c*), but the same may be acquired under clause (*b*) of this section.

II. The restrictions subject to which such $4,000,000 of reserve bonds from time to time shall be certified and delivered are as follows:

(1) Before certifying and delivering bonds under this section, there shall be delivered to the Trustee a copy of a resolution of the Board of Directors of the Railroad Company certified by its Secretary or Assistant Secretary, calling for the certification and delivery of such bonds, and directing the officers of the Railroad Company to set aside such bonds and their proceeds separate and apart from any other assets and funds of the Railroad Company, and to use the same only as authorized by this section;

(2) From time to time when and as requested by the President of the Railroad Company, upon the presentation to the Trustee of the copy of any such resolution as above provided, there shall be so certified and delivered such amount of the bonds reserved under this section, not in any one delivery exceeding, in the aggregate, $1,000,000 par value, as from time to time shall be called for in such resolutions. But, in every instance before certifying and delivering any of the bonds reserved under this section (except the $1,000,000 thereof first deliverable hereunder), the Trustee shall require the Railroad Company to furnish, in addition to such resolution of its Board of Directors, the certificate or certificates of some one or more officers of the Railroad Company, stating:

(*a*) That all bonds, theretofore certified and delivered under this section in respect of which no such certificate previously shall have been furnished, and the proceeds of all such bonds, have been actually used for the said purposes, or for some one or more of them, or to reimburse the Railroad Company as aforesaid—indicating the particular mines, collieries, coal lands and coal leaseholds and the lines of railway, extensions, branches, bridges, shops, depots, terminal properties, rolling stock or other additional property, and the kind or class of betterments or improvements constructed, acquired or made, and the stocks, bonds or indebtedness acquired, and the sums furnished to any such other company or companies, and the amount and description of the shares of capital stock, bonds or certificates of indebtedness of such other company or companies received by the Railroad Company on account thereof;

(*b*) That the price paid for such construction or for such acquisition, betterments or improvements was not in excess of the fair value of the property acquired or work done, and that the bonds included in such certificate were sold, disposed of or otherwise accounted for at not less than their fair value at the time of such sale, disposition or accounting.

(*c*) That no part of such expenditures so certified was included in any previous certificate furnished hereunder, or was made or reimbursed out of any bonds or

moneys received by the Railroad Company under any other provision of this indenture;

(*d*) That no part of the expenditures in such certificate so certified was included in the operating or maintenance expenses reported in any annual report theretofore issued by the Railroad Company.

(*e*) In case such certificate shall show the acquisition of new property, then such certificate also shall state whether such new property is known or is believed to be subject to any lien or charge prior to this indenture, except undetermined liens or charges incidental to construction; and such certificate shall specify the amount of any such prior lien or charge (other than as aforesaid) known or believed to exist. In case the certificate shall show the acquisition of any shares of the capital stock, bonds or other indebtedness of any other company, such certificate shall state whether the property of such other company is known or is believed to be subject to any lien or charge, and whether such company is known or is believed to have any indebtedness except ordinary operating accounts and undetermined claims, liens and charges incidental to construction, and except also indebtedness to the Railroad Company and liens, charges and indebtedness transferred to the Trustee or in respect of which bonds shall have been set apart under the following clause (3), and such certificate in each case shall specify the amount of any such lien, charge or indebtedness known or believed to exist;

(*f*) Any such certificate under this section may state any other facts pertaining to the right to certify and deliver bonds hereunder. The same officer or officers of the Railroad Company need not certify to all the facts required to be certified under the provisions of this section, but different officers may certify to different facts respectively.

(3) After delivery of the $1,000,000 of bonds first deliverable hereunder, no bonds shall be certified and delivered under this section, for or in respect of the construction or acquisition of property subject to any such certified lien or charge, or for or in respect of the acquisition of shares of capi-

tal stock, bonds or indebtedness of a company subject to indebtedness so certified, or whose property is subject to a lien or charge so certified, unless or until the Railroad Company shall have deposited with the Trustee an amount of the bonds hereby secured of a par amount equal to the aggregate amount of such certified indebtedness, liens and charges. Whenever thereafter any of such certified indebtedness, liens and charges shall be paid or satisfied, or shall be acquired and be subjected to the lien hereof, then an equal amount at par of the bonds hereby secured so deposited with the Trustee under this clause shall be redelivered by the Trustee to the Railroad Company or upon its order, so that the amount of such bonds held by the Trustee under this clause at all times shall be equal to the amount of such indebtedness, liens and charges remaining unsatisfied or not subjected to the lien hereof.

(4) The Railroad Company covenants that whenever all the bonds reserved under this section shall have been certified and delivered to, and used by, the Railroad Company, it will execute and deliver to the Trustee a similar certificate indicating the particular application of all bonds, or proceeds of bonds, in respect of which the Railroad Company shall not theretofore have furnished such certificate to the Trustee.

(5) Every such certificate furnished under this section, unless signed, *first,* by the President or a Vice-President or the General Manager or the Chief Engineer, and, *secondly,* by the Comptroller or Auditor or Treasurer of the Railroad Company, shall have endorsed thereon, or shall be accompanied by, a written statement of one of the officers first above designated, and one of the officers secondly above designated, that they believe that such certificate is true, and that such bonds have been used, and the expenditures certified have been made, only for purposes authorized by this section. A certificate signed by one of the officers first above designated and one of the officers secondly above designated or having endorsed thereon, or being accompanied by a written statement of said officers as above provided may be received by the Trustee as conclusive evidence of any facts pertaining to the right to certify and deliver bonds pursuant to this section.

Together with such statements and certificates there shall be delivered to the Trustee any such bonds so acquired, and the certificates endorsed for transfer in blank for any such

shares of stock so acquired, and any conveyances or instruments of further assurance that may be necessary for the purpose of effectually subjecting to the lien and operation of this indenture any new property so acquired by the Railroad Company, and so far as may be, any indebtedness, liens or charges so taken up or acquired by use of said bonds, and, also, the written opinion of counsel for the Railroad Company to the effect that such conveyances or other instruments are sufficient for that purpose or that no conveyance or instrument of further assurance is necessary for the purpose aforesaid. Such resolutions, statements, certificates and opinion shall be deemed, and shall be taken to be, full authority and protection to the Trustee for its certification of such bonds under the foregoing provisions of this section.

The Railroad Company covenants that when all the bonds reserved under this Section 3 shall have been certified and delivered to and used by the Railroad Company, it will execute and deliver to the Trustee a similar certificate indicating the purposes for which the Railroad Company shall have used all bonds or the proceeds of all the bonds in respect of which the Railroad Company shall not theretofore have furnished such certificate to the Trustee.

Sec. 4. Whenever under Section 3 of this Article the Railroad Company shall be entitled to bonds hereby secured or their proceeds, the Railroad Company may take and accept such bonds at a price not less than their average market price during the previous calendar month, any bonds so taken and accepted by the Railroad Company in reimbursement for expenses therefore actually made by the Railroad Company shall be held and may be used by the Railroad Company for its general corporate purposes freed and discharged from all restrictions and provisions of said Section 3 as though such bonds had been sold at such price, and the proceeds paid over to the Railroad Company.

Sec. 5. Whenever any coupon bond or bonds, issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds without coupons, the Railroad Company shall execute, and the Trustee shall certify, and in exchange for such coupon bond or bonds shall deliver registered bonds, or one registered bond, without coupons, for the like aggre-

gate principal sum. Such registered bonds shall bear interest at the same rate as the surrendered coupon bonds, and from the date of the last-matured coupon thereof. In every case of such exchange the Trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the Railroad Company.

Whenever any registered bond without coupons shall be surrendered, transferred and cancelled, the Railroad Company shall issue, and the Trustee shall certify and deliver, to the transferee, registered bonds, or one registered bond without coupons, for a like aggregate principal sum;

Whenever any registered bond without coupons shall be surrendered for exchange for a coupon bond or bonds, then upon cancellation of such surrendered bond and payment of the charges therefor, the Railroad Company shall issue, and the Trustee shall certify and deliver, in exchange therefor, coupon bonds for the like aggregate principal sum, having attached thereto the coupons maturing on and after the date when the next semi-annual instalment of interest would have matured on such surrendered registered bond without coupons.

For any exchange of coupon bonds for registered bonds, and (2) for any transfer of registered bonds without coupons, and (3) for any exchange of registered bonds without coupons for coupon bonds, the Railroad Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge required to be paid, and also of the further sum of one dollar for each new coupon bond or registered bond without coupons issued upon any such exchange or transfer.

Sec. 6. In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated, or be destroyed, the Railroad Company, in its discretion, may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of, and substitution for, the coupon bond and its coupons, or the registered bond so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons, or of

such registered bond, and upon receipt also of satisfactory indemnity.

Sec. 7. Nothing in this Article, or in any other Article of this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any person or corporation, other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

ARTICLE TWO.

THE RAILROAD COMPANY COVENANTS AS FOLLOWS:

Section 1. Duly and punctually it will pay the principal and interest of every bond issued and secured hereunder at the dates and the place and in the manner mentioned in such bonds, or in the coupons thereto belonging, without deduction from either principal or interest, for any taxes imposed by the United States or any State or County or Municipality thereof, which the Railroad Company may be required to pay or to retain therefrom under or by reason of any present or future law. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be canceled. The principal of each coupon bond shall be payable only upon presentation and surrender of the bond. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof. The principal of each registered bond without coupons shall be payable to the person registered as holder of such bond at the time of payment, but only upon presentation and surrender of such bond.

At all times until the payment of the principal of the bonds secured by this indenture, the Railroad Company will keep an office or agency in the City of New York where bonds and coupons may be presented for payment, and where notices or demands in respect of said bonds and coupons may be served,

and from time to time the Railroad Company will give written notice to the Trustee of the place of such office or agency. In case the Railroad Company shall fail to do so, presentation and demand may be made and notices served at the office of the Trustee in the City of New York.

Sec. 2. Whenever demanded by the Trustee, the Railroad Company will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the Trustee all and singular the premises and property hereby assigned, pledged, or mortgaged, or intended so to be, or which the Railroad Company herein has covenanted and agreed hereafter to assign, pledge, or mortgage, as the Trustee shall reasonably require for better accomplishing the provisions and purposes of this indenture and for securing the payment of the principal and interest of the bonds intended to be secured hereby.

Sec. 3. The Railroad Company, at an office or agency to be maintained by it in the City of New York, will keep a register or registers for the registration and transfer of bonds issued hereunder, in which it will register subject to such reasonable regulations as it may prescribe, bonds without coupons, and upon presentation thereof for such purpose any coupon bonds issued hereunder. Such register, at all reasonable times, shall be open to the inspection of the Trustee.

Upon presentation to the Railroad Company, at the place where such register shall be kept, of any such registered coupon bond, accompanied by delivery of a written instrument of transfer in a form approved by the Railroad Company, executed by the registered holder, such bond shall be transferred upon such register, and such transfer shall be noted by the Railroad Company upon such bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a

coupon bond shall be noted by the Railroad Company on the bond.

Registration of any coupon bond, however, shall not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely, and shall remain payable to bearer.

Any registered bond without coupons may be transferred at said office or agency by surrender of such bond to the Railway Company for cancellation, accompanied by the delivery of a written instrument of transfer in a form approved by the Railroad Company, duly executed by the registered holder for the time being, and by payment of any charge imposed under Section 5 of ARTICLE ONE hereof; and thereupon a new registered bond, or new registered bonds, for an equivalent aggregate principal sum, shall be issued to the transferee or transferees, as provided in said Section 4 of ARTICLE ONE.

Sec. 4. The Railroad Company will not voluntarily create or suffer to be created, any debt, lien or charge which would be prior to the lien of these presents upon any property which shall have become subject to this indenture, or any part thereof, or upon the income thereof; and within three months after the same shall accrue, it will pay, or will cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, laborers or others which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon such property or any part thereof, or the income thereof; and if any company (other than the New York, Susquehanna and Western Railroad Company), of whose capital stock the greater part shall have been pledged hereunder, at any time while the greater part of the capital stock of such company shall be pledged hereunder, shall voluntarily create, or shall suffer to be created (except as in this indenture expressly permitted), any new lien or charge upon its property or income, or shall create, or shall suffer to be created, any new indebtedness other than indebtedness to the Railroad Company, or indebtedness for the current expenses of such company during a period not exceeding three months, then it (the Railroad Company) will acquire such lien, charge or indebtedness and cause the same to be vested in the Trustee, or will cause the same to be paid or discharged, or will make adequate provision for the satis-

faction or discharge thereof; *provided* that nothing in this section contained shall require the Railroad Company to acquire, or cause to be paid or discharged or make provision for, any such debt, lien or charge so long as the validity thereof in good faith shall be contested.

Sec. 5. The Railroad Company from time to time will pay and discharge all taxes, assessments and governmental charges (the lien of which would be prior to the lien hereof) lawfully imposed upon the stocks, bonds and other property pledged or mortgaged hereunder, or upon any part thereof, or upon the income and profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest under this indenture of the Trustee or of the holders of the bonds hereby secured in respect of such stocks, bonds and other property, so that the lien and priority of this indenture shall be fully preserved at the cost of the Railroad Company without expense to the Trustee or the Bondholders; and if any company of whose capital stock the greater part shall have been acquired and pledged hereunder, at any time while a greater part of the capital stock of such company shall be pledged hereunder, shall fail to pay all taxes, assessments and charges lawfully imposed upon the property of such company or upon the income and profits thereof, then it, the Railroad Company, either will pay the same, or will acquire and will transfer to the Trustee the claim therefor, or will make adequate provision for the satisfaction or discharge thereof; *provided, however,* that nothing in this section contained shall require the Railroad Company to pay, acquire or make provision for any such tax, assessment or charge so long as in good faith the Railroad Company shall contest the validity thereof.

Sec. 6. Except as in this indenture expressly authorized, the Railroad Company will not by affirmative vote or consent, or by abstaining from voting, sanction or permit any increase of the capital stock of any company of whose capital stock the greater part shall be subject to this indenture, or the issue or the guaranty of any new bonds by any such company, or the creation of any new indebtedness of any such company (except current operating accounts for a period not at any date exceeding six months prior thereto), or the creation of any new mortgage or other lien upon the railroad or property

of any such company, unless simultaneously there shall be effective provision that such new indebtedness, and the evidences thereof and such new bonds issued or guaranteed, and such new mortgage or other lien, and all such additional stock (or such part of such additional stock as shall be proportionate to the part of such entire capital stock previously pledged hereunder) forthwith, upon the issue or creation thereof, shall be transferred to or pledged with the Trustee, by it to be held subject to all the trusts of this indenture; and all such additional stock shall be fully paid and non-assessable.

Except as in this indenture expressly authorized, the Railroad Company will not, by affirmative vote or consent, or by abstaining from voting, sanction or permit any company, of whose capital stock the greater part shall be subject to this indenture, to sell or otherwise to dispose of, any mine, colliery, railroad or bridge belonging to such company, unless the operation thereof be abandoned, or any property required for such operation, or to lease the same (unless such lease be upon the express condition that it shall terminate at the election of the Trustee in case any default shall be made and shall continue as provided in Section 2 of Article Four hereof), except to the Railroad Company or to some other company of whose capital stock not less than ninety per cent. shall then be held by the Railroad Company and be pledged with the Trustee hereunder.

Sec. 7. Any and all claims or indebtedness, which the Railroad Company hereafter may acquire against any other company, of whose capital stock the greater part shall have been pledged or assigned to the Trustee hereunder, shall (subject to the provisions in respect thereof in this indenture contained) be and become subject to the lien of this indenture, and, if when requested in writing by the Trustee, the Railroad Company will execute to the Trustee appropriate assignments thereof.

Sec. 8. The Railroad Company will not issue, negotiate, sell or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained; and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, only to and

for the purposes herein prescribed, and to and for no other or different purpose.

Sec. 9. In each and every year after the year 1901 during the month of May the Railroad Company will deliver to the Trustee, and also to the copartnership firm of J. P. Morgan & Co., Bankers in the city of New York, as Sinking Fund Trustees hereunder, a statement in writing, under its corporate seal, showing the total amount of coal sold and delivered during the preceding calendar year from the mines of the Pennsylvania Coal Company; and simultaneously it will pay to the said copartnership firm of J. P. Morgan & Co. as Sinking Fund Trustees hereunder, a sum equal to ten cents for every ton of coal so sold and delivered. The moneys so received, together with all accumulations of interest thereon, as hereinafter provided, shall be appropriated to, and shall constitute, **a sinking fund,** as additional security for the retirement of every bond of this issue at or before the stated maturity thereof.

The moneys paid or coming into the sinking fund shall by the said firm of J. P. Morgan & Co., Sinking Fund Trustees, be held as bankers; and from time to time the said sinking fund, together with any accumulations of interest thereon, shall by them be invested in bonds hereby secured, by the purchase thereof in such manner as to them shall seem best, and at such prices as they shall deem best, not exceeding par and accrued interest, with five per cent. premium added to the principal.

To the extent that, in the opinion of the Sinking Fund Trustees, bonds hereby secured cannot be purchased on said terms, the Sinking Fund Trustees may and shall proceed to draw and to designate by lot, bonds hereby secured to an aggregate amount sufficient at the valuations above prescribed to exhaust the net moneys paid by the Railroad Company under the provisions of this section, and all accumulations of interest thereon and then in possession of the Sinking Fund Trustee and available for the redemption of the bonds so designated.

The numbers of all bonds so designated and drawn shall be published as directed by the Sinking Fund Trustees, twice in each week for three successive weeks in the month of January or the month of July, in two or more newspapers published in the City of New York, with a notice that upon presentation thereof to the Sinking Fund trustees, every such bond will be paid at par, together with a premium of five per cent. thereof

and all interest accrued thereon upon the first day of the following month of February or of August, as the case may be; and after such day so designated no interest shall thereafter accrue or be payable upon, or in respect of, any bond so designated and notified, nor shall any coupon representing any such subsequently accruing interest be of any force or effect. But, to the extent of any moneys at any time thereafter in their possession, upon receipt of any such bond so designated and notified, and not presented before the day so designated, together with all coupons (if any) belonging thereto for interest accruing after such designated day, the Sinking Fund Trustees may receive the same, and may pay therefor a sum equal to par together with a premium of five per cent. thereof and all interest accrued thereon up to the date so designated.

All of the bonds hereby secured, which shall be called or purchased, as aforesaid, shall, as soon as received by the Sinking Fund Trustees, be conspicuously and indellibly stamped on the face thereof, as "Received for the sinking fund, and no longer negotiable or transferable," and the date of the receipt thereof by the Sinking Fund Trustees shall also be plainly noted thereon; and the coupons thereto belonging shall be defaced or canceled by perforations or punctures through the name of the Treasurer; or the Sinking Fund Trustees may exchange any coupon bond for a registered bond or bonds without coupons, for the like aggregate principal sum, as permitted by Section 5 of Article One of this indenture; and, in case of such exchange, every such registered bond so received shall be stamped "Received for the sinking fund and no longer transferable."

All coupon bonds or registered bonds so received by the Sinking Fund Trustees shall be held by them for the sinking fund. All of the bonds hereby secured, which shall come into or be received for the sinking fund, shall remain in force as valid obligations, as an investment of and for the sinking fund, but for no other purpose; and the semi-annual interest thereon, as the same shall mature, shall be payable, and shall continue to be paid by the Railroad Company to the Sinking Fund Trustees, in the same manner and at the same times as such payments of interest would be made if the said bonds were held and owned by any other corporation or person, and the amount of such interest shall be added to and deposited and

shall be applied as a part of the sinking fund, in the manner, and with the limitations hereinbefore provided in respect of the deposit and investment of other moneys paid or coming into the sinking fund and the accumulations thereof.

When all of the bonds secured by this indenture shall have been paid, or shall have been called or designated for acquisition for the sinking fund, as hereinbefore provided, all of the said bonds that shall have been acquired or held for the sinking fund shall by the Sinking Fund Trustees be canceled and delivered to the Railroad Company, together with all coupons (if any) thereto belonging; and the Sinking Fund Trustees shall also pay over and deliver to the Railroad Company all moneys and securities for money then in or belonging to the sinking fund; but not without making ample provision, or taking adequate security, for the payment of the principal at or before the maturity of any of the said bonds that shall have been called for the sinking fund, as hereinbefore provided, and shall not have been presented and delivered in pursuance of such call.

No registered bond without coupons shall be drawn so long as any coupon bond is outstanding and unpaid.

As Sinking Fund Trustees, J. P. Morgan & Co. shall act as a copartnership. Notwithstanding any change in said firm, J. P. Morgan & Co., as from time to time constituted, shall continue to be Sinking Fund Trustees, with all the powers, right and title vested hereunder in the Sinking Fund Trustees. But in case of any change in said firm, the Railroad Company and the Trustee, by an instrument in writing under the corporate seals of the Trustee and of the Railroad Company, may appoint to be Sinking Fund Trustee in place and in lieu of J. P. Morgan & Co. some trust company in good standing, doing business in the City of New York and having a capital and surplus aggregating at least $1,000,000. Thereupon the firm of J. P. Morgan & Co., as then constituted, shall execute and deliver an instrument transferring to such Sinking Fund Trustee all of the estates, properties, rights, powers and duties of the said J. P. Morgan & Co. as Sinking Fund Trustees, and shall duly transfer and deliver to the new Sinking Fund Trustee so appointed in their place all bonds and other property and moneys held by them as such Sinking Fund Trustees after deducting therefrom their reasonable costs and charges then

remaining unpaid. Without any further act, deed or conveyance, such new Sinking Fund Trustee forthwith shall become and be vested with all the properties, rights, powers, trusts, duties and obligations of J. P. Morgan & Co. as Sinking Fund Trustees hereunder, with like effect as if originally named herein as Sinking Fund Trustee.

Neither J. P. Morgan & Co., nor any successor, as Sinking Fund Trustees, shall be answerable for the default or misconduct of any agent or attorney appointed by them in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, or for anything whatever in connection with such sinking fund except wilfull misconduct and gross negligence. The Sinking Fund Trustees shall be entitled to a reasonable compensation payable primarily by the Railroad Company and secondarily out of the Sinking Fund.

ARTICLE THREE.

Section 1. The Trustee shall be authorized to cause to be registered in its name as Trustee hereunder any and all coupon bonds pledged with it hereunder, or which at any time hereafter may be pledged with it under any of the provisions of this indenture, or it may cause the same to be exchanged for registered bonds without coupons of any denomination, or it may cause any such bonds to be stamped "Non-negotiable. Held in trust under the Collateral Trust Indenture bearing date February 1, 1901, executed by Erie Railroad Company to The Mercantile Trust Company, as Trustee."

The Trustee shall cause to be transferred into its name, as Trustee hereunder, all registered bonds which shall have been delivered and assigned to it as security hereunder. The Trustee at any time may transfer into its name, as Trustee hereunder, all or any shares of stock, the certificates for which shall have been pledged with it hereunder.

The Trustee may do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of any company the greater part of whose shares shall have been pledged hereunder, and for such purposes, from time to time, it may sell, assign, transfer and deliver so many shares of the stock of the several companies as may be necessary to qualify persons to act as directors of, or in any other official relation to, said companies; provided, however, that under

this provision no transfer shall be made which shall so reduce the amount of stock in any company held by the Trustee as to render it less than a controlling interest in such stock; and in every case the Trustee may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Sec. 2. Unless and until there shall be some continuing default (1) in the payment of any interest on any bond or bonds secured by this indenture and such default shall have continued for a period of ninety days, or (2) in the payment of the principal of any bond hereby secured when the same shall have become payable, or (3) in the due observance or performance of any other covenant or condition in this indenture required to be kept or performed by the Railroad Company, and such last-mentioned default shall have continued for a period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company—(*a*) the Trustee (except upon the request or with the assent of the Railroad Company) shall not enforce the payment of, or collect, the principal or interest of any bonds or of any other claims or indebtedness now or hereafter subject to this indenture, whether at or before or after the maturity of such bonds or contract obligations or other claims or indebtedness, and shall not enforce any provision of the mortgages, trust deeds or other instruments under which such bonds or other obligations were issued or by which the same are secured; and (*b*) the Railroad Company shall be entitled to receive all interest paid in respect of any such bonds or obligations, and the dividends on all shares of stock which shall be subject to this indenture, although the same shall have been transferred to the Trustee; (*c*) from time to time (subject to the covenants in respect thereof in this section contained), upon the request of the Railroad Company on a date not more than sixty days prior to the maturity of any coupons, held by the Trustee for such interest, the Trustee shall deliver such coupons to the Railroad Company in order that the Railroad Company may receive payment therof for its own use, or may cause the same to be canceled, and, upon request of the Railroad Company on a date not more than sixty days prior to the maturity of any interest or dividends, the Trustee shall deliver to the Railroad Company suitable orders in favor of the Railroad Company, or its nominee, for the payment of such interest and dividends

upon any bonds or shares held by the Trustee, and the Railroad Company may collect such coupons, interest and dividends, but not by any proceeding which the Trustee shall deem to be prejudicial to the trusts hereunder, and the Trustee at once shall pay over to the Railroad Company any such interest and dividends which may be collected or be received by it; and (*d*) the Railroad Company, for its own use, shall be entitled to demand, collect and receive, and may release and discharge, the principal and interest of any claims and indebtedness subjected to the lien of this indenture under Section 7 of Article Two hereof, and upon request of the Railroad Company the Trustee shall execute any reassignments or releases which may be required for that purpose.

Provided, however, and hereby it is declared and agreed that, except as in this indenture otherwise expressly provided, (1) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over to the Railroad Company, any principal of any bond pledged or assigned to the Trustee hereunder; (2) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over, any interest on any such bond, or any principal or interest of any such other obligation, claim or indebtedness, which shall have been collected or paid out of the proceeds of any sale of the property covered by a mortgage securing such bonds, or out of the proceeds of the sale of any other property of the company liable upon such bonds, obligations, claims or indebtedness in case of a dissolution or liquidation of such company; it being the intention that the Railroad Company shall be entitled to receive payments made only out of the rents, revenues, income or proceeds of operation of such properties; (3) The Railroad Company shall not sell, assign or transfer any such coupon, or right to interest or dividends, delivered or assigned to it, or any other such claim or indebtedness, except subject to this indenture; (4) the Railroad Company shall not collect any such coupons or interest, or any such other claims or indebtedness, by legal proceeding or by enforcement of any security therefor, except with the assent of the Trustee, nor in any manner which the Trustee shall deem prejudicial to the trust hereunder; and, (5) until actually paid, released or discharged, every such coupon, or right to interest or dividends, and such other claims and indebtedness, shall remain subject to the lien of this indenture.

If any such coupon, claim or indebtedness shall not be paid or satisfied within sixty days after delivery thereof to the Railroad Company hereunder, the Railroad Company shall return the same to the Trustee; and in case of the payment or satisfaction of any such coupon, claim or indebtedness delivered by the Trustee to the Railroad Company hereunder, the Railroad Company, upon demand of the Trustee, shall furnish satisfactory evidence of such payment or satisfaction.

Sec. 3. In case any sum shall be paid on account of the principal of any bonds or of any obligations held by the Trustee hereunder, or in case any sum shall be paid on account of the interest on any such bonds or obligations out of the proceeds of a sale of the property covered by a mortgage or trust deed securing such bonds or obligations, or in case, upon the dissolution or liquidation of any company, any sum shall be paid upon any shares of stock of such company pledged hereunder or upon any such claims against or indebtedness of any such company held by the Trustee, then, in any such case, any such sum, unless applied on account of the purchase price of property purchased pursuant to Section 5 of this Article, shall be received by the Trustee and shall be paid over by the Trustee to the Railroad Company to reimburse it for expenditures by it made for any one or more of the purposes for which bonds reserved under Section 4 of Article One hereof or their proceeds may be used, upon certificates of such expenditures, signed by the President or a Vice-President, and by the Comptroller, or Auditor, or Treasurer, of the Railroad Company.

Sec. 4. Unless and until there shall be some continuing default (1) in the payment of any interest on any bond or bonds secured by this indenture and such default shall have continued for a period of ninety days; or (2) in the payment of the principal of any bond hereby secured when the same shall have become payable, or (3) in the due observance or performance of any other covenant or condition in this indenture, required to be kept or performed by the Railroad Company, and such last-mentioned default shall have continued for a period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company —the Railroad Company shall have the right to vote upon all shares of stock subject to this indenture for all purposes not inconsistent with the provisions or purposes of this indenture,

and with the same force and effect as though such shares were not subject hereto; and from time to time, upon demand of the President of the Railroad Company, the Trustee, forthwith, shall execute and deliver to the Railroad Company, or to its nominees, suitable powers of attorney or proxies to vote upon any shares of stock which shall have been transferred to the name of the Trustee.

Sec. 5. In case default shall be made in the payment of the principal or interest of any of the bonds or obligations which shall have been delivered to, and held by, the Trustee hereunder, then in any such case, if the Trustee shall hold more than ninety per cent. in amount of the entire issue of such bonds or obligations in default, upon the written request of the Railroad Company, it shall, and in other cases, upon such written request, it may, in its discretion, cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage, or trust, or charge, by which such bonds or obligations in default are secured. In case the Railroad Company shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default in the payment of interest shall have continued for a period of ninety days, then the Trustee, in its discretion, may institute such proceedings without such written request.

In case, at any time, any company of whose capital stock the greater part shall be held by the Trustee hereunder shall be dissolved or liquidated; or in case all or any of the property of any such company shall be sold upon the insolvency of such company at any judicial or other sale; or in case any property covered by a mortgage securing any bonds, or subject to any charge or trust for the payment of any other obligations held by the Trustee hereunder, shall be sold upon foreclosure of such mortgage, or by enforcement of such charge or trust; then and in every such case (if the property of such company, or the property sold, can be acquired by crediting on the bonds, obligations, claims, indebtedness or shares of stock of such company, held by the Trustee hereunder, any sum accruing or to be received thereon out of the proceeds of such property, and paying not more than ten per cent. of the price of such property in cash) the Trustee, in its discretion, may, but, if by the Railroad Company requested in writing and provided with the

amount of cash necessary therefor (whether such amount be more or be less than ten per cent. of the price of such property), the Trustee shall purchase, or shall cause to be purchased, or shall permit the Railroad Company to purchase, such property, either in the name or on behalf of the Trustee or of the Railroad Company, or by purchasing trustees, and shall use, or shall permit the Railroad Company to use, such bonds, obligations, claims, indebtedness and stock, so far as may be, to make payment for such property. In case of such purchase the Trustee shall take such steps as it may deem proper to cause such property to be vested either in the Railroad Company, subject to the lien of this indenture, or in some other corporation organized or to be organized, with power to acquire and manage such property, provided that all the outstanding bonds and shares of capital stock of such other corporation (excepting the number of shares required to qualify Directors) shall by the Trustee be acquired on behalf of the Railroad Company and be held under this indenture.

With the consent of the Railroad Company at any time, the Trustee may take such proceedings as in its discretion it shall deem desirable to protect its interests hereunder in respect of any bonds, obligations or stock subject to the lien hereof, and for that purpose it may join in any plan of reorganization in respect of any such bonds, obligations or stocks, and may accept new securities issued in exchange therefor, under such plan. In case the Railroad Company shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default shall have continued for the period of ninety days, the Trustee shall be entitled to take such proceedings without the consent of the Railroad Company.

The Railroad Company covenants that, forthwith, on demand of the Trustee, it, the Railroad Company, will pay, or will make satisfactory provision for, all expenditures to be incurred by the Trustee under any of the provisions of this section, including all expenditures necessary to obtain and to perfect the ownership and title to any property which pursuant to the provisions of this section the Trustee shall purchase or shall cause to be purchased; and in case the Railroad Company shall fail so to do, then, without impairment of, or preju-

dice to, any of its rights hereunder by reason of the default of the Railroad Company, the Trustee, in its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for such advances made by the Trustee, or by others at its request, with interest thereon, the Trustee shall have a lien prior to that under this indenture upon the bonds, obligations, claims, indebtedness or stock in respect of which such advances shall have been made, and upon the proceeds thereof and upon any property acquired by means of such bonds, obligations, claims, indebtedness or stock.

In case the Trustee shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds, obligations or stock, then the Trustee shall receive any portion of the proceeds of the sale accruing on the bonds, obligations and stock by it held hereunder, and from time to time such proceds shall be paid over to the Railroad Company to reimburse it for expenditures which shall have been made by it for any purpose for which bonds or their proceeds may be used under section 3 of Article One hereof, upon certificates of such expenditures signed by the President or a Vice-President, and by the Comptroller or Auditor or Treasurer of the Railroad Company

Sec. 6. Anything in this indenture to the contrary notwithstanding, any company of whose shares of capital stock the larger part shall be held by the Trustee hereunder may be merged or consolidated with, or all or any part of the property of any such company may be sold to, the Railroad Company or with or to any other company of whose capital stock at least ninety per cent. in amount shall then be held by the Trustee hereunder;

Provided, however, (1) that in case of a merger or consolidation with, or sale or conveyance to, the Railroad Company, the property of such company, or the property sold or conveyed, shall become and be subject to the lien of this indenture, free from any prior charge except to secure bonds then held by the Trustees or by the Trust Company hereunder, and shall be vested in the Trustees; and (2) that in case of a merger or consolidation with, or sale or conveyance to, any company other than the Railroad Company, all the shares of capital

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stock (except the number of shares required to qualify directors), and all the bonded indebtedness and other obligations of such consolidated company or company into which such other company shall have been merged (except current operating liabilities), shall continue to be held by the Trustee, notwithstanding such merger, consolidation, sale or conveyance. The Trustee may make any exchange, substitution, cancellation or surrender of securities required for the purposes or in accomplishment of any such merger or consolidation; and the Trustee may receive the opinion of any counsel approved by it as to the legal effect of any such merger or consolidation, and as to the steps necessary to be taken to consummate the same, and as to any other matter under this section; and such opinion shall be full protection to the Trustee for any action by it taken pursuant thereto.

Sec. 7. At any time in its discretion, the Trustee may, and, if requested in writing by the Railroad Company, the Trustee shall, consent to the extension or renewal of any bonds or obligations now held, or which hereafter shall be held by the Trustee hereunder; *provided* that the mortgage and lien securing such bonds or obligations shall continue unimpaired notwithstanding such extension. The Trustee may receive the opinion of any counsel approved by it as conclusive evidence that any such extension is in compliance with the provisions of this section.

ARTICLE FOUR.

Section 1. Neither any coupon belonging to any bond hereby secured, nor any claim for interest on any registered bond which in any way, at or after maturity, shall have been transferred or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit, of or from, this indenture, except after the prior payment in full of the principal of the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

Sec. 2. In case (1) default shall be made in the payment of any interest on any bond or bonds secured by this indenture, and any such default shall continue for a period of ninety days, or in case (2) default shall be made in the due and punctual

payment of the principal of any bond hereby secured, or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall continue for a period of six months after written notice thereof shall be given to the Railroad Company by the Trustee or by the holders of five per cent. in amount of the bonds hereby secured,—then and in every such case the Trustee, by any officer, attorney or agent, appointed by it therefor, shall be entitled to vote on all shares of stock then held by the Trustee hereunder, and shall be entitled to receive and collect all dividends and all interest moneys maturing or payable upon any and all stocks and bonds then held by the Trustee hereunder, and the Trustee shall be entitled, by its attorneys or agents, to enter into and upon all or any property and premises, rights and interests conveyed or mortgaged to the Trustee hereunder, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and, having and holding the same, may use, operate, manage and control the same and conduct the business thereof, by its superintendents, managers, receivers, agents and servants, to the best advantage of the holders of the bonds hereby secured; and, at the expense of the trust estate, the Trustee may administer and manage the same as it may deem to the best advantage of the holders of said bonds. After deducting all expenses incurred under this section and any other expenses of the trust hereunder, the Trustee shall apply all moneys collected or received by it hereunder as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent. per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference: and

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, *first* to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of four per cent. per annum) in the order of the maturity of the installments, and *next* to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons

entitled to such payment without any discrimination or preference.

These provisions, however, are not intended in anywise to modify the provisions of section 1 of this Article Four, but are subject thereto.

Sec. 3. In case default shall be made in the payment of any interest on any bond or bonds hereby secured, and any such default shall continue for a period of six months, then and in every case of such continuing default, the holders of a majority in amount of the bonds hereby secured then outstanding, by notice in writing delivered to the Railroad Company and to the Trustee, may declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this Indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of four per cent. per annum on overdue installments of interest, shall either be paid by the Railroad Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railroad Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such recission and annulment shall extend to, or shall affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abondoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railroad Company and the Trustee shall be restored respectively to their several positions and rights hereunder in respect of the mortgaged premises, and the shares of stock and the bonds and other property herein pledged or agreed to be pledged; and all rights, remedies and powers of the Trustees, shall continue as though no such proceeding had been taken.

Sec. 4. In case (1) default shall be made in the payment of any interest on any bond at any time issued under and secured by this indenture, and any such default shall continue for a period of ninety days; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall continue for a period of six months after written notice thereof from the Trustee; then, and in each and every such case of default, with or without entry, personally or by attorney, in its discretion, (*a*) the Trustee may sell to the highest and best bidder all and singular the stocks, bonds and other property which then shall be held by the Trustee, or in any manner shall be subject to this indenture, including any real and personal property, franchises and rights of any kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of Section 6 of this Article Four, in which case such sale may be made in parcels as in said section provided, which sale or sales shall be made at public auction at such place in the City of New York, in the State of New York, or at such other place or places, and at such time or times, and upon such terms, as the Trustee may fix and briefly specify in the notice or notices of sale to be given, as herein provided; or (*b*) the Trustee may proceed to protect and enforce its rights and rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

Sec. 5. Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the

rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit, or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured; but, anything in this indenture to the contrary notwithstanding, the holders of seventy-five per cent. in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and to control the method and place of conducting any proceedings for any sale of the premises subject to the lien of this indenture, or for the foreclosure hereof, or for a receiver or any other proceedings hereunder.

Sec. 6. In the event of any sale hereunder, whether under the power of sale or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property held by the Trustee, or in any manner subject to this indenture, shall be sold in one parcel and as an entirety, unless the holders of a majority in amount of the bonds hereby secured, then outstanding, shall in writing request the Trustee to cause said premises to be sold in parcels, in which case the sale or sales shall be made in such parcels, and at such times and places, as may be specified in such request, or unless such sale as an entirety shall be impracticable by reason of some statute or other cause. This provision shall bind the parties hereto, and the holders of the bonds and the coupons hereby secured.

Sec. 7. Notice of any sale pursuant to any provision of this indenture shall state the time and place or the times and places when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be given sufficiently if published once in each week for four successive weeks prior to such sale in a newspaper published in New York, N. Y.

Sec. 8. From time to time the Trustee may adjourn any sale by it to be made under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and, in such event, without further notice or publication, the Trustee may make such sale at the time and place to which the same shall be so adjourned.

Sec. 9. Upon the completion of any sale or sales under this indenture the Trustee shall execute and deliver to the accepted purchaser or purchasers good and sufficient assignments, transfers and conveyances of the stocks, bonds and other property sold, and shall deliver to such purchaser or purchasers all bonds and obligations and the certificates for all shares of stock by it, held hereunder, which shall have been sold to such purchaser or purchasers. The Trustee and its successors hereby are appointed the true and lawful attorney or attorneys irrevocable, of the Railroad Company, in its name and stead to make all necessary assignments, transfers and conveyances of shares of stock or bonds or other property thus sold; and for that purpose it and they may execute all necessary acts of assignment and transfer and may substitute one or more persons with like power; the Railroad Company hereby ratifying and confirming all that its said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred, or under and by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railroad Company, of, in and to the property sold, and shall be a perpetual bar both at law and in equity, against the Railroad Company, its successors and assigns, and against any and all persons claiming or to claim the premises sold, or any part thereof, from, through or under the Railroad Company, its successors or assigns.

Sec. 10. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property or any part thereof, sold as aforesaid, for the purchase money; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or shall in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or shall be bound to inquire as to the authorization, necessity, expediency or regularity of any such sales.

Sec. 11. In case of such sale, whether made under the power of sale hereby granted or pursuant to judicial proceed-

ings, the whole of the principal sums of the bonds hereby secured, if not previously due, shall at once become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Sec. 12. The purchase money, proceeds or avails of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee under this indenture and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sales shall have been made subject;

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent. per annum on the overdue installments of interest, and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, ratably, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, subject, however, to the provisions of Section 1 of this Article Four: and

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Sec. 13. Upon any such sale by the Trustee or pursuant to judicial proceedings, any purchaser, in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof under Section 12 of this

article; and such purchaser thereupon shall be credited, on account of such purchase price payable by him, with the sums so applicable to the payment of, and credited on, the bonds and coupons so presented; and at any such sale, any bondholders may bid for and purchase such property, and may make payment therefor as aforesaid, and, in compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

Sec. 14. The Railroad Company covenants that (1) in case default shall be made in the payment of any interest on any bonds at any time outstanding and secured by this indenture, and such default shall continue for a period of six months, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds, or by declaration as authorized by this indenture, or upon a sale of the mortgaged premises as hereinbefore provided, then, upon demand of the Trustee, the Railroad Company will pay to the Trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount which then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of four per cent. per annum upon the overdue principal and installments of interest; and in case the Railroad Company shall fail to pay the same forthwith upon such demand, the Trustee in its own name, and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture upon the mortgaged and pledged premises, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the mortgaged premises, and of the application of the proceeds of sale to the payment of the mortgage debt, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of

the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, no levy of any execution upon any such judgment upon property subject to the lien of this indenture, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the mortgaged premises or any part thereof, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section shall be applied by the Trustee towards payment of such amounts then due and payable upon such bonds and coupons and in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind, upon presentation of the respective bonds and coupons and stamping such payments thereon, if partly paid, or upon cancellation thereof, if paid in full.

Sec. 15. The Railroad Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law, now or at any time hereafter in force in any locality where the mortgaged premises or pledged property, or any part of either, may or shall be situate, nor will it claim, take or insist on, any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the mortgaged premises or pledged property, or any part thereof, prior to any sale, or sales, thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right, conferred by any statute enacted by any State, or otherwise, to redeem the property so sold or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Sec. 16. Upon filing a bill in equity, or upon beginning any other judicial proceedings, to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred, and provided to be exercised by the Trustee upon the occurrence and continuance of default, as hereinbefore provided; and, as matter of right, the Trustee shall be entitled to the appointment of a receiver of the premises subject to the lien of this indenture, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment shall confer; but notwithstanding the appointment of any receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of the stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

Sec. 17. At any time hereafter before full payment of the bonds secured hereby and whenever it shall deem expedient for the better protection or security of such bonds (although then there shall be no default entitling the Trustee to exercise the rights and powers conferred by section 2 of this Article Four of this indenture) the Railroad Company, with the consent of the Trustee, may authorize the Trustee for any period, fixed or indefinite, to vote upon all the shares of stock then held by the Trustee hereunder, and to collect the dividends thereon and the interest upon any bonds or other obligations then held by the Trustee hereunder, and to enter into full possession of the whole or any part of the property and premises hereby mortgaged or conveyed or intended so to be. In such event the Trustee shall have, and may exercise, the same rights and powers, and shall apply the moneys by it collected or received, in the manner provided in said section 2 of this Article Four in case of exercise by the Trustee of the rights and powers thereby conferred upon a default continuing as therein set forth; but no action under this Section shall prejudice or impair the right of the Trustee at any time subsequently to exercise, or to continue to exercise, the rights and powers conferred by said section 2 of this Article Four, or by any other provision of this indenture, when entitled thereto.

Sec. 18. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding

in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a Receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of such default and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee, and shall have afforded to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action, for foreclosure or for the appointment of a Receiver, or for any other remedy hereunder it: being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

Sec. 19. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Sec. 20. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default, continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee,

or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the bondholders.

ARTICLE FIVE.

No recourse under or upon any obligation, covenant or agreement of this indenture, or of any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company, or of any successor corporation, either directly or through the Railroad Company by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly understood that this mortgage, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the Railroad Company, or of any successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, either in common law or in equity, or by statute, of, and any all rights and claims against every such stockholder, officer or director, are hereby expressly waived as a condition of, and as a consideration for, the execution of this indenture, and the issue of such bonds and coupons.

ARTICLE SIX.

Section 1. Any request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee with regard to due action taken by it under

such request or other instrument, if made in the following manner:

The fact and date of the execution by any person of any such request, or other instrument, or writing, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person whose name was subscribed to such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

The amount of coupon bonds transferable by delivery, held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such persons, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing therein that at the date therein mentioned such person had on deposit with such depositary the bonds described in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

Sec. 2. The Railroad Company and the Trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond and coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes; and neither the Railroad Company nor the Trustee shall be affected by any notice to the contrary.

The Railroad Company and the Trustee may deem and treat the person in whose name any registered bond without coupons issued hereunder shall be registered upon the books of the Railroad Company, as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of, or on account of, the principal thereof, and for all other purposes except to receive payment of interest represented by

outstanding coupons; and all such payments so made to any such registered holder for the time being, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

ARTICLE SEVEN.

In case any real property, rolling stock, machinery or other tangible property (but not shares of stock or certificates therefor, bonds, certificates of indebtedness or other securities) shall be conveyed or mortgaged to the Trustee hereunder, then from time to time, upon the written request of the Railroad Company approved by resolution of its Board of Directors or Executive Committee, the Trustee shall release from the lien and operation of this indenture any of such real property, rolling stock, machinery or other tangible property described in such written request; *provided,* that there shall be delivered to the Trustee together with such written request a certified copy of the resolution approving thereof, and a certificate signed by the President or a Vice-President of the Railroad Company, stating (*a*) that the Railroad Company has sold or exchanged, or has agreed to sell or exchange, such property, and the price or consideration to be received therefor by the Railroad Company, in cash or other property, and that such price or consideration in his opinion is equal to the full value of such property; and (*b*) that it is no longer necessary or expedient to retain the property described in such request for use in carrying on the business of the Railroad Company or in connection with the maintenance or operation of any mine, colliery, railway or property belonging to any of the companies of whose capital stock the greater part shall then be held by the Trustee hereunder.

The Railroad Company covenants and agrees that it will set aside, separate and apart from all other property and funds of the Railroad Company, the price or consideration by it received for any property which may be released under the provisions of this Article, and that the same shall be applied, but only with the approval of the Trustee, for some one or more of the purposes for which bonds or their proceeds reserved under section 3 of Article One of this indenture may be applied.

It is expressly understood and declared that nothing in this Article contained shall authorize or permit the release by

the Trustee of any shares of stock or the certificates therefor, or any bonds or other evidences of indebtedness or securities which shall be held by the Trustee hereunder, but that the provisions of this Article shall apply only to real property, rolling stock, machinery or other tangible property which, pursuant to any provision of this indenture, shall have been conveyed or assigned to the Trustee by way of mortgage.

ARTICLE EIGHT.

Section 1. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; or for anything whatever in connection with this trust, except willful misconduct or gross negligence. The Trustee shall not be personally liable for any debts contracted by it, or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contacts during any period wherein the Trustee shall manage the trust property or premises. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent. in amount of the bonds hereby secured, then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this section are intended only for the protection of the Trustee, and shall not be construed to limit or affect any discretion or power by any provision of this indenture given to the Trustee to determine whether or not it shall take action in respect of any default, or any power or discretion of the Trustee to take action in respect of any default without such notice or request from bondholders. The Trustee shall not be responsible for

the recording of this indenture and shall not be required to file the same as a chattel mortgage.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and the Railroad Company agrees to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder.

Sec. 2. The Trustee, or any Trustees hereafter appointed, may resign, and may be discharged of the trusts created by this denture by giving notice thereof to the Railroad Company and to the bondholders, by publication, at least twice a week, for four successive weeks, in one newspaper at that time published in New York, N. Y.

The Trustee may be removed at any time by an instrument in writing under the hands of the holders of not less than two-thirds in amount of the bonds hereby secured and then outstanding.

Sec. 3. In case at any time said Trustee, The Mercantile Trust Company, or any trustee hereafter appointed, shall resign or shall be removed or otherwise shall become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys-in-fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the Railroad Company, by an instrument executed by order of its Board of Directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. Thereupon the Railroad Company shall publish notice of such appointment once a week for six successive weeks in a newspaper published in New York, N. Y., but any new trustee so appointed by the Railroad Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured prior to the expiration of one year after such publication of notice. Every such trustee appointed in place of The Mercantile Trust Company, or its successor in the trust, shall always be a trust company in good standing, doing

business in the City of New York, and having a capital and surplus aggregating at least $1,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any such new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office, and also to the Railroad Company, an instrument accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder with like effect as if originally named as trustee herein; but nevertheless, on the written request of the new trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver all stocks, bonds or other property and moneys held by such trustee to the new trustee so appointed in its place; and, upon request of any such new trustee, the Railroad Company shall make, execute, acknowledge and deliver any and all assignments, deeds, conveyances or instruments in writing for more fully and certainly vesting in and confirming to such new trustee all such estates, properties, rights, powers and duties.

ARTICLE NINE.

Section 1. Until some default shall have been made in the due and punctual payment of the interest, or of the principal of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railroad Company, and, until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Railroad Company voluntarily shall waive any such period of grace (such waiver by the Railroad Company being hereby expressly permitted), the Railroad Company, its successors and assigns, shall be suffered and permitted to retain actual possession of any property, other than certificates for shares of stock, bonds, certificates of indebtedness or other securities, cash or other property

pledged or to be pledged hereunder with the Trustee, which, hereafter, may be mortgaged to the Trustee pursuant to any provision of this indenture, and to manage, operate and use such property, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the earnings, income, rents, issues and profits thereof, but not to sell or dispose of the property itself except as expressly in this indenture authorized; and to vote upon or to cause to be voted upon all the shares of stock subject to this indenture except as hereinbefore otherwise expressly provided.

Sec. 2. If, when all the bonds hereby secured shall have become due and payable, the Railroad Company well and truly shall pay, or shall cause to be paid, the whole amount of the principal moneys and interest due upon all of such bonds and coupons for interest thereon then due and unpaid, or shall provide for such payment by depositing with the Trustee hereunder, for the payment of such bonds and coupons, the entire amount then due thereon for principal and interest, and also shall pay, or shall cause to be paid, all other sums payable hereunder by the Railroad Company (including any costs and charges of the Trustee or of the Sinking Fund Trustee then remaining unpaid), and well and truly shall keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then, and in that case, all property, rights and interests hereby conveyed or pledged shall revert to the Railroad Company and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and in such case the Trustee, on demand of the Railroad Company, and at its cost and expense, shall execute proper instruments acknowledging satisfaction of and discharging this indenture; otherwise the same shall be, continue and remain in full force and virtue.

ARTICLE TEN.

Section 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railroad Company, shall bind its successors and assigns whether or not so expressed.

Sec. 2. Nothing contained in this indenture or in any bond hereby secured, shall prevent any consolidation, or merger of the Railroad Company with any other corporation or any

conveyance and transfer subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged and pledged premises as an entirety to any other corporation; *provided, however,* that such consolidation, merger or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee, or of the bondholders hereunder, and that all stock, and the certificates therefor, and all bonds, certificates of indebtedness and other obligations then held by the Trustee shall continue to be held by the Trustee, as though such consolidation, merger or sale had not taken place, and, *provided, further,* that upon such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of the said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the corporation formed by such consolidation or merger, or purchasing as aforesaid.

Sec. 3. In case, pursuant to Section 2 of this Article, the Railroad Company shall be consolidated or merged with any other corporation, or shall sell, convey and transfer, subject to this indenture, all the mortgaged and pledged premises as an entirety, as aforesaid, the successor corporation formed by such consolidation, or into which the Railroad Company shall have been merged, or which shall have purchased and received a conveyance and transfer as aforesaid—upon executing, acknowledging and delivering to the Trustee an indenture satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture—shall succeed to, and shall be substituted for, the Railroad Company, party of the first part hereto, with the same effect as though it had been named herein as such party of the first part; and thereupon such successor corporation may cause to be signed, and may issue, either in its own name or in name of the Railroad Company, any or all of such bonds which theretofore shall not have been signed by the Railroad Company and delivered to the Trustee; and, upon the order of said successor corporation, in lieu of the Railroad Company, and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and shall deliver any of such bonds, which previously

shall have been signed and delivered by the officers of the Railroad Company to the Trustee for certification, and any of such bonds which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the bonds so issued shall, in all respects, have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this Indenture, as though all of said bonds had been issued at the date of the execution hereof.

Sec. 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the words "Railroad Company" include and mean, not only the party of the first part hereto, but also any such successor corporation. Every such successor corporation shall possess, and from time to time may exercise, each and every right and power hereunder of the Railroad Company in its name or otherwise.

Sec. 5. Any act or proceeding, by any provision of this indenture required to be done or performed by any board or officer of the Railroad Company, shall and may be done and performed with like force and effect by the like Board or officer of any corporation that shall at the time be such lawful sole successor of the Railroad Company.

Sec. 6. Nevertheless, before the exercise of the powers conferred by this Article, the Railroad Company, by instrument in writing executed by authority of two-thirds of its Board of Directors and delivered to the Trustee, may surrender any of the powers reserved to the Railroad Company or to such successor corporation under this Article; and thereupon such power so surrendered shall terminate.

The Mercantile Trust Company, Trustee, party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

Except when otherwise indicated, the words "the Trustee," or "said Trustee," or any other equivalent term, as used in this indenture shall be held and construed to mean the Trustee or Trustees, for the time being, whether original or successor, and the words "Trustee," "bond," "bondholder," "coupon" and "holder" shall include the plural as well as the singular num-

ber, and the term "majority" shall signify "majority in amount," whether or not so expressed.

The internal revenue stamps required by law are to be affixed to this indenture from time to time when and as the bonds thereby secured shall be issued.

In witness whereof, Erie Railroad Company, the party hereto of the first part, has caused this indenture to be signed by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary, and the due execution of these presents to be proved, and The Mercantile Trust Company, the party hereto of the second part, has caused its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary, and the due execution of these presents to be proved, and these presents to be signed by its Vice-President.

Erie Railroad Company,
By
E. B. Thomas
President.

Signed, sealed and delivered in the presence of
Wm. H. Bruder.

Attest:
J. A. Middleton
(seal) Secretary.

The Mercantile Trust Company,
By
H. C. Deming
Vice-President.

Signed, sealed and delivered in the presence of
Wm. H. Bruder.

Attest:
E. R. Adee,
(seal) Secretary.

On page 35, line 13, the words "President of the" interlined before execution.
Wm. H. Bruder.

Exhibit R-119.

STATE OF NEW YORK,
County of New York } *ss.*:

On the 14th day of March, in the year one thousand nine hundred and one, before me personally came Eben B. Thomas, to me known, who being by me duly sworn, did depose and say that he resided in the City of New York; that he is the President of Erie Railroad Company, the corporation described in and which executed the above instrument as party of the first part therein; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

WM. H. BRUDER
Notary Public. [SEAL]
New York Co.

STATE OF NEW YORK,
County of New York, } *ss.*:

On the 14th day of March, in the year one thousand nine hundred and one, before me personally came Henry C. Deming, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he is the Vice-President of The Mercantile Trust Company, the corporation described in and which executed the above instrument as party of the second part therein; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

I. MICHAELS
Notary Public. [SEAL]
New York County, N. Y.
No. 65.

Exhibit R-120.

EXHIBIT R-120.

GENERAL MORTGAGE

SECURING

FOUR PER CENT. CONVERTIBLE FIFTY-YEAR GOLD BONDS.

Interest Payable April 1 and October 1.

ERIE RAILROAD COMPANY

TO

THE STANDARD TRUST COMPANY OF NEW YORK,

TRUSTEE.

Dated April 1, 1903.

STETSON, JENNINGS & RUSSELL,
GENERAL COUNSEL,
15 Broad Street, New York.

Exhibit R-120.

This Indenture, Made this first day of April, in the year one thousand nine hundred and three, between

Erie Railroad Company, a corporation created by and existing under the laws of the State of New York, hereinafter called the "Railroad Company," party of the first part, and

The Standard Trust Company of New York, a corporation created by and existing under the laws of the State of New York, hereinafter called the "Trustee," party of the second part.

Whereas, At the 43rd meeting of the Board of Directors of the Railroad Company, duly held, pursuant to due notice, at the office of the Company, in the City of New York, on the 11th day of February, 1903, a quorum being present, resolutions were duly adopted, including the following, that is to say:

Whereas, Upon the report of the President this day made, the Board of Directors of the Erie Railroad Company has determined that it is desirable now to make comprehensive provision for the progressive improvement of the line and terminals of its railroad, during a series of years, to an extent involving the probable expenditure of $50,000,000 for such purpose and for the acquisition of equipment and the funding or consolidating of existing obligations, which sum can best be provided through an issue of Four Per Cent. Convertible Fifty Year Bonds, such bonds to be dated April 1, 1903, and to be convertible into the common stock of the Company (stock trust certificates), at a price not less than the market value thereof at the date when the stockholders of the company shall have given their consent to such bonds; such bonds to be issued either in a single series or in successive series, and such price of conversion to be fixed from time to time by the Board of Directors when authorizing the issue of the several series, and to be specified in every bond of the several series when and as issued;

Now therefore be it

Resolved, That for the purpose of completing and finishing or operating and improving its railroad, or for any other of its lawful purposes, including the acquisition of equipment or the funding or consolidation of existing obligations, the Erie Railroad Company do borrow the sum of $50,000,000, and do issue and dispose of its bonds for such amount so borrowed, and do mortgage its property and franchises to secure the payment of the said bonds; and, accordingly, that the President or any Vice-President, and the Secretary or any Assistant Secretary, of the Erie Railroad Company, be, and hereby they are, authorized to execute and to issue and deliver bonds of the Erie Railroad Company for the aggregate principle sum of $50,000,000 dated

April 1, 1903, and payable April 1, 1953, with interest thereon at the rate of four per cent. per annum, payable semi-annually on the first day of April and the first day of October in each and every year until the principal shall be fully paid; both the principal and the interest to be payable in gold coin of the United States of the present standard of weight and fineness, at the office or agency of the Erie Railroad Company in the City of New York, without deduction for any tax or taxes which the Railroad Company or the trustee may be required to pay or to retain therefrom, under or by reason of any present or future law of the United States or of any State, County or municipality therein; such bonds to be coupon bonds each for the principal sum of $1,000, giving to the holder the right to register the principal thereof and the right to convert the same into registered bonds without coupons; and also registered bonds without coupons, each for the principal sum of $500, of $1,000, or of such multiples of $1,000 as from time to time may be prescribed by the Railroad Company by resolution of its Board of Directors; the bonds to be substantially in the form now submitted to this meeting, of which copies are annexed to the minutes thereof; interim or temporary bonds to be issued and to be exchangeable for permanent bonds pursuant to like resolution.

Resolved, That at any time after April 1, 1905, and before April 1, 1915, the holder of any such bonds shall have the right to convert the principal thereof at par into common stock (stock trust certificates) of the Erie Railroad Company at a price not less than the market value thereof at the date when the stockholders of this Company shall have given their consent to such bonds; such bonds to be issued either in a single series, or in successive series, and such prices of converion to be fixed from time to time by the Board of Directors when authorizing the issue of the several series, and to be specified in every bond of the several series when and as issued.

Resolved, That the President or any Vice-President, and the Secretary or any Assistant Secretary, of the Erie Railroad Company, be, and hereby they are, authorized in the name and behalf of the Erie Railroad Company, and under its corporate seal, to execute and acknowledge, and to deliver to The Standard Trust Company of New York, a corporation of the State of New York, as Trustee, a mortgage or deed of trust to be dated April 1, 1903, mortgaging and pleding any and all of the railroads, franchises, income and property, now owned or hereafter acquired by the Erie Railroad Company, as security for the said issue of bonds for the aggregate principal sum not exceeding $50,000,000, authorized by the foregoing resolutions; such mortgage or deed of trust to be in form generally similar to the First Consolidated Mortgage or Deed of Trust of the Erie Railroad Company dated December 10, 1895, and to be prepared and approved by the General Counsel of this Company.

Exhibit R-120.

Resolved, That the coupons attached to the said coupon bonds to be issued under these resolutions, may be authenticated by the engraved fac-simile signature of the present Treasurer, or of any future Treasurer of the Erie Railroad Company, it being hereby intended that the Railroad Company may adopt, and may use for that purpose, the engraved signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer, at the time when such bonds shall actually be certified and delivered.

Resolved, That the first $10,000,000 bonds of such $50,000,000 bonds shall be convertible at par into common stock at $50 per share, and from time to time, when and as it shall become necessary for the conversion of any of said $50,000,000 bonds the common stock be increased to the required amount, and that whenever so requested by the Voting Trustees such increased stock be issued to them in exchange for such bonds, that they may issue their common stock trust certificates in respect thereof.

Resolved, That the President or any Vice-President and the Secretary or any Assistant Secretary be, and hereby they are, authorized, in behalf of the Erie Railroad Company, to take all such action as from time to time may become necessary or proper to carry these resolutions into effect.

Resolved, That the execution and delivery of the bonds hereby authorized, and of the mortgage or deed of trust securing the same, shall take place when and not before consent thereto shall have given by stockholders owning at least two-thirds of the stock of the Erie Railroad Company, which consent shall be given and certified, and shall be filed and recorded in the office of the Clerk or Register of the County of New York, as provided in Section 2 of the Stock Corporation Law, and consent to such mortgage shall have been given also by the Board of Railroad Commissioners.

And whereas, Prior to the execution and delivery of the bonds and of the mortgage or deed of trust securing the same, as authorized by the said resolutions, consent in due form to the execution and issue of such convertible bonds conferring upon the holder thereof the right to convert the principal thereof into common stock (stock trust certificates) of the Erie Railroad Company as therein provided, was duly given upon February 11, 1903, by stockholders owning at least two-thirds of the stock of the Erie Railroad Company, which consent, prior to the execution and delivery of this indenture and of the bonds therein mentioned, as thus duly given and certified, was duly filed and recorded in the office of the Clerk or Register of the County of New York as provided in Section 2 of the Stock Cor-

poration Law, and consent to the execution of such mortgage has been duly given or authorized by stockholders, and has been duly given also by the Board of Railroad Commissioners of the State of New York; and

WHEREAS, At the 44th meeting of the Board of Directors of the Erie Railroad Company held upon the 21st day of April, 1903, the draft of a mortgage or deed of trust of the form and tenor and date of this indenture, was submitted and read, and resolutions authorizing the execution and delivery thereof were duly and unanimously adopted by said Board; and

WHEREAS, The bonds to be secured by this indenture may be issued in series, and are to be coupon bonds of the denomination of $1,000, numbered consecutively from 1 upwards, giving to the holder the right to register the principal thereof and the right to convert the same into registered bonds without coupons; and also registered bonds without coupons, each for the principal sum of $500, or of $1,000, or of such multiples of $1,000 as from time to time may be prescribed by the Railroad Company by resolution of its Board of Directors; every series of such bonds to have a distinctive serial letter and every such bond to bear a distinctive number or designation; and all such bonds from time to time, as directed by the Board of Directors of the Railroad Company, to be executed in the name and behalf of the corporation and under its corporate seal, by the President or any Vice-President, and by the Secretary or any Assistant Secretary, of the Railroad Company, and to be substantially of the following tenor—the letter of the series, the number of the bond, the rate at which shares of common stock will be issued in conversion of the bond, and the principal sum of each registered bond without coupons, and the date from which interest thereon is to accrue, having been inserted in the respective blanks therefor:

Exhibit R-120.

[FORM OF COUPON FOUR PER CENT. GOLD BOND.]

No. SERIES $1,000

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

4% CONVERTIBLE 50-YEAR COUPON GOLD BOND.

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation, hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder of this bond, one thousand dollars in Gold Coin of the United States of America, on the first day of April, 1953, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon at the rate of four per cent. per annum from April 1, 1903, payable semi-annually at the said office or agency, in like Gold Coin, on the first day of April and the first day of October in each and every year until the payment of said principal sum, but only upon presentation and surrender, as severally they shall mature, of the coupons therefor annexed hereto; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed April 1, 1903.

Both the principal and the interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under any present or future law of the United States, or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Convertible 50-year Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Fifty Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust dated April 1, 1903, duly executed by the Railroad Company to The Standard Trust Company of New York, as Trustee, of the property and franchises mentioned in said mortgage or deed of trust, to which reference hereby is made for a description of the property and franchises mortgaged and pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are secured and are to be used; the officers, directors and stockholders of the Railroad Company being expressly exempted, relieved and absolved from any and all personal liability in respect of said bonds, all such liability being hereby expressly waived.

This bond shall pass by delivery, unless registered in the owner's name on the books of the Railroad Company, at its office or agency in the City of New York, such registry being

noted on the bond by the Bond Registrar of the Railroad Company. After such registration, no transfer shall be valid unless made on the Railroad Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder, also, at his option, may surrender for cancellation this bond with the coupons for future interest thereon, in exchange for a registered bond without coupons, as provided in said Indenture.

As duly authorized by the consent of stockholders, the Board of Directors has conferred upon the holder of this bond the right to convert the principal thereof at par at any time after April 1, 1905, and before April 1, 1915, into the fully paid common stock of the Erie Railroad Company of the par value of $100, at the price of $ for each and every share; and if such common stock shall not be sufficient to meet the conversion when made, the Board of Directors will authorize an increase sufficient for that purpose. Accordingly this bond is convertible, at the option of the holder thereof, at any time after April 1, 1905, and prior to April 1, 1915, as provided in said mortgage or deed of trust, into shares of the common capital stock of the Railroad Company as such stock shall be constituted at the time of such conversion, with an adjustment of current or accrued interest and dividends as between this bond and the stock into which the same may be converted, with the right on the part of the Railroad Company during the continuance of the Voting Trust Agreement of January 1, 1896, in said indenture described, to deliver in lieu of certificates of common stock, voting trust certificates therefor.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said Indenture.

In witness whereof, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, and coupons for such interest, with the engraved fac-simile signature of its Treasurer, to be attached hereto, this first day of April, 1903.

Erie Railroad Company,

[L. S.] By

President.

Attest:

Secretary.

Exhibit R-120.

[FORM OF REGISTERED FOUR PER CENT. GOLD BOND.]

No. SERIES $

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

4% CONVERTIBLE 50-YEAR REGISTERED GOLD BOND.

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation, hereinafter called the "Railroad Company," for value received, promises to pay to or assigns dollars, in the Gold Coin of the United States of America, on the first day of April, 1953, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon from the first day of , 19, , at the rate of four per cent. per annum, payable semi-annually at said office or agency, in like Gold Coin, on the first day of April and the first day of October in each and every year until the payment of said principal sum; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed April 1, 1903.

Both the principal and the interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under any present or future law of the United States, or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Convertible 50-year Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Fifty Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed or trust dated April 1, 1903, duly executed by the Railroad Company to The Standard Trust Company of New York, as Trustee, of the property and franchises mentioned in said mortgage or deed of trust, to which reference hereby is made for a description of the property and franchises mortgaged and pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are secured and are to be used; the officers, directors and stockholders of the Railroad Company being expressly exempted, relieved and absolved from any and all personal liability in respect of said bonds, all such liability being hereby expressly waived.

This bond is transferable by the registered holder hereof, in person or by attorney duly authorized, on the books of the Railroad Company, at its office or agency in the City of New York, upon surrender and cancellation of this bond; and there-

upon a new registered bond will be issued to the transferee in exchange therefor, as provided in said Indenture, and on payment, if the Railroad Company shall so require, of the charge therein provided for. This bond, also, in the manner prescribed in said Indenture, and upon payment of the charge therein provided for, is exchangeable for coupon bonds for the same aggregate principal sum.

As duly authorized by the consent of stockholders, the Board of Directors has conferred upon the holder of this bond, the right to convert the principal thereof at par at any time after April 1, 1905, and before April 1, 1915, into the fully paid common stock of the Erie Railroad Company of the par value of $100, at the price of $ for each and every share; and if such common stock shall not be sufficient to meet the conversion when made, the Board of Directors will authorize an increase sufficient for that purpose. Accordingly this bond is convertible, at the option of the holder hereof, at any time after April 1, 1905, and prior to April 1, 1915, as provided in said mortgage or deed of trust, into shares of the common capital stock of the Railroad Company as such stock shall be constituted at the time of such conversion, with an adjustment of current or accrued interest and dividends as between this bond and the stock into which the same may be converted, with the right on the part of the Railroad Company, during the continuance of the Voting Trust Agreement of January 1, 1896, in said indenture described, to deliver in lieu of certificates of common stock, voting trust certificates therefor.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said Indenture.

In witneww whereof, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, this first day of April, 1903.

Erie Railroad Company,

[L. S.] By

President.

Attest:

Secretary.

And whereas, There are to be attached to the said coupon bonds, at the time of the issue thereof, coupons representing the semi-annual installments of interest which are to become due thereon, each of which coupons is to be substantially of the following tenor, to wit:

Exhibit R-120.

[FORM OF INTEREST COUPON, OF WHICH THE FIRST IS TO BE PAYABLE OCTOBER 1, 1903.]

No. $20.00

On the first day of Erie Railroad Company will pay to bearer, at its office or agency in the City of New York, N. Y., Twenty Dollars, United States Gold Coin of the standard existing April 1, 1903, without deduction for taxes, being six months' interest then due on its Four Per Cent. Convertible 50-Year Gold Bonds, series , No. , subject to the terms and conditions stated in said bond and in the indenture dated April 1, 1903, therein mentioned.

Treasurer.

AND WHEREAS, On each of said coupon bonds, and on each of said registered bonds without coupons, there is to be endorsed a certificate of the Trustee, or its successor appointed hereunder, that it is one of a series of bonds described in this indenture, and no bond shall be secured by this indenture or shall be obligatory for any purpose unless such certificate shall have been executed by the said Trustee or its successor appointed hereunder; said certificate to be substantially of the following tenor, to wit:

[FORM OF TRUSTEE'S CERTIFICATE.]

This bond is one of a series of bonds described in the within mentioned Indenture.

THE STANDARD TRUST COMPANY OF NEW YORK,
Trustee.

By

AND WHEREAS, Each of the coupons to be attached to said coupon bonds is to be authenticated by the engraved fac-simile signature of the present Treasurer or of any future Treasurer of the Railroad Company, and the Railroad Company may adopt and may use for that purpose the engraved fac-simile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when any such coupon bond shall be actually certified and delivered, and such coupons shall be attached to the bond; and

Exhibit R-120.

WHEREAS, This indenture is of the tenor of the draft thereof submitted to and duly approved by the Railroad Company; and

WHEREAS, All acts and things prescribed by law and by the by-laws of the Railroad Company have been duly complied with, and the Railroad Company has executed this indenture, and proposes to issue the bonds hereby secured, in the exercise of each and every legal right and power in it vested:

Now, Therefore, This Indenture Witnesseth:

That in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which such bonds shall be issued and received:

THE RAILROAD COMPANY, party of the first part hereto, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over, unto

THE TRUSTEE, party of the second part, its successors and assigns forever:

ALL THE ESTATE, RIGHT, TITLE, INTEREST AND PROPERTY NOW belonging to the Railroad Company, or that hereafter may be acquired by the Railroad Company, of, in and to

ALL AND SINGULAR the railway of the Railroad Company, from and including Piermont, on the Hudson River, in the State of New York, to and including the terminus of the said railway on Lake Erie at or near Dunkirk, in said State, and the railway known at the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway extending from Hornellsville to Attica, in the State of New York, also that part of the railway known as the Newburgh and New York Railroad, extending from Turners on the main line to Vail's Gate on the Newburgh branch; also the railway formerly belonging to the

Lockport and Buffalo Railroad Company and extending from Lockport to North Tonawanda (subject to the lease thereof to the International Railway Company), both in the State of New York; also the railway formerly belonging to the Erie International Railway Company, and extending from a point of connection with the road formerly known as the Suspension Bridge and Erie Junction Railroad in Erie County, to International Bridge in Erie County, both in the State of New York; also the railway formerly known as the Suspension Bridge and Erie Junction Railroad, extending from East Buffalo, in Erie County, to Suspension Bridge, in Niagara County, with the passenger branch extending from the main line near Eleventh Street, in the City of Niagara Falls, Niagara County, to the passenger station at the corner of Fourth and Niagara Streets, in said city, all in the State of New York; also the railway formerly known as the Buffalo, New York and Erie Railroad, extending from Painted Post, Steuben County, to the City of Buffalo, Erie County, both in the State of New York; also all the railroad formerly of the Buffalo and Southwestern Railroad Company, extending from Jamestown, in Chautauqua County, to Buffalo, in Erie County, both in the State of New York; and also all other railways now belonging to the Railroad Company in the States of New York, Pennsylvania and New Jersey, or any of them;

Also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action of whatsoever name or nature in law or in equity, conveyed or assigned to the New York and Erie Railroad Company, or to the Erie Railway Company, or to the New York, Lake Erie and Western Railroad Company, or to the Erie Railroad Company, by the Union Railroad Company, a corporation existing under the laws of the State of New York; by the Bergen County Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Buffalo, Bradford and Pittsburg Railroad Company, a corporation existing under the laws of the States of New York and Pennsylvania; by the Rochester and Genesee Valley Railroad Company, a corporation existing under the laws of the State of New York; by the Long Dock Company, a corporation existing under the laws of the State of New Jersey; by the Goshen and Deckertown Railroad Company, a corporation existing under the laws of the State of New York; by

the Hoboken Land and Improvement Company, a corporation existing under the laws of the State of New Jersey, by the New York and Fort Lee Railroad Company, a corporation existing under the laws of the State of New Jersey, and the New Jersey Junction Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Jefferson Railroad Company, a corporation existing under the laws of the State of Pennsylvania; by the Montgomery and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the New York, Lake Erie and Western Docks and Improvement Company, a corporation existing under the laws of the State of New Jersey; by the Middletown and Crawford Railroad Company, a corporation existing under the laws of the State of New York; by the New York, Lake Erie and Western Coal and Railroad Company, a corporation existing under the laws of the State of Pennsylvania; by the Northern Railroad Company of New Jersey, a corporation existing under the laws of the State of New Jersey; by the New York and Greenwood Lake Railway Company, a corporation existing under the laws of the State of New Jersey; by the Avon, Geneseo and Mount Morris Railroad Company, a corporation existing under the laws of the State of New York; by the Tioga Railroad Company, a corporation existing under the laws of the State of Pennsylvania; or by the Newark and Hudson Railroad Company, a corporation existing under the laws of the State of New Jersey.

And also all the estate, right, title and interest of the Railroad Company in and to certain real estate situate in Hudson County, in the State of New Jersey, known as the Penhorn property; and also in and to a certain parcel of land lying west of the Bergen Tunnel, in Hudson County, State of New Jersey, known as the Laundry property; and also in and to all other real estate of the Railroad Company, situate in the State of New Jersey, of every kind and description, and wherever in the said State the same may be situate.

And also all the estate, right title and interest of the Railroad Company of, in and to certain piers, bulkheads and water fronts in the said City of New York—that is to say: Piers 20 and 21, North River, with slips and appurtenances; also 560 feet of bulkhead extending northerly from the northerly line of Pier 19, with certain wharf surface, together with ferry near foot of Chambers Street, and rights and franchises appurtenant

thereto; also bulkhead, slip and ferry at the foot of West Twenty third street, and that portion of the bulkhead between Twenty-second and Twenty-third streets abutting on the ferry; together with ferry rights and franchises appurtenant thereto; also pier at foot of West Forty-ninth Street, and slips in connection therewith, together with certain water front south of the pier, and also Pier 7, East River, and slips connected therewith and appurtenant therto.

And also all tracts of land or interest therein of the Railroad Company lying and being in the following states and counties—namely, counties of Rockland, Orange, Sullivan, Delaware, Broome, Tioga, Chemung, Steuben, Alleghany, Livingston, Wyoming, Genesee, Erie, Niagara, Cattaraugus, Chautauqua and Monroe, in the State of New York; counties of Hudson, Essex, Bergen and Passaic in the State of New Jersey, counties of Susquehanna, Jefferson, Elk, Pike, McKean, Wayne and Lackawanna, in the State of Pennsylvania.

Also all and singular the railroad, property and franchises of The Nypano Railroad Company demised and leased to the Erie Railroad Company by the Indenture made the 17th day of March, 1896, by and between said The Nypano Railroad Company, a corporation of the States of Ohio and Pennsylvania, as party of the first part thereto, and the Erie Railroad Company, as party of the second part thereto, and all rights of the Erie Railroad Company of every name and nature in and to such railroad, property and franchises leased as aforesaid; *subject, however,* to the conditions, reservations and provisos set forth in a certain indenture of pledge, dated July 6, 1896, by the Erie Railroad Company to The Farmers' Loan and Trust Company, as trustee, wherein the said leasehold estate and interest was assigned to the said trustee as security under the First Consolidated Mortgage Deed, dated December 10, 1895, made by the Erie Railroad Company to said The Farmers' Loan and Trust Company; and also any and all other right, title and interest of every name and nature now possessed or hereafter acquired by the Railroad Company in or to the property, railroad and franchises of said The Nypano Railroad Company, or of any branch, extension or leased or operated line thereof, or in or to any stocks, bonds or other obligations of said The Nypano Railroad Company, or of any successor company or

companies, subject to the terms upon which any such acquisition may have been made.

ALSO all the right, title, estate, interest and property of the Railroad Company, of, in and to any and all other lines of railway, extensions and branches, now owned, leased or held by the Railroad Company or in which it has any interest whatsoever (excepting its leasehold interest in the Buffalo Creek Railroad, and excepting also all shares of capital stock not herein expressly described and made subject hereto), wherever located, including the franchises appurtenant thereto, notwithstanding the same may not be particularly set forth or described in this indenture.

ALSO ALL THE ESTATE, RIGHT, TITLE, INTEREST AND PROPERTY of the Railroad Company of, in and to any and all lines of railway, extensions and branches, including the franchises appurtenant thereto, and any and all ferry-houses, ferry-boats, shops, depots, terminal properties, rolling stock and other equipment, and other acquisitions, additions, improvements and betterments, and any and all bonds, stocks and other property of every kind or description (notwithstanding that the same are not now particularly set forth in this indenture), which, from time to time, in the manner hereinafter provided, shall be purchased, acquired, or constructed by the use of any of the bonds secured by this indenture.

INCLUDING in the railroads, franchises and properties subject to this indenture, any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine-houses, freight-houses, machine shops and other shops, turn-tables, water-stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind in anywise or at any time belonging or appertaining to any and every line of railway at any time subject to this indenture, or to any branch thereof, or provided for use thereon, or in connection therewith; and any and all lands designed for depots, warehouses or other structures at any terminus, or on or along such lines of railway, or upon or along any such branch; and any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels now or hereafter acquired or provided for use upon such lines of railway or branches, or upon any other line or

branch; and any and all property, real or personal, of every kind and description, now or hereafter acquired for use upon, or in connection with, or for the purpose of, such lines of railway, or any such branch; and any and all corporate rights, privileges and franchises which the Railroad Company now has, or hereafter can or shall acquire, possess or exercise in, to, upon, or in any respect of such lines of railway or branches or any part thereof, necessary for, or appertaining to, the construction, maintenance or operation of such lines of railway or any such branch, or any part thereof; and any and all the rents, issue, profits, tolls and other income of such lines of railway, and of any and all branches; and also any and all the rights, privileges, franchises, properties, real or personal, rights and things, which the Railroad Company may or shall hereafter possess, or become entitled to possess, for the purposes of or in connection with, such lines of railway or any such branch.

TOGETHER with all and singular the franchises, rights and privileges now or hereafter appurtenant to or used in connection with the lines of railway above mentioned or any branch thereof.

ALSO ALL THE RIGHT, TITLE AND INTEREST of the Railroad Company in and to the following shares of stock heretofore transferred to, and now held by, The Farmers' Loan and Trust Company, as Trustee under the said First Consolidated Mortgage Deed, dated December 10, 1895:

Exhibit R-120.

Name of Company.	Par value per share.	Number of shares.
Buffalo, New York and Erie Railroad Company	$100	8,938
Jefferson Railroad Company	50	41,909
Buffalo, Bradford and Pittsburgh Railroad Company	100	22,049
Bergen County Railroad Company	100	2,000
Middletown and Crawford Railroad Company	50	2,413
Newark and Hudson Railroad Company	100	2,500
Paterson, Newark and New York Railroad Company	50	5,000
Bergen and Dundee Railroad Company	100	400
Long Dock Company	100	8,000
New York, Lake Erie and Western Docks and Improvement Company	100	6,040
Suspension Bridge and Erie Junction Railroad Company	100	5,000
Buffalo Creek Railroad Company	100	1,250
Chicago and Erie Railroad Company	100	1,000
Pavonia Ferry Company	100	1,000
Hillside Coal and Iron Company	100	10,000
Northwestern Mining and Exchange Company	100	5,000
Blossburg Coal Company	100	10,000
Tioga Railroad Company, Preferred Stock	50	3,794
Tioga Railroad Company, Common Stock	50	7,818
Elmira State Line Railroad Company	100	692
Arnot and Pine Creek Railroad Company	100	2,550
Union Steamboat Company	100	10,000
Union Dry Dock Company	500	300
Conesus Lake Railroad Company	50	375
The Nypano Railroad Company	100	199,991

Also all the right, title and interest of the Railroad Company in and to the following bonds, heretofore delivered to and now held by the said Trustee under the said First Consolidated Mortgage Deed dated December 10, 1895:

$580,000 bonds of the Buffalo, Bradford and Pittsburgh Railroad Company, secured by its mortgage dated January 1st, 1865, to Dorman B. Eaton, as Trustee.

$57,200 bonds of the Middletown and Crawford Railroad Company, secured by its mortgage dated April 1st, 1871, to Jonathan M. Matthews, Ambrose S. Murray and Alexander Crawford, as Trustees.

$250,000 bonds of the Newark and Hudson Railroad Company, secured by its mortgage dated September 20th, 1871, to H. N. Otis, as Trustee.

$499,000 bonds of the Paterson, Newark and New York Railroad Company, secured by its mortgage dated January 1st, 1868, to W. C. Rushmore and C. Walsh, as Trustees.

$604,000 bonds of the New York, Lake Erie and Western Docks and Improvement Company, secured by its mortgage dated June 1st, 1883, to The Farmers' Loan and Trust Company, as Trustee, as modified by the supplemental contract dated February 8, 1890.

$1,900,000 bonds of the New York, Lake Erie and Western Coal and Railroad Company, secured by its mortgage dated May 15th, 1882, to the Metropolitan Trust Company of the City of New York and J. Lowber Welsh, of the City of Philadelphia, as Trustees.

$1,000,000 bonds of the Suspension Bridge and Erie Junction Railroad Company, secured by its mortgage, dated June 1st, 1870, to Horatio N. Otis, as Trustee.

$9,899,000 Income bonds of the Chicago and Erie Railroad Company, secured by its mortgage dated August 21st, 1890, to New York Security and Trust Company and John B. Elam, as Trustees.

$125,000 bonds of the Tioga Railroad Company, secured by its mortgage dated November 1, 1876, to Myron P. Bush, as Trustee.

$140,000 bonds of the Lockport and Buffalo Railroad Company, secured by its mortgage dated October 1, 1877, to Mathias H. Arnot, as Trustee.

$20,000,000 bonds of The Nypano Railroad Company, secured by its mortgage dated March 17, 1896, to The Farmers' Loan and Trust Company, as Trustee.

Also all the right, title and interest of the Railroad Company in and to shares of stock of the following corporations, for which the certificates have been delivered to and are now held by The Mercantile Trust Company, as Trustee under the Pennsylvania Collateral Indenture of the Railroad Company dated February 1, 1901, viz.: The Pennsylvania Coal Company, the Erie and Wyoming Valley Railroad Company, the Delaware Valley and Kingston Railroad Company, and fifty-one per cent. of the capital stock of the New York, Susquehanna and Western Railroad Company.

Also the right, title and interest of the Railroad Company in and to sixty shares, of the aggregate par value of $6,000, of the capital stock of the Penhorn Creek Railroad Company, being all the outstanding capital stock of said corporation.

But nothing in this indenture is intended or shall be construed to prevent or limit the powers in respect of any bonds

and stocks, subject to this indenture conferred upon the Trustee under said First Consolidated Mortgage Deed dated December 10, 1895, or upon the Trustee under the said Indenture dated February 1, 1901.

Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company or any one in its behalf to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of the bonds issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

It being intended to include within the grant of this indenture all the right, title and interest of the Railroad Company of, in and to all lines of railway, extensions, branches, real estate and railroad property, and all stocks and bonds and other securities now or hereafter described or embraced, in the two several indentures heretofore executed and delivered by the Railroad Company, viz.: (1) The First Consolidated Mortgage Deed to the Farmers' Loan and Trust Company, as Trustee, dated December 10, 1895, and (2) the Pennsylvania Collateral Indenture to The Mercantile Trust Company, as Trustee, dated February 1, 1901; and of, in and to the properties severally and respectively mentioned in and subject to the lien of said several indentures; and also all the right, title and interest of the Railroad Company of, in and to any and all other property herein conveyed, or agreed to be conveyed, to the Trustee hereunder.

To have and to hold, the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee, its successor or successors and assigns, forever:

Subject, however, to the two indentures last above mentioned, and to the existing liens of the several mortgages or charges underlying either of the said indentures, and to all other existing liens and charges, upon and against the railroads, properties and franchises, and stocks, bonds and other obligations, hereby or in and by said indentures, mortgages or charges,

severally and respectively, conveyed, assigned, mortgaged or pledged, or so intended to be:

But in trust, nevertheless, for the equal, proper and proportionate benefit and security, severally and respectively, of all and every the present and future holders of any and every bond and interest obligation issued under and secured by this indenture, as well all those now issued as all hereafter issued in addition thereto or by way of substitution or exchange, in accordance with the terms of this indenture, and for enforcing the payment thereof when payable, in accordance with the true intent and meaning of the stipulations of this indenture and of the said bonds and interest obligations respectively, without preference, priority or distinction, as to lien or otherwise, of any one bond over any other bond, by reason of priority in the execution, delivery or negotiation thereof, and so that each and every bond, issued and to be issued as aforesaid, shall have, under and by this indenture, the same right, lien and privilege as every other bond of the issue; and so that the principal and interest of every such bond shall, subject to the terms hereof, be secured hereby equally and proportionately with every other bond, as though all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of all such bonds shall take effect from the day of the date of this indenture, without regard to the date of actual issue, sale or disposition thereof; and so that the lien and security of this indenture, and of all bonds issued hereunder, shall take effect from the day of the date hereof, as though upon such day all such bonds shall have been actually issued, sold and delivered to, and in the hands of, innocent holders for value.

And it is hereby expressly covenanted, that all such bonds, and the coupons for interest thereon, are to be issued, certified, delivered, received and negotiated, and that the mortgaged and pledged properties and franchises are to be held by the Trustee, subject to the following further covenants, conditions and provisions, viz.:

Exhibit R-120.

ARTICLE ONE.

SECTION 1. From time to time the bonds to be secured hereby shall be executed by the Railroad Company and by it shall be delivered for certification to the Trustee; and thereupon as provided in this Article, and not otherwise, the Trustee shall certify and shall deliver the same. At the option of the Railroad Company, from time to time, any of such bonds may be executed, certified and delivered originally either as coupon bonds or as registered bonds.

The amount of bonds hereby secured which may be executed by the Railroad Company, and which may be certified by the Trustee, is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding **$50,000,000.** All of such bonds shall be dated April 1, 1903; but in no instance shall the interest upon any such bond begin to accrue from a date earlier than the first day of April or the first day of October, as the case may be, next preceding the day of the certification thereof. The Trustee shall not certify or deliver any coupon bond hereby secured, until all coupons thereof then matured shall have been detached and shall have been canceled. The Trustee shall not certify or deliver any registered bond without coupons until there shall have been inserted therein the date from which interest is to accrue, which date shall be the first day of April or the first day of October, as the case may be, next preceding the day of the certification thereof, except as provided in Section 6 of this Article One.

Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture, or shall be entitled to any lien or benefit hereunder. No such bond nor any coupon thereunto attached shall be valid for any purpose until such certificate shall have been duly endorsed on such bond. Every such certificate of the Trustee upon any bond executed by the Railroad Company shall be the conclusive and the only evidence that the bond so certified was duly issued hereunder, and is entitled to the benefit of the trust hereby created.

On request of the Railroad Company, but within the limitations hereinafter prescribed, bonds shall be certified and be delivered hereunder in advance of registration or recording of this

indenture; but the Railroad Company with all convenient speed shall cause this indenture to be recorded as a mortgage upon railways.

Whenever, from time to time, any bonds certified by the Trustee, shall be deliverable by it according to the terms of this indenture (excepting the $10,000,000 bonds, for the immediate delivery whereof provision is hereinafter made in Section 2 of this Article), such bonds shall be delivered by the Trustee as may be directed by resolution of the Board of Directors of the Railroad Company or of the Executive Committee thereof. A copy of any such resolution, certified by the Secretary under the corporate seal, shall be full authority to the Trustee for the certification and delivery of such bonds.

SEC. 2. Of the bonds authorized to be issued under and secured by this indenture, bonds for the aggregate principal sum of ten million dollars (**$10,000,000**), convertible at par into common stock of the Railroad Company at fifty per cent. of the par value of such stock, shall be executed by the Railroad Company and be delivered to the Trustee for certification, and as soon as may be after the execution of this indenture, and without any further action on the part of the Railroad Company, shall by the Trustee be certified and be delivered to the Railroad Company from time to time upon the written order of the Railroad Company signed by its President and its Treasurer under the corporate seal.

SEC. 3. The remaining forty million dollars (**$40,000,000**), par value, of the bonds authorized to be issued under and secured by this indenture, shall be reserved to be executed by the Railroad Company and to be certified and delivered by the Trustee from time to time after December 31, 1903, for some one or more of the purposes specified in this section, but only as herein provided, and subject to the restrictions herein stated.

Such reserved bonds may be issued in one or more series. The Board of Directors of the Railroad Company from time to time shall determine the amount of bonds to be issued in any series, and shall fix the price or rate at which shares of the common stock of the Railroad Company will be issued in and upon conversion of the bonds of such series, when the right to demand such conversion shall be exercised by the holder of any such bond; but in no instance shall such price or rate be less than

the market price of such shares on February 11, 1903. The price or rate of conversion, as so fixed by the Board of Directors, shall be stated in every bond issued hereunder, and shall be alike in every bond of the same series.

A. The purposes for which such **$40,000,000** of reserved bonds from time to time shall be executed, certified and delivered, and for which such bonds or their proceeds may be used, are:

(*a*) The construction or acquisition after December 31, 1903, of branch or connecting lines of railroad and extensions; and of ferry houses, ferry boats, shops, depots, terminal properties, rolling stock and other equipment, and other acquisitions, additions, improvements and betterments, upon, along or appertaining to, or for use in connection with, any lines of railway, branches or terminal properties, which at the time of such construction or acquisition, shall belong to the Railroad Company and be subject to the lien of this indenture, or shall belong to any other company of whose capital stock at least ninety per cent. in amount shall then be subject to this indenture (whether or not subject to the prior lien of the said First Consolidated Mortgage Deed dated December 14, 1895, or of the said Indenture dated February 1, 1901), or upon, along, or appertaining to, or for the use in connection with, the lines of railway of the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company, the Union Railroad Company, The New York and Greenwood Lake Railway Company, the Northern Railroad Company of New Jersey, The Cleveland and Mahoning Valley Railroad Company, The Sharon Railway, the Westerman Railroad or the Elmira State Line Railroad Company; and to reimburse the Railroad Company for sums expended by it, or by any such other company, after December 31, 1903, for any of the foregoing purposes.

(b) The acquisition after December 31, 1903, of shares of the capital stock, bonds or other indebtedness of any company owning any branch or connecting lines of railroad or extensions; or any ferry houses, ferry boats, shops, depots or terminal properties such as are specified in the foregoing clause (*a*), *provided* that no bonds or their proceeds shall be used for the acquisition of any shares of the capital stock, bonds or other indebtedness, for the purchase or acquisition of which any bonds have been reserved under the provisions of said First Consoli-

dated Mortgage Deed of December 10, 1895; and *provided, further,* that no bonds shall be used for the purchase of shares of the capital stock, bonds or other indebtedness of any company unless or until the greater part of the entire capital stock of such company shall be acquired or shall have been acquired, and that all the shares, bonds and other indebtedness so acquired shall become and shall be subject to the lien of this indenture, whether or not also subject to the prior lien of said First Consolidated Mortgage Deed dated December 10, 1895, or of said Indenture of February 1, 1901; and *provided, further,* that no shares, bonds or other indebtedness issued or created by any such company after such ninety per cent. of the capital stock thereof shall have become subject to this indenture, shall be acquired under this clause (*b*); but bonds may be certified and delivered under the foregoing clause (*a*) in respect of any construction or acquisition such as is specified in said clause, by any such company, and to reimburse the Railroad Company for sums expended by it after December 31, 1903, for any such acquisition.

B. The restrictions subject to which such **$40,000,000** of reserved bonds from time to time shall be certified and delivered, are as follows, viz.:

(*1*) Before certifying and delivering bonds under this section, there shall be delivered to the Trustee a copy of a resolution of the Board of Directors of the Railroad Company, certified by its Secretary or an Assistant Secretary, calling for the certification and delivery of a specified amount of such bonds, and directing the officers of the Railroad Company to set aside such amount of bonds or their proceeds separate and apart from any other assets and funds of the Railroad Company, and to use the same only for purposes authorized by this section.

(*2*) In each calendar year after December 31, 1903, there shall be so certified and delivered out of such $40,000,000 of bonds, such amount not in the aggregate exceeding ten million dollars ($10,000,000) par value in any calendar year, as from time to time shall be called for in such resolutions; but in every instance except the first, before certifying or delivering any of the bonds reserved under this section, the Trustee shall require the Railroad Company to furnish, in addition to such resolution

of its Board of Directors, the certificate or certificates of some officer or officers of the Railroad Company, stating:

(*a*) That all bonds certified and delivered under this section in respect of which no such certificate previously shall have been furnished, and the proceeds of all such bonds, have been actually used, or actually appropriated and set aside for liabilities actually incurred, for said purposes or for some one or more of them, or to reimburse the Railroad Company as aforesaid—indicating the particular branches, extensions, terminal properties, rolling stock or other property, acquired or constructed or contracted for, or the stock, bonds or other indebtedness of any other company acquired, and the kind or class of betterments or improvements made or contracted for, and the amount of bonds or proceeds of bonds or other cash, used or applied or actually appropriated and set aside for each such purpose;

(*b*) That the price paid or liability incurred for such construction, or for such acquisition, betterments or improvements, was not in excess of the fair value of such property or of such work, and that the bonds included in such certificate were sold, disposed of or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition or accounting;

(*c*) That no part of such certified expenditures or liabilities was included in any previous certificate furnished hereunder, or was made or reimbursed or provided for out of any bonds or moneys received by the Railroad Company under any other provision of this indenture, or under any provision of the First Consolidated Mortgage Deed dated December 10, 1895, or of said Indenture dated February 1, 1901;

(*d*) That no part of the expenditures certified in such cerificate was included in the operating or maintenance expenses reported in any annual report theretofore issued by the Railroad Company;

(*e*) In case such certificate shall show the acquisition of, or any contract for, new property, then such certificate also shall state whether such new property is known or believed to be, or that when acquired such new property will be, subject to any lien or charge prior to this indenture, except prior liens and charges to which the grant of

this indenture is made subject, and undetermined liens or ordinary operating accounts or charges incidental to construction, and such certificate shall specify the amount of any such prior lien or charge (other than as aforesaid) known or believed to exist or intended or expected to be created;

(*f*) Any such certificate under this section may state any other facts pertaining to the right to certify and deliver bonds hereunder. The same officer or officers of the Railroad Company need not certify to all the facts required to be certified under the provisions of this section, but different officers may certify to different facts respectively.

(3) None of the $40,000,000 of reserved bonds deliverable after December 31, 1903, pursuant to this Section 3, shall be certified and delivered for or in respect of the construction or acquisition of property subject to any lien or charge so certified, unless or until the Railroad Company shall have deposited with the Trustee, an amount of bonds hereby secured equal at par to the aggregate amount of such certified indebtedness, liens and charges. Whenever thereafter any of such certified indebtedness, liens and charges shall be paid or be satisfied, or shall be acquired and be subjected to the lien hereof, then an equal amount at par of the bonds hereby secured so deposited with Trustee under this clause shall be redelivered by the Trustee to the Railroad Company or upon its order, so that the amount of such bonds held by the Trustee under this clause at all times shall be equal to the amount of such indebtedness, liens and charges remaining unsatisfied or not subjected to the lien thereof.

(4) The Railroad Company covenants that whenever all the bonds reserved under this section shall have been certified and delivered to, and used by, the Railroad Company, it will execute and deliver to the Trustee a similar certificate indicating the particular application of all such bonds, or proceeds of such bonds, in respect of which the Railroad Company shall not theretofore have furnished such certificate to the Trustee.

(5) Every such certificate furnished under this section, unless signed, *first,* by the President or a Vice-President or the General Manager or the Chief Engineer, and, *secondly,* by the Comptroller or Auditor or Treasurer, of the Railroad Company, shall have endorsed thereon, or shall be accompanied by, a writ-

ten statement of one of the officers first above designated, and one of the officers secondly above designated, that they believe that such certificate is true, and that such bonds or their proceeds have been used, and the expenditures certified have been made, only for purposes authorized by this section. A certificate signed by one of the officers first above designated and one of the officers secondly above designated, or a certificate having endorsed thereon or annexed thereto a written statement of such officers in the form in this paragraph specified, shall be received by the Trustee as conclusive evidence of any facts pertaining to the right to certify and deliver bonds pursuant to this section.

Unless the bonds or the certificates for shares of stock or the other indebtedness acquired under the provisions of this section, shall be deliverable and shall have been delivered to the Trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or to the Trustee under the said Indenture dated February 1, 1901, such bonds, and such certificates of stock, endorsed for transfer in blank, and the assignments of such other indebtedness, shall be delivered to the Trustee hereunder, together with the said statements and certificates, and the Railroad Company shall execute or shall cause to be executed any conveyances or instruments of further assurance that may be necessary for the purpose of subjecting to the lien and operation of this indenture any new property so acquired by the Railroad Company, and, so far as may be, any indebtedness, liens or charges so taken up or acquired by use of said bonds, and, also, in the case of any construction upon or acquisition for any of the railroads specifically referred to in part A of this section 3, the Railroad Company shall execute or cause to be executed such instruments as may be necessary to subject the same to the leases, if any, under which such railroads are held: and, also shall furnish the written opinion of counsel for the Railroad Company to the effect that such conveyances or other instruments are sufficient for that purpose or that no conveyance or instrument of further assurance is necessary for the purpose aforesaid. Such resolutions, statements, certificates and opinion shall be deemed, and shall be taken to be, full authority and protection to the Trustee for its certification of such bonds under the foregoing provisions of this section.

Exhibit R-120.

SEC. 4. Whenever, under section 3 of this Article, the Railroad Company shall be entitled to reimbursement out of bonds of any series hereby secured or their proceeds, the Railroad Company may take and accept such bonds at prices to be fixed by the resolution of the Board of Directors, but not in any case less than the average market prices for bonds of the same series at the New York Stock Exchange during the previous calendar month (if there be any such market price for such bonds) in settlement and discharge of its claim to be reimbursed; and the bonds so taken and accepted by the Railroad Company shall be held and may be used by it for its general corporate purposes, freed and discharged from all restrictions and provisions of said Section 3 as though such bonds had been sold at such price and the proceeds paid over to the Railroad Company.

SEC. 5. Whenever any coupon bond or bonds, issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for a registered bond or registered bonds without coupons, the Railroad Company shall execute, and the Trustee shall certify, and in exchange for such coupon bond or bonds shall deliver, registered bonds, or one registered bond, without coupons, for the like aggregate principal sum. The registered bond or bonds without coupons so delivered in exchange, shall be of the same series as the surrendered coupon bond or bonds, and shall bear interest from the date of the last-matured coupon thereof.

Whenever any registered bond without coupons shall be surrendered, transferred and canceled, as provided in Section 3 of Article Two hereof, the Railroad Company, upon request therefor, shall issue to the transferee, and the Trustee shall certify and shall deliver, registered bonds, or one registered bond without coupons, of the same series, for the like aggregate principal sum.

Whenever any registered bond or bonds without coupons, for the principal sum of one thousand dollars or some even multiple of one thousand dollars, shall be surrendered for exchange for a coupon bond or bonds, the Railroad Company shall issue, and the Trustee shall certify, and, in exchange for such registered bond or bonds without coupons, shall deliver, a coupon bond or coupon bonds, of the same series, for the like aggregate principal sum, with the coupons maturing on and after the

date when the next semi-annual installment of interest would have been payable on such surrendered bond or bonds.

In every case of any such exchange, the Trustee forthwith shall cancel the surrendered bond or bonds and coupons and shall deliver the same to the Railroad Company.

For (1) any exchange of coupon bonds for registered bonds, and for (2) any transfer of registered bonds without coupons, and for (3) any exchange of registered bonds without coupons for coupon bonds,—the Railroad Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge, and in addition thereto, such further sum as may be necessary to meet other expense connected therewith; such further sum, however, not to exceed one dollar for each new coupon bond or registered bond without coupons issued upon such exchange or transfer.

SEC. 6. In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railroad Company, in its discretion, may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond without coupons, or in lieu of and substitution for the coupon bond and its coupons or the registered bond without coupons so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons, or of such registered bond without coupons, and upon receipt also of satisfactory indemnity.

SEC. 7. Until the bonds to be issued under and secured by this indenture can be engraved and printed, the Railroad Company may execute, and, upon its request, the Trustee shall certify and deliver, in lieu of such engraved bonds and subject to the same provisions, limitations and conditions, temporary bonds of any denomination, substantially of the tenor of the bonds to be issued as hereinbefore provided. Upon surrender of such temporary bonds for exchange, the Railroad Company at its own expense shall issue, and upon cancellation of such surrendered bonds the Trustee shall certify and deliver, in

exchange therefor, engraved coupon bonds or registered bonds without coupons of the denominations hereinbefore provided, for the same aggregate principal sum as the temporary bonds surrendered; and, until so exchanged, the temporary bonds shall be entitled to the same security as the engraved bonds issued hereunder.

SEC. 8. Nothing in this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any person or corporation other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders of the bonds hereby secured.

ARTICLE TWO.

THE RAILROAD COMPANY COVENANTS AS FOLLOWS:

SECTION 1. Duly and punctually it will pay the principal and the interest of every bond issued under this indenture, at the dates and the place and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under or by reason of any present or future law of the United States, or of any state or county or municipality therein. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be canceled. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof.

Duly and punctually the Railroad Company will also pay the principal and the interest of every bond issued under the said First Consolidated Mortgage Deed dated December 10, 1895, and of every bond issued under the said Indenture dated February 1, 1901, according to the terms of said bonds and

coupons and of said indentures securing the same, severally and respectively.

SEC. 2. All railways, franchises and other property of every kind, in respect of the acquisition or construction whereof bonds under this indenture hereafter shall be certified and be issued as hereinbefore provided, and all franchises and other property of every kind, as described and to the extent provided in the granting clauses of this indenture, which hereafter may be acquired by the Railroad Company, immediately upon the acquisition thereof by the Railroad Company, and without any further conveyance or assignment, shall become and shall be subject to the lien of this indenture as fully and completely as though now owned by the Railroad Company, and specifically described in the granting clauses hereof; but at any and all times the Railroad Company will execute and deliver any and all such further assurances or conveyances or assignments thereof as the Trustee may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture; and also it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered all and every such further acts, deeds, conveyances and transfers and assurances in the law, for the better assuring, conveying, assigning and confirming unto the Trustee, all and singular the hereditaments and premises, estates and property hereby conveyed or assigned, or intended so to be, or which the Railroad Company may hereafter become bound to convey or assign to the Trustee, as the Trustee shall reasonably require.

But nothing expressed or implied in this indenture is intended, or shall be construed, to limit the right or power of the Railroad Company, hereby distinctly reserved, by the use of its credit or in any manner other than by the use of the bonds hereby secured, or their proceeds, to construct or acquire other lines of railway, branches or extensions, or interests therein, or other property, free from the lien hereof.

SEC. 3. The Railroad Company, at an office or agency to be maintained by it in the City of New York, will keep a register or registers for the registration and transfer of bonds issued hereunder, in which it will register, subject to such reasonable regulations as it may prescribe, all such bonds without

coupons, and, upon presentation thereof for such purpose, any such coupon bonds; and such register or registers at all reasonable times shall be open to the inspection of the Trustee.

Upon presentation to the bond registrar of the Railroad Company, at the place where such register shall be kept, of any such registered coupon bond, accompanied by delivery of a written instrument of transfer in a form approved by the Railroad Company, executed by the registered holder, such bond shall be transferred upon such register by the registered holder, in person or by attorney, and such transfer shall be noted by such bond registrar upon the bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such coupon bonds registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a coupon bond shall be noted by the bond registrar on the bond.

Registration of any coupon bond, however, shall not affect the transferability of any coupon thereto belonging, by delivery merely, and payment to the bearer of any such coupon shall discharge the Railroad Company in respect of the interest therein mentioned, whether or not the bond shall have been registered.

Any registered bond without coupons may be transferred upon such register at such office or agency by the registered holder, in person or by attorney, upon surrender of such bond to such bond registrar for cancellation, accompanied by delivery of a written instrument of transfer in a form approved of by the Railroad Company, duly executed by the registered holder of the bond; and thereupon a new registered bond, or new registered bonds, for an equivalent principal sum shall be issued to the transferee or transferees as provided in Section 5 of Article One hereof.

Sec. 4. The Railroad Company shall not and will not suffer or permit any default wherefor any of the several lessors may terminate any of the existing leases of the Cleveland and Mahoning Valley Railroad, the Sharon Railroad or the Wes-

terman Railroad, or any lease hereafter made to it, or for its benefit, of any franchises or property now or hereafter belonging to any of the said railroad companies. In case and whenever it shall make default in paying any sum stipulated to be paid in any such present or future lease of any of the said railroads, the Trustee, without affecting any of its rights hereunder, from time to time, in its discretion, may itself pay any sum so in default, and thereupon shall have and forthwith may assert a lien for such advances upon the premises hereby mortgaged, and the proceeds thereof, which lien shall be entitled to priority in rank and payment from the income and profits of the mortgaged premises over any bonds hereby secured.

The Railroad Company will not voluntarily create, or suffer to be created, any debt, lien or charge (except as permitted or required under the said First Consolidated Mortgage Deed dated December 10, 1895, or under the said Indenture dated February 1, 1901, severally and respectively) which would be prior to the lien of these presents upon the mortgaged or pledged premises and property or any part thereof, or upon the income thereof; and within three months after the same shall accrue, it will pay, or will cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, laborers and others, which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof, or the income thereof; and if any company, of whose capital stock the greater part, pursuant to the provisions of Article One or to the provisions of Sections 5 and 6 of Article Three of this indenture, shall have been pledged hereunder, at any time while the greater part of the capital stock of such company shall be pledged hereunder (excepting the New York, Susquehanna and Western Railroad Company, or the Buffalo Creek Railroad Company, or the Blossburg Coal Company, or the Conesus Lake Railroad Company), shall create or shall suffer to be created (except as permitted or required under the two indentures above mentioned, or under this indenture, or as required by any existing obligation), any lien or charge upon its property or income, or any indebtedness other than indebtedness to the Railroad Company, or for the current operating expenses of such company during a period not exceeding three months, then it (the Railroad Company) will cause the same to be paid or discharged, or

will make adequate provision for the satisfaction or discharge thereof; provided, however, that the Railroad Company shall have the right to contest by legal proceeding any such debt, lien or charge, and pending such contest may delay or defer the payment or discharge thereof.

SEC. 5. The Railroad Company from time to time will pay and discharge all taxes, assessments and governmental charges (the lien whereof would be prior to the lien hereof) lawfully imposed upon the premises or property subject to this indenture, or upon any part thereof, or upon the income and profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustee in respect of such premises or property, so that the lien and priority of this indenture shall be fully preserved at the cost of the Railroad Company without expense to the Trustee or the bondholders; and if any company of whose capital stock the greater part pursuant to Article One or Article Three of this indenture shall have been pledged hereunder, at any time while the greater part of the capital stock of such company shall be pledged hereunder (except the Buffalo Creek Railroad Company, or any Coal Company, in respect of lands upon which mining shall have been abandoned), shall fail to pay all such taxes, assessments and charges lawfully imposed upon the property of such company or upon the income and profits thereof, then the Railroad Company itself will pay the same or make adequate provision for the satisfaction or discharge thereof; provided, however, that the Railroad Company shall have the right to contest by legal proceeding any such tax, assessment or charge, and pending such contest may delay or defer the payment thereof.

SEC. 6. Except in the cases of this indenture expressly authorized, the Railroad Company will not, by affirmative vote or by abstaining from voting, sanction or permit any increase of the capital stock of any company of whose capital stock the greater part shall be subject to this indenture, or the issue or guaranty of any bonds by any such company, or the creation of any mortgage or other lien upon the railroad or property of any such company, unless simultaneously there shall be made effective provision that such indebtedness and the evidences thereof, and such bonds issued or guaranteed, and such mort-

gage or other lien, and all such additional stock (or such part of such additional stock as shall be proportionate to the part of such entire capital stock previously subject to this indenture), forthwith, upon the issue or creation thereof, shall be delivered to, and be pledged with, the Trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or with the Trustee under the said Indenture dated February 1, 1901, if required by said instruments, severally and respectively, or with the Trustee hereunder, and shall be subject to all the trusts of this indenture; and all such additional stock shall be fully paid and non-assessable. Nothing herein, however, shall be construed to prohibit any increase of stock of, or the creation of mortgages or other liens by, the Buffalo Creek Railroad Company or the New York, Susquehanna and Western Railroad Company.

Except as herein otherwise expressly provided, the Railroad Company will not, by affirmative vote or by abstaining from voting, sanction or permit any railroad or ferry or terminal company, of whose capital stock the greater part shall be owned by the Railroad Company and be subject to this indenture, to sell or otherwise to dispose of its railroad or any part thereof, or any ferry or terminal, or to lease the same (unless such lease be upon the condition that it shall terminate, at the election of the Trustee, by entry or otherwise, in case default shall be made and shall continue as provided in Section 2 of Article Four hereof, or, at the election of the purchaser, in case of a sale of the property subject to this indenture, under this indenture or under either of said two former indentures, dated respectively December 10, 1895, and February 1, 1901), except to the Railroad Company or to some other company of whose capital stock not less than ninety per cent. shall then be held by the Railroad Company and be subject to this indenture.

SEC. 7. Any and all claims and indebtedness, which the Railroad Company now has or hereafter may acquire against any other company, of whose capital stock the greater part shall have become subject to this indenture, shall (subject to the provisions in respect thereof in this indenture contained), be and became subject to this indenture, and if and when requested in writing by the Trustee, the Railroad Company will execute to the Trustee appropriate assignments thereof: subject, however, to any prior rights of the Trustee under the said

Exhibit R-120.

First Consolidated Mortgage Deed dated December 10, 1895, or of the Trustee under the said Indenture dated February 1, 1901.

SEC. 8. The Railroad Company will not issue, negotiate, sell or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained; and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for the purposes herein prescribed, and to and for no other or different purpose.

SEC. 9. Prior to the first day of April, 1905, the Railroad Company will authorize the increase of its common capital stock to such amount as may be necessary to provide for the conversion thereinto of all of the bonds issued hereunder in accordance with the terms thereof; and, when and as demand therefor after April 1, 1905, and before April 1, 1915, shall be made by the holder of any such bond, it will as soon as practicable issue certificates for such shares of common stock as the same shall then be constituted, in exchange for, and in conversion of, such bond at the rate stipulated therein, but never at a rate less than the market price of such common stock on February 11, 1903; *provided, however,* that in case the voting trust of the stock of the Railroad Company under a certain agreement dated January 1, 1896, between Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, of the one part, and J. Pierrepont Morgan, Louis Fitzgerald and Sir Charles Tennant, Bart., Voting Trustees, of the other part, or any extension or renewal of said agreement, shall exist at the time of any such conversion, common stock voting trust certificates shall be deliverable in lieu of common stock certificates; and *provided further,* that scrip may be delivered for any fraction of a share of common stock, which scrip shall be exchangeable for common stock certificates, or common stock voting trust certificates, as the case may be, when presented in amounts aggregating $100 or some even multiple thereof, but which, until so exchanged, shall not confer on the holder the right to receive any dividends declared on such common stock, or any right whatever other than such right of exchange.

Demand by the holders of bonds for the conversion thereof into common stock shall be made by writings addressed to the

Railroad Company, which shall be delivered, together with the bonds to be converted, to the bond registrar of the Railroad Company. If the bond so surrendered be a registered bond without coupons, all rights to interest subsequently payable shall cease and determine. If the bond so surrendered be a coupon bond, the holder shall also surrender all unmatured coupons thereof. All registered bonds (with or without coupons) shall bear o written assignment in blank in a form satisfactory to the Railroad Company.

Upon the conversion and exchange of any such surrendered bond as above provided, the Railroad Company forthwith will cancel such surrendered bond (and also all unmatured coupons thereof if it be a coupon bond), and will exhibit the same to the Trustee; and thereupon the said bond shall be deemed to be and shall be satisfied and discharged, and no bond in place thereof shall be issued by the Railroad Company or be certifted or be delivered by the Trustee.

ARTICLE THREE.

SECTION 1. It is hereby declared and covenanted that until the final satisfaction or release of the said First Consolidated Mortgage Deed dated December 10, 1895, and of the said Indenture dated February 1, 1901, all the bonds, stocks and other property covered by said indentures, severally and respectively, shall be and shall remain subject to the prior and superior lien thereof, and shall be held as provided in said indentures severally and respectively, with all the powers, rights and discretions, and subject to all the provisions, set forth in said indentures severally and respectively; and neither the execution of this indenture, nor any action hereunder, shall in any manner affect said indentures or either of them, or any rights of the holders of the bonds thereby secured, or any rights or duties of the Trustee under either of said indentures.

Whenever said Indenture dated February 1, 1901, shall have been satisfied or released, the Trustee hereunder shall be entitled to receive, to take possession of, and to hold, as Trustee under this indenture, all the bonds, shares of stock and other property (including cash), then held by the Trustee under said Indenture dated February 1, 1901; and the Railroad Company covenants that it will execute and will deliver to the Trustee hereunder, such assignments, transfers, powers of attorney

and other instruments, as the Trustee may reasonably require in order to vest in the Trustee hereunder, or in order to enable the Trustee hereunder to acquire, the title and possession of all such bonds, shares of stock and other property; and the Trustee thereupon shall hold under this indenture all such bonds, shares of stock and other property, including cash.

The Railroad Company covenants that forthwith upon the execution hereof, it will cause due notice of the execution of this indenture to be given to each corporation or association which issued any of the shares of stock or any of the bonds now held by the Trustee under either of said two former indentures; and from time to time, upon the delivery to the Trustee under either of said indentures, of stocks, bonds or other obligations of any other corporation or association, it will give similar notice to such other corporation.

The Trustee shall be authorized (*1*) to cause to be registered in its name as Trustee, any and all coupon bonds pledged with and delivered to it hereunder, or which at any time hereafter may be received by it under any of the provisions of this indenture, or (*2*) to cause the same to be exchanged for registered bonds without coupons of any denomination, or (*3*) to cause any such bonds to be stamped—"Not negotiable. Held by The Standard Trust Company of New York, as Trustee under the General Mortgage of Erie Railroad Company, dated April 1, 1903."

The Trustee shall cause to be transferred into its name, as Trustee hereunder, all registered bonds which shall have been delivered and assigned to it hereunder. The Trustee at any time may transfer into its name, as Trustee hereunder, all or any shares of stock, the certificates for which shall have been pledged with and delivered to it hereunder, or in its discretion it may hold such certificates in the name of the registered holder thereof at the time of such pledge, provided that the same be endorsed in blank for transfer.

The Trustee may do whatever may be necessary for the purpose of maintaining, preserving, renewing or extending the corporate existence of any company the greater part of whose shares shall then be held by the Trustee hereunder, and for such purposes, from time to time, it may sell, assign, transfer and deliver so many shares of the stock of the several companies as may be necessary to qualify persons to act as directors

of, or in any other official relation to, said companies. Whenever requested in writing by the Railroad Company, the Trustee shall assign and transfer to persons designated by the Railroad Company a sufficient number of any shares that then shall be held by the Trustee hereunder, to qualify such persons to act as directors of, or in any official relation to, the several companies which issued such shares; *provided, however,* that under this provision no transfer shall be made which shall reduce the amount of stock in any company held by the Trustee, so as to render it less than a controlling interest in such stock; and in every case the Trustee may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Until the final satisfaction or release of said indentures dated December 10, 1895, and February 1, 1901, severally and respectively, unless the Railroad Company either (*1*) shall be in default in the payment of any interest upon any bond or bonds hereby secured and then outstanding, and such default shall have continued for a period of six months, or (*2*) shall be in default in the payment of the principal of any bond hereby secured; or (*3*) shall be in default in the payment of the principal of any of the bonds secured by the said Indenture dated February 1, 1901; or (*4*) shall be in default in the due observance or performance of some other covenant or condition in this indenture required to be kept or performed by the Railroad Company, and such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company,—all stocks, bonds. coupons, claims and other property that shall be subject to either of said indentures, dated December 10, 1895, and February 1, 1901, severally and respectively, except as herein expressly otherwise provided, may be used, held, dealt with and disposed of under and in accordance with the provisions of Article Four of said indenture dated December 10, 1895, and of Article Three of said indenture dated February 1, 1901, severally and respectively, as well by the Railroad Company as by the several trustees under said indentures, respectively, as though this indenture had not been made. None of the particular provisions hereinafter contained shall be construed as limiting the general provision contained in this section.

Exhibit R-120.

SEC. 2. Unless and until a Receiver shall have entered into possession of the railroad hereby mortgaged and conveyed; or unless the Trustee shall have entered into possession of the mortgaged premises or part thereof under the power herein granted; or unless and until there shall be a default (*1*) in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture and such default shall have continued for the period of six months; or (*2*) in the payment of the principal of any bond hereby secured; or (*3*) in the payment of the principal of any of the bonds secured by the said Indenture dated February 1, 1901; or (*4*) in the due observance or performance of any other covenant or condition in this indenture required to be kept or performed by the Railroad Company and such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company, —(*a*) the Trustee shall not (except with the assent of the Railroad Company) collect, or be entitled to collect, the principal or interest of any bonds or of any other claims or indebtedness now or hereafter subject to this indenture, whether at, or before, or after, the maturity of such bonds or contract obligations or other claims or indebtedness, and shall not enforce any provisions of the mortgages, trust deeds or other instruments under which such bonds or other obligations were issued, or by which the same are secured; (*b*) the Railroad Company shall be entitled to receive all interest paid in respect of any such bonds or obligations, and the dividends on all shares of stock, which shall be subject to this indenture although the same may have been transferred to the Trustee; (*c*) from time to time (subject to the covenants in respect thereof in this section contained), upon the request of the Railroad Company, the Trustee shall deliver to it any coupons for such interest then in the possession of the Trustee, in order that the Railroad Company may receive payment thereof for its own use or may cause the same to be canceled, and the Trustee shall deliver to the Railroad Company suitable orders in favor of the Railroad Company, or its nominee, for the payment of such interest and dividends, and the Railroad Company may collect such coupons, interest and dividends (but not by any proceeding which the Trustee shall deem to be prejudicial to the trusts hereunder), and the Trustee at once shall pay over to the Railroad Company any

such interest and dividends which may be collected or be received by it; and (*d*) the Railroad Company, for its own use, shall be entitled to demand, receive and collect, and may release and discharge, the principal and interest of any such claims and indebtedness subjected to the lien of this indenture under Section 7 of Article Two hereof, and upon request of the Railroad Company the Trustee shall execute any re-assignments or releases which may be required for that purpose:

Provided, however, and hereby it is declared and agreed that, except as in this indenture otherwise expressly provided, (*1*) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over to the Railroad Company, the principal of any bond subject to this indenture; (*2*) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over, any interest on any such bond, or the principal of or any interest on any such other obligations, claims or indebtedness, which shall have been collected or paid out of the proceeds of any sale or condemnation of the property covered by a mortgage securing such bonds, or out of the proceeds of the sale of any other property of the company liable upon such bonds, obligations, claims or indebtedness, in case of a dissolution or liquidation of such company, it being the intention that the Railroad Company shall be entitled to receive only payments made out of the rents, revenues, income or proceeds of operation of such property; (*3*) the Railroad Company shall not sell, assign or transfer any such coupon, or right to interest or dividends, delivered or assigned to it, or any other such claim or indebtedness, except subject to this indenture; (*4*) the Railroad Company shall not collect any such coupons or interest, or any such other claims or indebtedness, by legal proceedings or by enforcement of any security therefor, except with the assent of the Trustee, nor in any manner which the Trustee shall deem prejudicial to the trust hereunder; and (*5*) until actually paid, released or discharged, every such coupon, or right to interest or dividends, and all such other claims and indebtedness, shall remain subject to this indenture.

If any such coupons, or if any evidence of any such claim or indebtedness, delivered to the Railroad Company hereunder, shall not, as aforesaid, forthwith be paid or canceled, the Railroad Company shall return the same to the Trustee, and in case

of the payment of any such coupon, claim or indebtedness, shall, upon the demand of the Trustee, furnish satisfactory evidence of the cancellation and extinguishment thereof.

SEC. 3. In case any sum shall be paid on account of the principal of any bonds or of any obligations subject to this indenture, or in case any sum shall be paid on account of the interest on any such bonds or obligations, out of the proceeds of property covered by a mortgage or trust deed securing such bonds or obligations, or in case, upon the dissolution or liquidation of any company, any sum shall be paid upon any bonds or any shares of stock or any claims against or indebtedness of such company, subject to this indenture, then, in any such case, any such sum, unless received by the trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or by the trustee under the said Indenture dated February 1, 1901, upon the trusts thereof, severally and respectively, or unless applied on account of the purchase price of property purchased pursuant to Section 5 of this Article, shall be received by the Trustee and shall be paid over by the Trustee to the Railroad Company to reimburse it for expenditures by it made for any of the purposes for which bonds or their proceeds may be used under section 3 of Article One hereof, upon certificates of such expenditures, signed by the President or a Vice-President or the General Manager or Chief Engineer, and by the Comptroller or Auditor or Treasurer of the Railroad Company.

SEC. 4. Unless and until a Receiver shall have entered into possession of the railroad hereby mortgaged and conveyed; or unless the Trustee shall have entered into possession of the mortgaged premises or part thereof under the power herein granted; or unless and until there shall be a default (*1*) in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture and such default shall have continued for the period of six months; or (*2*) in the payment of the principal of any bond hereby secured; or (*3*) in the payment of the principal of any of the bonds secured by the said indenture dated February 1, 1901; or (*4*) in the due observance or performance of some other covenant or condition in this indenture required to be kept or performed by the Railroad Company and such last-mentioned default shall have con-

tinued for the period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company, —the Railroad Company shall have the right to vote upon all shares of stock subject to this indenture, for all purposes not inconsistent with the provisions or purposes of this indenture and with the same force and effect as though such shares were not subject to this indenture; and from time to time, upon demand of the Railroad Company, the Trustee forthwith shall execute and deliver, or shall cause to be executed and delivered, to the Railroad Company, or to its nominees, suitable powers of attorney or proxies to vote upon any shares of stock which shall have been transferred to the Trustee.

SEC. 5. In case default shall be made in the payment of the principal or interest of any of the bonds or obligations which shall have been delivered to, and shall be held by the Trustee hereunder, or of any other bonds then secured by the same mortgage or deed of trust as such bonds held by the Trustee, then in any such case, if the Trustee shall hold more than ninety per cent. in amount of the entire issue of such bonds or obligations in default, it shall, upon the written request of the Railroad Company, and in other cases, upon such written request, it may, in its discretion, cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage, or trust, or charge, by which such bonds or obligations in default are secured. In case the Railroad Company shall be in default in the payment of the principal of any of the bonds hereby secured, or in case the Railroad Company shall be in default in the payment of the interest on any of such bonds, and such default in the payment of interest shall have continued for the period of six months, or in case a receiver of the mortgaged premises shall have been appointed, or in case the Trustee shall have entered or shall have elected to enter into possession of the mortgaged premises, either under the power herein conferred or by the voluntary action of the Railroad Company, then and in any such case the Trustee, in its discretion, may institute such proceedings without such written request.

In case (*1*) any company of whose capital stock the greater part shall be held by the Trustee subject to this indenture as a first lien thereon, shall be dissolved or liquidated, or in case (*2*) all or any of the property of any such company shall be sold

upon the insolvency of such company at any judicial or other sale, or in case (*3*) any property, covered by a mortgage securing any bonds, or subject to any charge or trust for the payment of any other obligations, held by the Trustee subject to this indenture as a first lien thereon, shall be sold upon foreclosure of such mortgage, or by enforcement of such charge or trust,—then in any such event, if the property of such dissolved or liquidated company, or the property sold, can be acquired by crediting on the bonds, obligations, claims, indebtedness or stock, held by the Trustee hereunder, any sum accruing or to be received thereon out of the proceeds of such property, and by paying not more than ten per cent. of the price of such property in cash (or more than ten per cent., if the holders of a majority in amount of the bonds hereby secured shall so request), the Trustee in its discretion may, but, if requested in writing by the Railroad Company or by the holders of a majority in amount of the bonds hereby secured, and provided with the amount of cash necessary therefor (whether such amount be more or less than ten per cent. of the price of such property), the Trustee in every case shall, purchase or cause to be purchased, or permit the Railroad Company to purchase, such property, either in the name or on behalf of the Trustee or of the Railroad Company, or by purchasing trustees, and shall use, or permit the Railroad Company to use, such bonds, obligations, claims, indebtedness and stock, so far as may be, to make payment for such property; and in case of any such purchase the Trustee shall take such steps as it may deem proper to cause such property to be vested either in the Railroad Company, subject to this indenture, or in some other corporation organized or to be organized, with power to acquire and manage such property, provided that all the bonds and other indebtedness and capital stock thereof (excepting the number of shares required to qualify directors), shall be received by the Trustee and shall be held for the benefit of the Railroad Company, or its assigns, subject to this indenture.

With the written consent of the Railroad Company, the Trustee at any time may vote upon any shares of stock that shall be held by it hereunder, and may take such other action as in its discretion it shall deem advisable to protect its interests and the interests of the bondholders hereunder, in respect of any bonds, obligations or stocks subject to the lien hereof, and

with such consent of the Railroad Company, the Trustee may join in any plan of reorganization in respect of any such bonds or stocks and may accept new securities issued in exchange therefor under such plan. In case the Railroad Company shall be in default in the payment of any interest or the principal of any of the bonds hereby secured and such default shall have continued for the period of six months, the Trustee shall be entitled to take such steps without the consent of the Railroad Company.

The Railroad Company covenants that, on demand of the Trustee, it, the Railroad Company, forthwith will pay, or will satisfactorily provide for, all expenditures incurred by the Trustee under any of the provisions of this section, including all sums required to obtain and perfect the ownership and title to any property which the Trustee shall purchase or shall cause to be purchased pursuant to the provisions of this section; and in case the Railroad Company shall fail so to do, then, without impairment of, or prejudice to, any of its rights hereunder by reason of the default of the Railroad Company, the Trustee, in its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for such advances made by the Trustee, or by others at its request, with interest thereon, the Trustee shall have a lien prior to these presents upon all the stocks, bonds, claims and indebtedness in respect of which such advances shall have been made, and the proceeds thereof and any property acquired by means thereof.

In case the Trustee shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds or stocks, then the Trustee shall receive any portion of the proceeds of the sale accruing on the securities by it held hereunder, and such proceeds, from time to time, shall be paid over to the Railroad Company to reimburse it for expenditures by it made for any of the purposes for which bonds or their proceeds may be used under section 3 of Article One hereof, upon certificates of such expenditures signed by the President or a Vice-President or the General Manager or Chief Engineer, and by the Comptroller or Auditor or Treasurer, of the Railroad Company.

Exhibit R-120.

SEC. 6. Anything in this indenture to the contrary notwithstanding, any company all or part of whose capital stock shall be subject to this indenture, may be merged or consolidated with, or all or any part of its property may be sold or conveyed to, the Railroad Company. In the event of such consolidation or merger or sale, this indenture shall become and be a lien upon the property of the company so consolidated or merged with, or the property so sold or conveyed to, the Railroad Company, with the same force and effect as if expressly conveyed by this indenture, and the holders of the bonds hereby secured shall always have as full and complete a lien upon such property as that herein created by the pledge of the stock and bonds of such constituent companies or of such selling company, to the Trustee hereunder.

Anything in this indenture to the contrary, notwithstanding, any company, all or part of whose capital stock shall be subject to this indenture, may be merged or be consolidated with, or all of its property may be sold or conveyed to, any other company, all or part of whose capital stock shall be subject to this indenture: *provided, however,* that the portion of the capital stock of any such consolidated or merging company (but never less than a majority thereof) issued for and in lieu of any stock previously pledged hereunder, shall always bear to the total capital stock a proportionate relation at least as high as that borne by such previously pledged stock to the total capital stock of such constituent companies; and *provided further,* that in the case of any such sale by any such company of all its property, the portion of the capital stock of the purchasing company (but never less than a majority thereof) subject to this indenture, shall always bear to the total capital stock of such purchasing company a proportionate relation at least as high as that borne by the previously pledged stock of the selling company to the total capital stock of such selling company. Such portion of such stock of such consolidated or merging company shall then become and be subject to this indenture, and shall be held by the Trustee hereunder pursuant to the provisions hereof, or by the Trustee under the First Consolidated Mortgage Deed, dated December 10, 1895, or by the Trustee under the Indenture dated February 1, 1901, pursant to the provisions thereof, severally and respectively, and the holders of the bonds hereby secured

shall always, subject to the lien of said two former indentures last above mentioned, have a lien upon such portion of such stock of such consolidated or merging company as full and complete as upon the stock of such constituent companies, by reason of the pledge hereunder.

The trustee holding the same may make any exchange, substitution, cancellation or surrender of securities required for the purposes or in accomplishment of any such merger or consolidation; and the Trustee hereunder may receive the opinion of any counsel approved by it as to the legal effect of any such merger or consolidation, and as to the steps necessary to be taken to consummate the same, and as to any other matter under this section; and such opinion shall be full protection to the Trustee for any action by it taken pursuant thereto.

SEC. 7. Nothing in this indenture contained shall prevent (1) the renewal or extension, if without impairment of lien or security, at the same or lower rate of interest, (*a*) by the Railroad Company of any bond or obligation secured by a mortgage or charge underlying the lien of the said First Consolidated Mortgage Deed dated December 10, 1895, or of the said Indenture dated February 1, 1901, or secured by a mortgage or lien permitted to be created under the provisions of either of said indentures; or (*b*) by any company any of the shares of whose capital stock shall be subject to this indenture, of any bond or obligation secured by mortgage upon its property; or (*c*) by any company of any of its bonds or obligations which shall be subject to this indenture; or (2) the issue in place of and in substitution for any such bonds or obligations of the Railroad Company or of any such other company, of other bonds or obligations for equivalent amounts, bearing the same or a lower rate of interest, adequately secured by a similar mortgage or lien upon the same property; *provided, however,* that in case any bonds or obligations subject to this indenture shall be so renewed or extended, such bonds or obligations as so renewed or extended shall continue subject to this indenture to the same extent, and shall be lodged and held in the same manner as theretofore; and that in case any bonds or obligations subject to this indenture shall be exchanged for bonds or obligations substituted as aforesaid, the substituted bonds or obligations shall *ipso facto* forthwith become subject to this indenture to

the same extent, and shall be lodged and held in the same manner as those for which they are substituted.

At any time, in its discretion, the Trustee may, and, if requested in writing by the Railroad Company, it shall, consent to any such renewal, extension or substitution. The Trustee may receive the opinion of any counsel approved by it as conclusive evidence that any such renewal, extension or substitution is in compliance with the provisions of this section.

ARTICLE FOUR.

SECTION 1. Neither any coupon belonging to any bond hereby secured, nor any claim for interest on any registered bond, which in any way at or after maturity shall have been transferred or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of or from this indenture, except after the prior payment in full of the principal of the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

SEC. 2. In case (*1*) default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of six months, or in case (*2*) default shall be made in the payment of the principal of any bond hereby secured, or in case (*3*) default shall be made in the payment of the principal of any of the bonds secured by the said Indenture dated February 1, 1901; or (*4*) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given to the Railroad Company by the Trustee or by the holders of five per cent. in amount of the bonds hereby secured,—then and in each and every such case the Trustee personally, or by its agents or attorneys, may enter into and upon all or any part of the railways, rolling stock, property and premises, lands, rights, interests and franchises, hereby conveyed or intended so to be, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom; and having and holding the same,

may use, operate, manage and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry, the Trustee, at the expense of the trust estate, from time to time, either by purchase, repairs or construction, may maintain and restore, and may insure or keep insured, the rolling stock, tools and machinery and other property, buildings, bridges and structures, erected or provided for use in connection with said railways and other premises whereof it shall have become possessed as aforesaid, in the same manner and to the same extent as is usual with railway companies; and likewise, from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to it may seem judicious; and in such case the Trustee shall have the right to manage the mortgaged premises and to carry on the business and exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise, as the Trustee shall deem best; and it shall be entitled to collect and receive all tolls, earnings, income, rents, issues and profits of the same and every part thereof, and also the income from stocks and bonds subject to this indenture; and after deducting the expenses of operating said railways and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges upon the said premises and property, or any part thereof, as well as just and reasonable compensation for its own services and for all agents, clerks, servants and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest on the overdue installments at the rate of four per cent. per annum; such payments to

be made ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of four per cent. per annum) in the order of the maturity of the installments, and next to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons entitled to such payment without discrimination or preference.

These provisions, however, are not intended in anywise to modify the provisions of section 1 of this Article Four, but are subject thereto.

SEC. 3. In case the Trustee shall have entered, or shall have elected to enter, as aforesaid, or in case a Receiver shall have entered into possession of the railroad hereby mortgaged and conveyed, or in case default shall be made and shall continue as specified in the preceding section 2 of this Article, the Trustee shall be entitled (subject to any prior rights of the trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or of the trustee under the said Indenture dated February 1, 1901, severally and respectively, in respect of the stocks and bonds pledged thereunder) to vote on all shares of stock then subject to this indenture, and, for the benefit of the holders of the bonds hereby secured, shall be entitled to collect and receive all dividends on the shares of stock that shall then be subject to this indenture, and all sums payable for principal, interest or otherwise upon any bonds or obligations that shall then be subject to this indenture, and to apply as hereinbefore provided the net moneys received; and, as holder of any such shares of stock and of any such bonds, to perform any and all acts, or to make or execute any and all transfers, requests, requisitions of other instruments, for the purpose of carrying out the provisions of this section; but in the event that a receiver of any railway upon which this indenture is a first lien shall have been appointed and shall be in possession thereof, the Trustee from time to time, in its discretion may, and if requested by the holders of a majority in amount of the bonds hereby secured, it shall, turn over any part or all of the interest moneys and dividends, so collected

by it, to such receiver, and may co-operate with such receiver in managing and operating the entire system of the Railroad Company in such manner as the Trustee shall deem for the best interests of the holders of the bonds hereby secured.

In aid of the powers in this section to it granted, the Trustee hereunder in case of and during any entry or receivership or default as herein contemplated, shall possess and may exercise, to the exclusion of the Railroad Company, any and all of the rights reserved to the Railroad Company under the said First Consolidated Mortgage Deed of December 10, 1895, and the Indenture of February 1, 1901, in respect of the stocks, bonds or other obligations held by the trustee of either of said indentures, respectively, and subject to this indenture, including the right to demand and to receive from either of said trustees, suitable proxies, orders or other instruments to enable it or its nominee to vote and to collect dividends and interest upon any of such stocks, bonds or other obligations.

SEC. 4. In case a default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of six months,—then and in every case of such continuing default, upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railroad Company, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the mortgaged premises shall have been made, all arrears of interest upon all the bonds secured hereby, with interest at the rate of four per cent. per annum on overdue installments of interest, shall either be paid by the Railroad Company or be collected out of the mortgaged premises, and all defaults as aforesaid shall have been made good, then and in such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railroad Company and to the Trustee may waive such default and its consequences;

but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have determined adversely to the Trustee, then and in every such case, the Railroad Company and the Trustee shall be restored to their former position and rights hereunder in respect of the mortgaged premises, and the shares of stock and the bonds and other property subject or to be subject to this indenture, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

SEC. 5. In case (*1*) default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of six months; or in case (*2*) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (*3*) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given to the Railroad Company by the Trustee, or by the holders of five per cent. in amount of the bonds hereby secured,—then, and in each and every such case of default, the Trustee, with or without entry, personally or by attorney, in its discretion either

(*a*) may sell, subject to the liens thereon which then shall be prior and superior to the lien of this indenture, to the highest and best bidder, all and singular the property and premises covered by this indenture, including bonds and stocks, rights, franchises and interests, and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of section 7 of this Article Four, in which case such sale shall be made in parcels, as in said section provided; which sale or sales shall be made at public auction at such place in the City of Elmira, in the State of New York, or at such other place, and at such time and upon such

terms, as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; or

(*b*) may proceed to protect and to enforce its rights and the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

SEC. 6. Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any continuing default as specified in Section 5 of this Article Four, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured; but anything in this indenture to the contrary notwithstanding, the holders of seventy-five per cent. in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and to control the action of the Trustee, and the method and the place of conducting any and all proceedings for any sale of the premises and property subject to this indenture, or for the foreclosure of this indenture or for the appointment of a receiver, or any other proceedings hereunder.

SEC. 7. In the event of any sale, whether made under the power of sale herein granted or conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property subject to this indenture shall be sold in one parcel and as an entirety, including all the rights, titles, estates, railroads, equipment, franchises, leases, leasehold interests, contracts, stocks, bonds and other real and personal property of every name and nature, unless

such sale as an entirety is impracticable by reason of same statute or other cause, or unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustee to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request; and this provision shall bind the parties hereto, and each and every of the holders of the bonds and coupons hereby secured, or intended so to be.

SEC. 8. Notice of any such sale pursuant to any provision of this indenture, shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale in a newspaper published in New York, N. Y., and in a newspaper published in Chicago, Illinois.

SEC. 9. The Trustee may adjourn from time to time any sale by it to be made under the provisions of this indenture by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

SEC. 10. Upon the completion of any sale or sales under this indenture, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, and other instruments, conveying, assigning and transferring the properties and franchises sold, subject severally and respectively to the liens thereon which then shall be prior and superior to the lien of this indenture. The Trustee and its successors hereby are appointed the true and lawful attorneys irrevocable of the Railroad Company, in its name and stead to make all necessary conveyances and assignments of property and all necessary transfers of shares of stock or bonds or other obligations thus sold; and for that purpose it and they may execute all necessary deeds and instruments of assignment and transfer, and may substitute one or more persons with like power; the Railroad Company hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale herein granted and

conferred, or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railroad Company, of, in and to the premises and property so sold, and shall be a perpetual bar both at law and in equity, against the Railroad Company, its successors and assigns, and against any and all persons claiming or to claim the premises or property sold, or any part thereof, from, through or under the Railroad Company, its successors or assigns.

The personal property and chattels conveyed or intended to be conveyed by or pursuant to this indenture, other than stocks, bonds and other securities and claims, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads and part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SEC. 11. The receipt of the Trustee for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property or any part thereof, sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SEC. 12. In case of such sale under the foregoing provisions of this Article, whether made under the power of sale herein granted or pursuant to judicial proceedings, or in case of a sale upon foreclosure of the said First Consolidated Mortgage Deed dated December 10, 1895, or of the said Indenture dated February 1, 1901, by reason of a default of the Railroad Company thereunder, the principal sums of the bonds hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

SEC. 13. The purchase money, proceeds or avails of any such sale, whether under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except the superior liens and any taxes, assessments or other charges subject to which the property shall have been sold.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent. per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and the accrued and unpaid interest, subject, however, to the provisions of section 1 of this Article Four.

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SEC. 14. Upon any such sale by the Trustee or pursuant to judicial proceedings, any purchaser, for or in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons, as his ratable share of such net proceeds, after the deduction of costs, expenses, compensations and other charges; and thereupon such purchaser shall be credited, on account of such purchase

price payable by him, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the bonds and coupons so presented; and, at any such sale, any bondholders may bid for and purchase, such property and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

SEC. 15. The Railroad Company covenants that (*1*) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for the period of six months, or (*2*) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether upon the maturity of said bonds, or upon declaration as authorized by this indenture, or upon a sale as set forth in Section 12 of this Article Four,—then, upon demand of the Trustee, the Railroad Company will pay to the Trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount that then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of four per cent. per annum upon the overdue principal and installments of interest; and in case the Railroad Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the property subject to this indenture, and of the application of the proceeds of sale to the payment of the debt hereby secured, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof,

and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution upon any such judgment upon property subject to this indenture, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the property or any part of the property subject to this indenture, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section shall be applied by the Trustee towards payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 1 of this Article Four), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

SEC. 16. The Railroad Company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law, now or at any time hereafter in force, nor will it claim, take or insist upon, any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the property or any part of the property subject to this indenture, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State, or otherwise, to redeem the property so sold or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Exhibit R-120.

SEC. 17. Upon filing a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry, and also any and all other rights and powers, herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default, as hereinbefore provided; and, as matter of right, the Trustee shall be entitled to the appointment of a receiver of the premises and property subject to this indenture, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment shall confer; but notwithstanding the appointment of any receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of any stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

SEC. 18. At any time hereafter before full payment of the bonds secured hereby, and when ever it shall deem expedient for the better protection or security of such bonds (although then there shall be no default entitling the Trustee to exercise the rights and powers conferred by Sections 2 and 3 of this Article Four), the Railroad Company, with the consent of the Trustee, may surrender and may deliver to the Trustee full possession of the whole or of any part of the property, premises and interests hereby conveyed or assigned, or intended so to be, and may authorize the Trustee to collect the dividends and interest on all shares of stock, bonds and other obligations subject to this indenture, and to vote upon all such shares of stock, bonds and other obligations subject to this indenture, and to vote upon all such shares of stock, for any period fixed or indefinite. In such event the Trustee shall enter into and upon the premises and property so surrendered and delivered, and shall take and receive possession thereof, for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon maintaining and to maintain such possession though beyond the expiration of any such prescribed period, and the Trustee, from the time of its entry upon such premises and property, shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this indenture, and shall receive and apply the income and

revenues thereof as provided in Section 2 of this Article Four. Upon application of the Trustee, and with the consent of the Railroad Company, if then there be no subsisting default such as is specified in said Section 2 of this Article Four, and without such consent if then there shall be such a subsisting default, a receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of the property subject to this indenture, and the Railroad Company shall transfer and deliver to such receiver all such property, wheresoever the same may be situated; and in every case, when a receiver of the whole or of any part of said property shall be appointed under this section, or otherwise, the net income and profits of such property shall be paid over to, and shall be received by, the Trustee, for the benefit of the holders of the bonds hereby secured; *provided, however,* that notwithstanding the appointment of any such receiver, the Trustee, as pledgee, shall be entitled to retain possession and control of any stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

SEC. 19. In case of any default hereunder, if, in order to preserve the franchises of the Railroad Company and to avoid foreclosure and sale involving the organization of a successor company, any plan of reorganization shall be proposed with provisions for the modification of this indenture, as far as to authorize and require the creation of new liens upon the property subject to this indenture, prior and superior to the lien hereof, then, and in every such case, registered holders of four-fifths in amount of all of the bonds hereby secured then outstanding, by writing, may direct the Trustee, in behalf of all the holders of all bonds then or thereafter issued hereunder, to acquiesce in the provisions of such plan, which plan also may determine and provide for the interests of other creditors and lienors and of the shareholders of the Railroad Company. This special power, however, is granted to the registered holders of four-fifths in amount of the bonds upon the express condition that no bond hereby secured and then outstanding shall be changed as to the amount of principal or the date of payment thereof, or as to the rate or dates of payment of interest, or as to the price or rate at which shares of common stock will be issued in conversion of any such bond according to the terms thereof, as herein contemplated. Thereupon, but not otherwise,

the Trustee shall, by writing, acquiesce in such provisions of such plan, and such acquiescence by the Trustee shall constitute the irrevocable assent of all holders of bonds and coupons hereby secured to any such accepted modifications, as set forth in such plan and necessary to give effect to such provisions thereof. All such modifications so affecting this indenture and the bonds and coupons hereby secured, shall be reduced to a written agreement between the Railroad Company and the Trustee, and such agreement shall be recorded in New York County, New York; Passaic County, New Jersey; Susquehanna County, Pennsylvania; Marion County, Ohio; Huntington County, Indiana, and Cook County, Illinois; and, thenceforth, shall be deemed to be part of this indenture, and thereafter the lien of this indenture, and of the bonds hereby secured, shall be deemed to be, and shall be, subordinate to such new and prior liens created pursuant to such plan, but only to the extent specified in such written agreement.

Registration for any purpose of this section shall be sufficient if then or theretofore made and then continuing in any manner permitted by Section 3 of Article Two of this indenture.

SEC. 20. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust hereunder, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of such default, and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee, and shall have afforded to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor, unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver or for any

other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

SEC. 21. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SEC. 22. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee, or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the bondholders.

ARTICLE FIVE.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company, or of any successor corporation, either directly or through the Railroad Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the Railroad Company or of any successor cor-

poration, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against, every such stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this indenture and the issue of the bonds and interest obligations secured hereby.

ARTICLE SIX.

SECTION 1. Any demand, request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such agent, and of the ownership by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee or of the Railroad Company with regard to due action taken by it under such instrument, if such proof be made in the following manner:

The fact and date of the execution by any person of any such demand, request, or other instrument or writing, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

The fact of the holding by any bondholder of coupon bonds transferable by delivery, and the amounts and issue numbers and serial letter of such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary the bonds described

in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

SEC. 2. The Railroad Company and the Trustee may deem and may treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of converting the bond, or of receiving payment of any bond or coupon, and for all other purposes, and neither the Railroad Company nor the Trustee shall be affected by any notice to the contrary.

The Railroad Company and the Trustee may deem and treat the person in whose name any registered bond without coupons, issued hereunder, shall be registered upon the books of the Railroad Company as hereinbefore provided, as the absolute owner of such bond, for the purpose of converting the bond, or of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof, for the purpose of converting the bond, or of receiving payment of, or on account of, the principal thereof, and for all other purposes, except to receive payment of interest represented by outstanding coupons; and all such conversions or payments so made to any such registered holder for the time being, or upon his order, shall be valid, and effectual to satisfy and discharge the obligation to convert such bonds, and to the extent of the sum or sums so paid the liability for moneys payable upon any such bonds.

ARTICLE SEVEN.

SECTION 1. Upon the written request of the President or of a Vice-President of the Railroad Company, approved of or authorized by resolution of its Board of Directors or Executive Committee, from time to time, while the Railroad Company is in possession of any of the property subject to this indenture, but subject to the conditions and limitations in this section prescribed, and not otherwise, the Trustee shall release from the lien and operation of this indenture any part of the railways, lands and other property then subject thereto, except

stocks, bonds and other securities; *provided* (*1*) that no part of the lines of track or of the rights of way shall be released unless the use thereof no longer shall be necessary or advantageous in the operation of any of the lines of railway subject to this indenture, and no part of such lines of track or rights of way shall so be released if thereby the continuity of the lines of railway of the Railroad Company shall be broken; and (*2*) that no part of the railways or other property subject to this indenture shall be released hereunder, unless at the time of such release it no longer shall be necssary or advantagous to retain the same for the operation, maintenance or use of such lines of railway, or for use in the business of the Railroad Company, and no such release shall be made unless the Railroad Company shall have sold, or shall have contracted to exchange for other property or to sell, the property so to be released.

The proceeds of any and all such sales, and all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain (unless applied in accordance with the requirements of the said indentures dated December 10, 1895, and February 1, 1901, severally and respectively) shall be set apart and applied, with the approval of the Trustee, to the purchase of other property, real or personal, or for betterments of or improvements upon any part of the mortgaged premises. Any new property acquired by the Railroad Company to take the place of any property released hereunder, *ipso facto,* shall become and be subject to this indenture, as fully as if specifically mortgaged or assigned hereby, but, if requested by the Trustee, the Railroad Company will convey and assign the same to the Trustee by appropriate deeds or other instruments upon the trusts and for the purposes of this indenture.

The Railroad Company, from time to time, while in possession of any of the property subject to this indenture, also shall have full power, in its discretion, to dispose of any portion of the machinery, equipment and implements, at any time subject to the lien hereof, which may have become unfit for such use, replacing the same by new machinery, equipment or implements, which shall become subject to this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this Article be required to see to the application of the purchase money.

Exhibit R-120.

SEC. 2. Upon the written request of the President or of a Vice-President of the Railroad Company, authorized or approved by resolution of the Board of Directors or of the Executive Committee of the Railroad Company, the Trustee, from time to time, shall execute such releases or other instruments as may be required to release from the lien and operation of this indenture, the leasehold interest, or the term of the lessee or lessees and assigns, under any lease or sub-lease, which may be executed by the Railroad Company or by any lessor Company of any land subject to this indenture or embraced in any lease pledged or assigned under this indenture, which is not embraced in the right of way of the mortgaged railroad or of any leased railroad and is not used for the purpose of stations, yards, round-houses, freight houses, machine shops, docks or gravel-beds, or other purposes connected with the maintenance or operation of the railroad, and thereupon such leasehold interest or term shall be free from the lien and operation of this indenture. The reversion under any such lease shall be and shall remain subject to this indenture.

SEC. 3. In case any of the property subject to this indenture shall be in the possession of a receiver lawfully appointed, the powers in and by this Article conferred upon the Railroad Company may be exercised by such receiver with the approval of the Trustee; and if the Trustee shall be in possession of any of such property under any provision of this indenture, then all the powers of this Article conferred upon the Railroad Company may be exercised by the Trustee in its discretion.

SEC. 4. The Railroad Company from time to time may make changes or alterations in, or substitutions of, any leases, trackage rights or contracts that are subject to this indenture; provided that in case of any changes or alterations in, or any substitutions of, any leases, contracts or trackage rights, by which the Railroad Company now secures access to any point or points, the written consent of the trustee under the said First Consolidated Mortgage Deed, dated December 10, 1895, shall first be obtained so far as concerns any such leases, contracts of trackage rights subject to said indenture, and the written consent of the Trustee hereunder shall first be obtained so far as concerns any such leases, contracts or trackage rights, subject to this indenture and not subject to said First Consoli-

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dated Mortgage Deed. In any such event, any modified, altered or substituted leases, contracts or trackage rights forthwith shall become bound by and be subject to the terms of this indenture, in the same manner as those previously existing.

SEC. 5. A certificate signed by the President or any Vice-President, or the Chief Engineer of the Railroad Company, may be received by the Trustee as conclusive evidence of any of the facts mentioned in this Article, and shall be full warrant to the Trustee for its action on the faith thereof.

ARTICLE EIGHT.

SECTION 1. The Trustee, shall not be answerable for the default or the misconduct of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor shall any trustee be responsible for the acts or defaults of any other trustee or trustees, or for anything whatever in connection with this trust, except each for its or his willful misconduct or gross negligence. The Trustee shall be protected in acting upon any notice, request, consent, certificate, bond or other paper or document, believed by it to be genuine and to have been signed by the proper party. The Trustee shall not be personally liable for any debts duly contracted by it, or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. Neither shall the Trustee be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in the opinion of the Trustee, shall be likely to involve expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent. in amount of the bonds hereby secured, then outstanding, and tendered reasonable indemnity

as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this section are intended only for the protection of the Trustee and shall not be construed to affect any discretion or power by any provision of this indenture given to the Trustee, to determine whether or not it shall take action in respect of any default without such notice or request from bondholders, or to affect any other decision or power given to the Trustee. The Trustee shall not be responsible for the recording of this indenture and shall not be required to file the same as a chattel mortgage.

The Trustee shall be reimbursed for, and be indemnified against, any liability or damages which may be sustained by it in the premises. The Trustee shall have, secured hereby upon the property covered by this indenture, a lien prior to that of any bond issued under this indenture, for its compensation and expenses, and also for any liability or damage by it sustained in the premises.

The Trustee shall not be responsible in any manner whatsoever for the validity hereof, or for the amount or the extent of the security afforded by the property covered hereby, or for the recitals herein or in said bonds contained, all such recitals being and to be taken as the statements of the Railroad Company; nor shall it be accountable for the use of any bonds certified and delivered by the Trustee hereunder or for the application of the proceeds of such bonds.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and the Railroad Company agrees to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder.

SEC. 2. The Trustee, or any trustee or trustees hereafter appointed, may resign and be discharged from the trusts created by this indenture by giving to the Railroad Company and to the bondholders, notice by publication of such resignation, specifying a date when such resignation shall take effect, which notice shall be published at least once a day not less than thirty days nor more than sixty days prior to the date so specified, in a newspaper at that time published in New York, N. Y., and in a newspaper published in Chicago, Illinois. Such resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall have been appointed as here-

inafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee or trustees hereunder may be removed at any time by an instrument in writing under the hands of the holders of one-half in amount of the bonds hereby secured and then outstanding.

SEC. 3. In case at any time the Trustee, or any successor trustee, shall resign or shall be removed or otherwise shall become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys-in-fact duly authorized; but until a new trustee shall be appointed by the bondholders as herein authorized, the Railroad Company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy; *provided, however,* that every such trustee shall be a trust company in the City of New York, having a capital and surplus aggregating at least $2,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms. After any such appointment by the Railroad Company, it shall publish notice of such appointment once in each of four successive weeks in a newspaper published in New York, N. Y., and a newspaper published in Chicago, Illinois; and any new trustee so appointed by the Railroad Company shall immediately and without further act be superseded by a new trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured, if such appointment by such bondholders be made prior to the expiration of six months after such publication of notice.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Railroad Company, an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named as trustee herein; but nevertheless, on the written request of the Railroad Company or of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument trans-

ferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so ceasing to act, and shall duly assign, transfer and deliver its interest in any stocks, bonds or other property and moneys subject to this indenture to the successor trustee so appointed in its place; and, upon request of any such successor trustee, the Railroad Company shall make, execute, acknowledge and deliver any and all deeds, conveyances or other instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such estates, properties, rights, powers and duties.

If at any time or times, in order to conform to any law of any State in which the Railroad Company may hold property, the Railroad Company shall so request, the Railroad Company and the Trustee shall unite in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint another trust company or one or more persons approved by the Trustee, to act either as co-trustee or as co-trustees, for any purpose of this indenture, of all or any of the property subject to this indenture jointly with the Trustee originally named herein or its successors, or to act as separate trustee or trustees of any of such property.

ARTICLE NINE.

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds at any time outstanding and hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railroad Company, and, until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Railroad Company voluntarily shall have surrendered possession to the Trustee as herein permitted, the Railroad Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property subject to this indenture (other than bonds, certificates of stock, cash and other property pledged or to be pledged hereunder with the Trustee), and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof.

SEC. 2. If, when the bonds hereby secured shall have become due and payable, the Railroad Company shall well and truly pay, or cause to be paid, the whole amount of the principal and interest due upon all of the bonds and coupons hereby secured, then outstanding, or shall provide for the payment of such bonds and coupons by depositing with the Trustee hereunder the entire amount due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable hereunder by the Railroad Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or assigned or pledged shall revert to the Railroad Company, and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void; and the Trustee in such case, on demand of the Railroad Company, and at its cost and expense, shall enter satisfaction of this indenture upon the record; otherwise the same shall be, continue and remain in full force and virtue.

ARTICLE TEN.

SECTION 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railroad Company, shall bind its successors and assigns, whether so expressed or not.

SEC. 2. Nothing contained in this indenture or in any bond hereby secured, shall prevent any consolidation or merger of the Railroad Company with any other corporation, or any conveyance and transfer (subject to the continuing lien of this indenture and to all provisions thereof), of all the property subject to this indenture as an entirety to a railroad corporation at that time existing under and by virtue of the laws of any State or States, and empowered to acquire the same; provided, however, that such consolidation, merger or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee or of the bondholders hereunder, and that upon such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of the bonds hereby secured, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed

by the corporation formed by such consolidation or merger, or purchasing as aforesaid.

SEC. 3. In case, pursuant to Section 2 of this Article, the Railroad Company shall be consolidated or merged with any other corporation, or shall sell, convey and transfer (subject to this indenture), all the property covered by this indenture, as an entirety as aforesaid, the successor corporation formed by such consolidation, or into which the Railroad Company shall heve been merged, or which shall have purchased and received a conveyance and transfer, as aforesaid—upon executing and causing to be recorded an instrument satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of the bonds hereby secured, and the performance of all the covenants and conditions of this indenture—shall succeed to, and be substituted for, the Railroad Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part; and such successor corporation thereupon may cause to be signed, and may issue, either in its own name or in the name of the Erie Railroad Company, any or all of such bonds which theretofore shall not have been signed by the Erie Railroad Company and delivered to the Trustee; and, upon the order of said successor corporation, in lieu of the Railroad Company, and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and shall deliver any of such bonds which previously shall have been signed and delivered by the officers of the Railroad Company to the Trustee for certification, and any of such bonds which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the bonds so issued shall, in all respects, have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof.

SEC. 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms "Railroad Company" and "Erie Railroad Company" include and mean not only the party of the first part hereto. but also any such successor corporation formed by consolidation

or otherwise under the laws of New York or of any State or States. Every such successor or purchasing corporation shall possess, and from time to time may exercise, each and every right and power hereunder of the Erie Railroad Company, in its name or otherwise.

SEC. 5. Any act or proceeding, by any provision of this indenture authorized or required to be done or performed by any board or officer of the Railroad Company, shall and may be done and performed with like force and effect by the like board or officer of any railroad corporation that shall at the time of such lawful sole successor or purchaser of the Railroad Company.

SEC. 6. Nevertheless, before the exercise of the powers conferred by this Article, the Railroad Company, by instrument in writing executed by authority of two-thirds of its board of directors and delivered to the Trustee, may surrender any of the powers reserved to the Railroad Company or to such successor corporation; and thereupon such power so surrendered shall terminate.

THE STANDARD TRUST COMPANY OF NEW YORK, Trustee, the party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

The Erie Railroad Company hereby constitutes and appoints Frederick D. Underwood to be its attorney for it and in its name, and as and for its corporate act and deed, to acknowledge this mortgage deed before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

THE STANDARD TRUST COMPANY OF NEW YORK hereby constitutes and appoints William C. Lane to be its attorney for it and in its name, and as and for its corporate act and deed, to acknowledge this mortgage deed before any person having

authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

In witness whereof, the Erie Railroad Company, the party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary; and The Standard Trust Company of New York, the party of the second part, has caused its corporate seal to be hereunto affixed and to be attested by its Secretary, and these presents to be signed and acknowledged or proved by its President, the day and year first above written.

ERIE RAILROAD COMPANY,
By
F. D. UNDERWOOD,
President.

[L. S.]

Attest:

G. A. RICHARDSON,
Secretary.

THE STANDARD TRUST COMPANY OF NEW YORK,
By
WM. C. LANE,
President.

[L. S.]

Attest:

WM. C. COX,
Secretary.

Signed, sealed and delivered in the presence of }
As to Erie Railroad Company.

GEO. H. COREY,
GEORGE H. GARDINER.

Signed, sealed and delivered in the presence of }
As to the Standard Trust Company of New York.

GEO. H. COREY,
GEORGE H. GARDINER.

Formal acknowledgments and certification of recording are omitted.

INDEX FOR VOLUME IV.

Pleadings.

PAGE

Amended Petition of City of Paterson.....1635
Amendment to Petition.....1663
Answer of Erie R. R.....1664
Schedule A 1674
First Amendment to Answer of Erie R. R. Co...1675
Second Amendment to Answer of Erie R. R. Co..1678
Answer of Paterson & Hudson River R. R.....1679
" " Paterson & Ramapo R. R.....1684
" " Public Service Railway Co.....1689
" " Public Service Electric Co.....1690
" " Public Service Gas Co.....1691
" " New York Telephone Co.....1692
" " Western Union Tel. Co.....1694
" " Paterson, Passaic & suburban Telephone Co. 1698
" " Passaic Water Co.....1700
" " D. Fullerton & Co.....1703
" " National Silk Dyeing Co.....1706
" " Fullers Express Co.....1709
" " The Hermann Company.....1712
" " John Agnew Company.....1716
" " James Wilson & Sons, Inc.....1720
" " P. S. Van Kirk Company.....1722
" " Henry M. Post.....1726
" " Paterson Brewing & Malting Company 1728
" " Meyer & De Vogel.....1732
" " Leslie Elliott & Co.....1735
" " Samuel Smith & Sons Co.....1738
" " Morris & Company.....1740
" " McNab & Harlin Mfg. Co.....1744
Report of January 11, 1915.....1748
Schedule A 1766
Schedule B 1768

PAGE

Schedule C 1770
Schedule D 1771
Petition of Erie R. R. for further hearing.....1772
Filed February 5, 1915
Order of April 20, 1915.....1787
Report on Petition for further hearing.....1793
Filed April 20, 1915
Writ of Certiorari and Allocatur (Erie R. R.)..1796
Writ and Allocatur (Public Service Ry. Co.)...1798
" " " (Passaic Water Co.).....1800
" " " (Western Union Tel. Co.)...1802
" " " (D. Fullerton & Co.).....1804
" " " (Meyer & De Vogel).....1806
" " " (Fullers Express Co.).....1808
" " " (Morris & Co.).....1810
Return of Board.....1812
Orders Re Return.....1813
Reasons (Erie R. R.).....1815
" Amendment to (Erie R. R.).....1855
" (Public Service Ry. Co.).....1856
" (Passaic Water Co.).....1858
" (Western Union Tel. Co.).....1863
" (D. Fullerton & Co.).....1866
" (Meyer & De Vogel).....1869
" (Fullers Express Co.).....1872
" (Morris & Co.).....1876
Petition of Erie R. R. for Rehearing.....1879
Testimony on Rehearing.....1885
F. B. Lincoln,
direct examination 1885
cross " 1893
Report on Rehearing, filed July 9, 1915.....1919
Writ of Certiorari and Allocatur (on Rehearing) 1921
Return (on Rehearing).....1923
Reasons (on Rehearing).....1924
Order for Affidavits.....1926

AFFIDAVITS FOR PROSECUTOR.

George H. Palmer,
direct examination 1928
cross " 1932
re-direct " 1933
re-cross " 1934
Albin M. Smith,
direct examination 1934
cross " 1940
David Bosman,
direct examination 1944
cross " 1948
William H. Brameld,
direct examination 1948
cross " 1983

EXHIBITS FOR PROSECUTOR.

	Offered at page.	Printed or described at page.
Erie 1. Map of Susquehanna Terminal at Paterson	1928	1992
Erie 2. Deed, Garret A. Hobart and wife to Paterson Extension R. R. Co., dated March 10, 1882	1929	1992
Erie 3. Deed, Mutual Life Insurance Co. of New York, to Paterson Extension R. R. Co., dated May 28, 1881	1929	1995
Erie 4. Deed, N. Y., S. & W. R. R. Co. to Henry B. Crosby, dated August 30, 1883	1930	1997
Erie 5. Deed, N. Y., S. & W. R. R. Co. to Henry B. Crosby, dated Sept. 7, 1883	1930	2001
Erie 6. Deed, N. Y., S. & W. R. R. Co. to Henry B. Crosby, dated October 30, 1884	1930	2002
Erie 7. Deed, N. Y., S. & W. R. R. Co. to Henry B. Crosby, dated August 7, 1886	1931	2005
Erie 8. Agreement, N. Y., S. & W. R. R. Co. with Henry B. Crosby, dated November 1, 1884	1931	2008
Erie 9. Certificate of Incorporation of Erie Railroad Co.	1944	2011
Erie 10. Agreement between Erie Railroad Co. and Fullers Express Co., dated January 24, 1908	1944	2018
Erie 11. Lease between Erie Railroad Co. and Morris and Company, dated May 14, 1910	1945	2026
Erie 12. Letter and bill re Siding of Meyer & DeVogel	1946	2031

	Offered at page.	Printed or described at page.
Erie 13. Agreement between Paterson Railway Co. and New York, Lake Erie & Western Railroad Co., dated February 26, 1892.....	1946	2034
Erie 14. Agreement between Erie Railroad Co. and Public Service Railway Co., dated February 6, 1912.....	1947	2039
Erie 15. Equipment trust leases and agreements, conditional sale agreements, collateral trust notes, etc.	1947	2042
Erie 16. Estimate of cost of widening Essex Street	1949	2246
Erie 17. Estimate of cost of relocation of Market Street station	1952	2246
Erie 18. Estimate of cost of new buildings for Morris & Co. and Fullers Express Co.....	1956	2247
Erie 19. Estimate of cost of relocation of River Street station	1957	2247
Erie 20. Estimate of cost of consolidation of crossings at Clay and Straight Streets.....	1959	2247
Erie 20 (Cont.). Map showing plan for consolidation of Straight and Clay Streets.....	1959	2249
Erie 21. Estimate of cost of undergrade crossing at Taylor Street	1961	2250
Erie 22. Estimate of cost of undergrade crossing at Montgomery Street	1962	2250
Erie 23. Estimate of cost of undergrade crossings at Governor St. and Fulton St.....	1962	2251
Erie 24. Estimate of value of work destroyed...	1963	2251
Erie 25. Estimate of cost of new plan for Straight St., Clay St. and Cedar St.....	1964	2252
Erie 25 (Cont.). Map showing proposed separation of grades at Straight St., Clay St. and Cedar St.	1964	2253
Erie 26. Estimate of value of sidings destroyed.	1967	2253
Erie 27. Blue print of plan of Board with changes of sidings noted thereon in red.....	1980	2254
Erie 28. Estimate of cost of changes in side tracks	1980	2254

Additional Index to Vol. IV.

		Page
Opinion of Supreme Court	(Erie R. R. Co.)	2256
" " " "	(Public Service Ry. Co.)	2300
" " " "	(Passaic Water Co.)	2306
" " " "	(Western Union Telegraph Co.)	2308
" " " "	(D. Fullerton & Co.)	2309
" " " "	(Meyer & De Vogel, Fullers' Express Co. and Morris & Co.)	2311
Rule for Judgment	(Erie R. R. Co., Case No. 1)	2312
" " "	(Erie R. R. Co., Case No. 2)	2314
" " "	(Public Service Ry. Co.)	2315
" " "	(Passaic Water Co.)	2316
" " "	(Western Union Telegraph Co.)	2318
" " "	(D. Fullerton & Co.)	2320
" " "	(Meyer & De Vogel)	2321
" " "	(Fullers' Express Co.)	2323
" " "	(Morris & Co.)	2324
Notice of Appeal	(Erie R. R. Co., Case No. 1)	2325
" " "	(Erie R. R. Co., Case No. 2)	2326
" " "	(Public Service Ry. Co.)	2327
" " "	(Passaic Water Co.)	2328
" " "	(Western Union Telegraph Co.)	2329
" " "	(D. Fullerton & Co.)	2330
" " "	(Meyer & De Vogel)	2331
" " "	(Morris & Co.)	2332
Grounds of Appeal	(Erie R. R. Co., Case. No. 1)	2333
" " "	(Erie R. R. Co., Case No. 2)	2334
" " "	(Public Service Ry. Co.)	2335
" " "	(Passaic Water Co.)	2336
" " "	(Western Union Telegraph Co.)	2337
" " "	(D. Fullerton & Co.)	2338
" " "	(Meyer & De Vogel)	2339
" " "	(Morris & Co.)	2340

Amended Petition.

Petition.

To the Board of Public Utility Commissioners of New Jersey:

The amended petition of the Board of Finance of the City of Paterson respectfully shows unto your honorable body:

1. That the Board of Finance of the City of Paterson is the Board or body having charge of the finances of the municipality known as "City of Paterson"; that it heretofore under date of March 15th, 1913, filed with the Board of Public Utility Commissioners a petition for relief against the Erie Railroad Company, which maintains certain grade crossings in the City of Paterson.

2. This amended petition is filed by virtue of a resolution of the Board of Finance passed on the eleventh day of September, 1913, a copy of which resolution is hereto attached and marked Exhibit 1.

3. The Erie Railroad Company operates a railroad running through the City of Paterson, in the County of Passaic and State of New Jersey, entering the said city from the south at the border line of the Township of Acquackanonk, and thence running in a northwesterly direction to about Taylor street, where it assumes a northerly direction, running to about Godwin street in the said city, where it assumes a northeasterly direction, finally crossing the city line into the Borough of Hawthorne at the Passaic River.

4. In passing through the city said railroad crosses a great number of streets and highways at grade, and such crossing, and each of them, are dangerous to public safety, and public travel on the said streets and highways where the same are so crossed and on each of them is greatly impeded by reason of the said railroad crossing them at grade.

5. Your petitioner further shows that it is informed that the said Erie Railroad Company operates said railroad by virtue of a lease from two separate railroad companies.

6. Your petitioner is informed that the main right of way of the said railroad from a point at about Market street to the line of the Township of Acquackanonk is owned by the Paterson and Hudson River Railroad Company, which leases the said right of way to the Erie Railroad Company, which of its own right owns certain property adjacent to the said right of way and upon which are located certain side tracks and switches.

7. Your petitioner is informed that the main right of way of the said railroad from a point about Market street to the line of the Borough of Hawthorne is owned by the Paterson and Ramapo Railroad Company, which leases the said right of way to the Erie Railroad Company, which of its own right owns certain property adjacent to the said right of way and upon which are located certain side tracks and switches.

8. Your petitioner further shows that for a great many years the necessity of altering those grade crossings has been recognized by the people of the City of Paterson, and at various times the question of relief from the same has been taken up by various official and public boards or bodies of the City of Paterson.

9. That the Mayor of the City of Paterson has frequently endeavored to have the Erie Railroad Company enter into some arrangement for altering the said crossings.

10. That several years ago the Erie Railroad Company submitted to the Board of Trade of the City of Paterson for the consideration of the said board and the municipal authorities a plan for the abolition of

said crossings together with an estimate of the cost of said work. That the negotiations were unsuccessful because the proposition offered by the railroad company included the lending of money by the City of Paterson to the said company, which lending is forbidden by the constitution of the State of New Jersey. Your petitioner believes that the said railroad company now has on hand plans for the altering of the said crossings.

11. Accompanying this petition is a set of maps showing the crossings concerning which relief is sought. The first is a map entitled, "Map Showing Grade Crossings of the Erie Railroad." On the said map the crossings concerning which this petition is filed are indicated by letters of the alphabet, as follows:

A. Madison Avenue.
B. Clay and Straight Streets.
C. Cedar street.
D. Market street and Park Avenue.
E. Ellison Street.
F. Van Houten Street.
G. Broadway.
H. Fair Street.
I. Hamilton Avenue.
J. Lafayette Street.
K. Franklin Street.
L. Keen Street.
M. Warren Street.
N. River and Putnam Streets.

The following crossings as shown on the said map are not at grade but are carried under the said railroad: Essex street, Governor street, Fulton and Straight streets.

12. The said map referred to above shows the area which may possibly be affected by any order that may be made granting the relief sought by this petition.

The other maps accompanying this petition show more in detail each of said crossings and are lettered as shown in section 11 above. The said maps show all water or sewer pipes or other municipal pipe conduits or subways, street railways and any property or construction of any telegraph, telephone, gas, electric, lighting power, water, oil, pipe line or other public utility located within the limits of each of such crossings or within such area. They show also the elevation above sea level at the said crossings and at the nearest cross streets.

13. Your petitioner shows that during the months of March and April, 1913, an inspection of the said crossings was caused to be made by your petitioner for the purpose of ascertaining the frequency with which trains passed over the said crossings and the use of the same by vehicles and pedestrians. Such inspection was made at a time when a strike of textile workers was in progress in the city and most of the mills were closed so that the use of the said crossings by vehicles and pedestrians is probably greater than set forth herein and based on said inspection.

14. The following are the facts relating to each crossing:

A. Madison Avenue Crossing.

a. How Protected.

This crossing is now protected by gates and watchmen, operated part of the day.

b. Obstructions.

On the southwesterly side of the crossing is a large brick building owned by the American Locomotive Company, as shown on Map A.

c. Volume and Frequency of Travel.

On an average about 250 automobiles, 500 wagons and from 2,200 to 2,500 pedestrians use this crossing daily. The time table of the company shows 34 passen-

ger trains running east and 39 running west daily. In addition a large number of freight trains and switch engines pass over this crossing. The passenger trains pass over this crossing at a high rate of speed, varying from 30 to 60 miles per hour.

d. Distance to Nearest Passenger Station.

The Lakeview station is located within 5,000 feet and the main Paterson station is about 7,000 feet from this crossing.

e. The Nearest Overhead or Underground Crossing is at Essex street, a distance of about 6,500 feet.

f. Grade of Highway.

The highway runs at a slight grade down from the west and to the east of the crossing is about level.

g. Extent to Which Travel is Impeded.

The automobile and wagon traffic is considerably impeded at this crossing by the frequency of train service. The section near this crossing is rapidly increasing in population and will be used with greater frequency in the future. It is the main thoroughfare from the eastern section of Paterson to Passaic and points south. It connects with Main street about one thousand feet west of the crossing. The avenue is macadamized, is 80 feet wide and is about 3 miles long.

h. Street Railway Tracks.

The crossing is not used by any street railway company.

i. Pipe Crossing.

Public Service Gas Company maintains two mains under the crossing, one six inches, the other sixteen inches in diameter.

The Passaic Water Company maintains a sixteen-inch water main under the crossing.

j. Wires.

B. Clay and Straight Streets.

a. How Protected.

These crossings are now protected by gates and watchmen.

b. Obstructions.

The approach of Straight street from the south is obstructed by a frame building on the west side and a stone building on the east side. Both of which are built close to the right of way. The approach on Straight street on the north is obstructed by a brick building on the west side.

The approach on Clay street from the east is obstructed by a high brick building to the north and from the west by a frame building to the south. Crossing Clay street a short distance to the west is a spur railroad operated by the D., L. & W. R. R. Company.

c. Volume and Frequency of Travel.

On the average about 90 automobiles, 250 wagons and from 2,500 to 3,000 pedestrians use this crossing daily. The time table of the company shows 50 passenger trains running east and 53 trains running west daily. In addition a large number of freight trains and switch engines pass over this crossing. It lies within the freight yard of the company and there are four tracks crossing this street at this point. Passenger trains are restricted in passing over this crossing by an order of the Public Utility Commissioners to a speed of fifteen miles per hour.

d. Distance to Nearest Passenger Station.

These crossings are located about 3,000 feet from the main Paterson station at Market street.

e. The Nearest Overhead or Underground Crossing is at Essex street, a distance of about 2,500 feet.

f. GRADE OF HIGHWAY.

The grade of both streets in the vicinity of these crossings is practically level.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

This crossing is a very dangerous one and the travel is impeded because a very high degree of care must be exercised to pass over the same in safety. There is a sharp curve immediately north of Clay street. This street crosses the freight yard of the company and there is much switching in the vicinity. There are a great many manufacturing establishments along the line of the railroad at this point. The sharp curve to the north prevents a view of the trains coming from that direction until the trains are nearly upon the crossing. The record of accidents and deaths here is a very long one.

h. STREET RAILWAY TRACKS.

The crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains two sewer pipes under Clay street crossing; a fifteen-inch pipe sewer and a forty-inch brick sewer.

The Passaic Water Company maintains a twelve-inch pipe under Clay street crossing.

The City of Paterson maintains an eighteen-inch pipe sewer under Straight street.

The Passaic Water Company maintains a six-inch water pipe under the Straight street crossing.

The Public Service Gas Company maintains a six-inch gas main under Straight street.

j. WIRE CROSSINGS.

Crossing the right of way on the northerly side of Clay street are eight wires forty-one feet high, maintained by the Public Service Electric Company.

Crossing the right of way on the northerly side of Clay street are 33 wires 39 feet high, maintained by the New York Telephone Company.

The Erie Railroad Company also maintains wires crossing its right of way at these crossings and running to its signal towers.

C. Cedar Street Crossing.

a. How Protected.

This crossing is now protected by double set of gates and watchmen.

b. Obstructions.

This crossing is obstructed on both sides by large buildings located near the right of way. Ten sets of tracks cross this street and the company maintains on a number of them long lines of freight cars which obstruct the view of those who use the crossing.

c. Volume and Frequency of Travel.

On an average about 25 automobiles, 300 wagons, and from 3,200 to 3,500 pedestrians pass over this crossing daily. The time-table of the company shows fifty passenger trains running east and fifty-three running west daily. There is much switching done at this point. The speed of passenger trains is regulated by the order referred to above.

d. Distance to Nearest Passenger Station.

This crossing is located about 1,800 feet from the main Paterson station at Market street.

e. The Nearest Overhead or Underground Crossing is at Essex street, a distance of about 1,300 feet.

f. Grade of Highway.

The grade of the highway on both sides of this crossing is practically level.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

This crossing is a very dangerous one and is the scene of many accidents. There is a sharp curve in the railroad just south of this crossing and because of the many freight cars on the tracks extreme care must be used in crossing at this point. It is especially dangerous at night when a great deal of switching is done. Much of the travel in this vicinity is to the freight yard of the company. There are many warehouses in the vicinity which require considerable trucking.

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The Passaic Water Company maintains an eight-inch water pipe under this crossing.

The Public Service Gas Company maintains a six-inch gas main under this crossing.

j. WIRE CROSSINGS.

Crossing the right of way on the northerly side of Cedar street are sixteen wires thirty-seven feet high, maintained by New York Telephone Company.

Crossing the right of way on the southerly side of Cedar street are seven wires thirty-seven feet high, maintained by the Public Service Electric Company.

The Erie Railroad also maintains wires crossing its right of way at this crossing and running to its signal tower.

D. Market Street.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower and by crossing watchmen.

b. OBSTRUCTIONS.

This crossing is obstructed by large buildings built near to the right of way. On the east side there is

an open street between these buildings and the right of way. The view to the north on this side is obstructed further, however, by freight cars on the Susquehanna Railroad, which is about 200 feet north of this crossing at right angles to the right of way of the Erie Railroad. The Susquehanna Railroad does not cross the right of way or connect with the Erie Railroad in any way.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 1,100 automobiles, 2,000 wagons and from 28,000 to 30,000 pedestrians and about 1,000 street railway cars use this crossing daily. The timetable of the company shows fifty passenger trains running east and fifty-three running west daily. The main station of the company is located at this crossing and trains all stop here, so that they do not pass over the crossing at a high rate of speed.

d. DISTANCE TO NEAREST PASSENGER STATION.

The main station of the company is located at this crossing.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 800 feet from this crossing.

f. GRADE OF HIGHWAY.

To the west the grade of Market street falls slightly and to the east the grade of Market street and Park avenue rises slightly.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

This crossing is one most used in the City of Paterson. The business center of the city lies to the west of this crossing and a large residential section to the east. The gates of this crossing during certain periods of the day are closed from twenty to thirty minutes in the hour. The crossing is located so near to the passenger station that trains coming into the station from the south are apt to run over the crossing before

stopping, thus necessitating the closing of the gates as the train comes into the station, also the closing of them as it leaves the station.

Trains from the north frequently do not clear the street, thus blocking the travel on the street while such trains remain in the station. Some of the trains carry cars for Fuller's Express Company, which are detached from the train at this point, causing two extra movements over the crossing. The Board of Railroad Commissioners three or four years ago directed the Attorney-General to proceed in the courts to have this grade crossing altered. So far as your petitioner can ascertain no action has been taken by the Attorney-General under this order. The frequent closing of the gates at this crossing interferes with the schedule of the trolley company which operates three lines of cars over this crossing. The delays caused the passengers of the street railway are very serious and annoying. The street railway is protected by a derail switch, but notwithstanding this protection several collisions have occurred between trains and street railway cars. Market street is paved with asphalt, Park avenue with wood block.

h. STREET RAILWAY TRACKS.

The Public Service Railway Company operates going east a line of street railway cars known as the PARK AVENUE LINE and going west the BROADWAY LINE, and also CEDAR LAWN LINE. These lines use two tracks crossing the railroad running east on Park avenue and west on Market street. The same company also operates a third track over this crossing running east and west on Market street, over which it operates a line of street cars known as the HALEDON LINE and also a line known as the WHITE LINE.

i. PIPE CROSSINGS.

The City of Paterson maintains under this crossing a thirty-inch brick sewer and an eighteen-inch pipe sewer.

The Public Service Gas Company maintains under this crossing a twelve-inch gas main and two six-inch gas mains.

The Public Service Electric Company maintains under this crossing one two-inch tube, two two-inch tubes and twelve conduits.

The New York Telephone Company maintains under this crossing nine conduits.

The Passaic Water Company maintains under this crossing one twelve-inch water main.

j. Wire Crossings.

Crossing the right of way on the southerly side of Market street are four wires twenty-six feet high and maintained by the Public Service Electric Company.

The Public Service Railway Company maintains three trolley wires over this crossing.

E. Ellison Street Crossing.

a. How Protected.

This crossing is now protected by gates operated from a tower.

b. Obstructions.

The view of this crossing is obstructed on all sides by large buildings built up close to the right of way.

c. Volume and Frequency of Travel.

On an average about 50 automobiles, 600 to 700 wagons, and from 4,000 to 5,000 pedestrians use this crossing daily. The number of passenger trains is the same as at the Market street crossing. Trains at this point from the south generally run slowly as they are approaching the passenger station at Market street and from the north are gathering headway after leaving said station.

d. Distance to Nearest Passenger Station.

This crossing is located about 1,000 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 1,800 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway on both sides of this crossing is practically level with the right of way.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains and by trains from the north stopping at this point until the station is cleared of trains from the south.

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains a thirty-six inch brick sewer and an eighteen-inch pipe sewer under this crossing.

The Public Service Gas Company maintains one six-inch and one four-inch gas main under this crossing.

The Public Service Electric Company maintains one tube on the north side and four conduits and two tubes on the south side under this crossing.

The Passaic Water Company maintains a six-inch water main under this crossing.

j. WIRE CROSSING.

Crossing the right of way on the southerly side are sixteen wires forty feet high maintained by the Public Service Electric Company.

F. Van Houten Street Crossing.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

The view at this crossing is obstructed on all sides by large buildings built up close to the right of way.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 300 automobiles, 500 wagons and from 4,000 to 5,000 pedestrians use this crossing daily. The number of passenger trains are the same as at the Market street crossing and their speed is regulated by the order referred to above.

d. DISTANCE TO NEAREST PASSENGER STATION.

This crossing is located about 1,200 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 2,000 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway on both sides of this crossing is practically level with the right of way.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains. This street is paved for a long distance on both sides of this crossing with asphalt and is used very much by automobiles.

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains an eighteen-inch pipe sewer under this crossing.

The Public Service maintains two three-inch mains under this crossing.

The Public Service Electric Company maintains one tube on the northerly side and twenty conduits and two tubes on the southerly side under this crossing.

The Passaic Water Company maintains one twenty-four-inch and one six-inch water main under this crossing.

j. WIRE CROSSINGS.

Crossing the right of way on the southerly side are seven wires fifty-two feet high maintained by the Public Service Electric Company.

G. Broadway Crossing.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower and watchman.

b. OBSTRUCTIONS.

The view to the south is obstructed by large buildings built close to the right of way. To the north it is obstructed by two large dwellings and from the east side by a high bank. This crossing is the one referred to in the 1910 report of the Public Utility Commissioners page 226. As a result of the accident referred to in the said report a recommendation was made by the commission that the company run its trains through the City of Paterson at a rate not exceeding fifteen miles per hour.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 300 to 400 automobiles, 400 to 500 wagons, 12,000 to 15,000 pedestrians use this crossing daily. The number of passenger trains is the same as at the Market street crossing. The automobile travel over this crossing is greatly increased on Saturday and Sunday because this street provides an outlet from the city to Hackensack, and New York and the east. Many of these automobilists are not familiar with the crossing and by reason of the obstructions it is particularly dangerous. The street car traffic over this crossing is heavy and the delays caused here are serious and annoying. This crossing interferes seriously with the schedule of the street railway company.

d. DISTANCE TO NEAREST PASSENGER STATION.

This crossing is located about 1,500 feet from the main Paterson station at Market street.

e. The Nearest Overhead or Underground Crossing is at Governor street a distance of about 1,800 feet from this crossing.

f. Grade of Highway.

The street crosses this railroad at a sharp grade falling from the east to the west.

g. Extent to Which Travel is Impeded.

Travel is impeded by the great number of trains. This street is paved for a long distance on both sides of this crossing with brick. It is one of the main thoroughfares of the city providing access from the residential section on the east to the business section on the west.

h. Street Railway Tracks.

The Public Service Railway Company maintains the following lines of street cars over this crossing:

1. Cedar Lawn line running east;
2. Broadway line running east;
3. Park Avenue line running west;
4. Governor Street line running east and west;
5. Hudson River line running east and west.

The number of cars crossing at this point average about fifty an hour. During the summer season on Saturday afternoons and Sundays the travel on the Hudson River line is greatly increased.

i. Pipe Crossings.

The City of Paterson maintains a twelve-inch pipe sewer under this crossing.

The Public Service Gas Company maintains one three-inch and one four-inch gas main under this crossing.

The Public Service Electric Company maintains one two-inch tube and six conduits under this crossing.

The Passaic Water Company maintains one sixteen-inch water main under this crossing.

The Paterson, Passaic and Suburban Telephone Company maintains four conduits under this crossing.

j. WIRE CROSSINGS.

Crossing the right of way diagonally from the northeast to the southwest are six wires fifty-three feet high, maintained by the Public Service Railway Company.

H. Fair Street Crossings.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

The view to the north and south coming from the east is obstructed by frame buildings close to the right of way. Coming from the west the view is obstructed by frame buildings which are not built as close as those on the east side.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 50 to 100 automobiles, 200 to 250 wagons, and from 2,000 to 2,500 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. DISTANCE TO NEAREST PASSENGER STATION.

This crossing is located about 2,000 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Governor street, a distance of about 1,500 feet from this crossing.

f. GRADE OF HIGHWAY.

The grade of the highway at this crossing falls sharply from the east to the west.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains.

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains one twelve-inch pipe sewer under this crossing.

The Passaic Water Company maintains one six-inch water main under this crossing.

j. WIRE CROSSINGS.

No wires cross the right of way at this point.

I. Hamilton Avenue Crossing.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

From all sides the view to the crossing is obstructed by buildings built close to the right of way.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 150 to 200 automobiles, 500 to 600 wagons, and from 4,000 to 5,000 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. DISTANCE TO THE NEAREST PASSENGER STATION.

This crossing is located about 2,500 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Governor street, a distance of about 1,000 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway at this crossing falls sharply from the east to the west.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains.

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains one twelve-inch pipe sewer under this crossing.

The Public Service Gas Company maintains one four-inch gas main under this crossing.

The Passaic Water Company maintains one six-inch water main under this crossing.

j. WIRE CROSSINGS.

No wires cross the right of way at this point.

J. Lafayette Street.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

From all sides the view to the crossing is obstructed by buildings built up close to the right of way.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 50 automobiles, 400 to 500 wagons and 5,000 to 6,000 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. DISTANCE FROM NEAREST PASSENGER STATION.

This crossing is located about 1,500 feet from the River street station.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Fulton street, a distance of about 1,000 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway at this crossing falls gradually from east to west.

g. Extent to Which Travel is Impeded.

Travel is impeded by the great number of trains. There are three tracks at this crossing and the Riverside or West Paterson yards begin about at this point and the number of switching movements increases from at this point to the north.

h. Street Railway Tracks.

This crossing is not used by any street railway company.

i. Pipe Crossings.

The City of Paterson maintains one thirty-inch brick and one twelve-inch pipe sewer.

The Public Service Gas Company maintains one six-inch gas main.

The Passaic Water Company maintains one six-inch water main.

j. Wire Crossings.

Crossing the right of way on the northerly side are six wires forty-one feet high and on the southerly side one cable thirty feet high maintained by the Public Service Electric Company.

K. Franklin Street Crossing.

a. How Protected.

This crossing is now protected by gates operated from a tower.

b. Obstructions.

At this crossing the view is obstructed by buildings built close to the right of way with the exception to the view to the south coming from the east where the nearest building is located about fifty feet from the right of way.

c. Volume and Frequency of Travel.

On an average about 25 automobiles, 100 to 200 wagons and from 1,500 to 2,000 pedestrians use this crossing daily. The number of trains is about the

same as at the Market street crossing. The switching movements are frequent because of the vicinity of the Riverside yards.

d. Distance to the Nearest Passenger Station.

This crossing is located about 1,250 feet from the Riverside station.

e. The Nearest Overhead or Underground Crossing is at Fulton street, a distance of about 1,250 feet from this crossing.

f. Grade of Highway.

The highway at this crossing falls slightly to the east and to the west.

g. Extent to Which Travel is Impeded.

Travel is impeded by the great number of trains. There are four tracks at this crossing.

h. Street Railway Tracks.

This crossing is not used by any street railway company.

i. Pipe Crossings.

The Passaic Water Company maintains a six-inch water main.

j. Wire Crossings.

Crossing the right of way on the northerly side are twenty wires thirty-one feet high maintained by the New York Telephone Company.

L. Keen Street Crossing.

a. How Protected.

This crossing is now protected by flagman and bell.

b. Obstructions.

At this crossing the view is obstructed on all sides by buildings built close to the right of way.

c. Volume and Frequency of Travel.

On an average about 50 to 100 automobiles, 200 to 300 wagons and 2,000 to 3,000 pedestrians use this

crossing daily. The number of trains is about the same as at the Market street crossing. There are five tracks at this crossing. The amount of switching movements is very great.

d. Distance to the Nearest Passenger Station.

This crossing is located about 750 feet from the Riverside station.

e. The Nearest Overhead or Underground Crossing is at Fulton street a distance of about 1,750 feet from this crossing.

f. Grade of Highway.

The highway falls slightly to the east and west of the right of way.

g. Extent to Which Travel is Impeded.

Travel is impeded by the great number of trains.

h. Street Railway Tracks.

This crossing is not used by any street railway company.

i. Pipe Crossings.

The City of Paterson maintains one twenty-four-inch pipe sewer under this crossing.

j. Wire Crossings.

Crossing the right of way on the northerly side are eight wires forty-seven feet high maintained by the Public Service Electric Company.

M. Warren Street Crossing.

a. How Protected.

This crossing is now protected by gates operated from a tower.

b. Obstructions.

At this crossing the view to the south is obstructed by buildings built close to the right of way on both sides thereof. The view to the north is obstructed by

a building built close to the right of way on the east side thereof.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 50 to 100 automobiles, 200 wagons and from 2,000 to 2,500 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing. There are two tracks at this crossing.

d. DISTANCE TO THE NEAREST PASSENGER STATION.

The crossing is located about 500 feet from the River street station.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Fulton street a distance of about 2,000 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway to the west is about level with the right of way and to the east rises slightly above the right of way.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains.

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains one eighteen-inch pipe sewer under this crossing.

The Public Service Gas Company maintains one four-inch gas main under their crossing.

The Passaic Water Company maintains two six-inch water mains.

j. WIRE CROSSINGS.

No wires cross the right of way at this point.

N. River and Putnam Streets Crossing.

a. How Protected.

This crossing is now protected by several gates and by crossing watchmen.

b. Obstructions.

The view on Putnam street coming from the east is obstructed to the north and south by buildings built close to the right of way. The view coming from the west on Putnam street is obstructed by buildings to the south and by freight cars to the north. The view to the south coming from the west on River street is obstructed by buildings and to the north by freight cars. The view on River street coming from the east is obstructed to the north by buildings and by the depot of the company, and to the south by large brick buildings built close to the right of way. There are two tracks at his crossing.

c. Volume and Frequency of Travel.

On an average about 300 to 400 automobiles, 800 to 1,000 wagons and 12,000 to 15,000 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. Distance to the Nearest Passenger Station.

The River street passenger station is located at this station, as is also a freight station.

e. The Nearest Overhead or Underground Crossing is at Fulton street a distance of about 2,800 feet from this crossing.

f. Grade of Highway.

The grade of River street to the west is about level with the right of way and to the east rises sharply. Putnam street to the west is about level with the right of way and to the east rises gradually.

g. Extent to which Travel is Impeded.

This crossing is an exceedingly dangerous one because of the sharp angle at which River street crosses

and it is very confusing to the persons who use it. There are a great number of switching movements to and from the freight yards in the vicinity. The stoppage of trains at the depot causes the gates to be lowered twice for each train from the north which stops at the River street station.

h. STREET RAILWAY TRACKS.

The Public Service Railway Company operates a street railway upon River street over this crossing and runs about 25 cars per hour.

i. PIPE CROSSINGS.

The City of Paterson maintains a twenty-four-inch brick sewer through River street under this crossing and an eighteen-inch pipe sewer through Putnam street and under this crossing.

The Public Service Gas Company maintains seven gas mains under this crossing.

The Passaic Water Company maintains a six-inch water main.

j. WIRE CROSSINGS.

Crossing the right of way are one set of wires maintained by the New York Telephone Company and one set maintained by the Public Service Electric Company.

15. Your petitioner shows that the said crossings are so located with respect to each other that any plan for altering one will necessarily involve the others so that it will be necessary and advisable to formulate some plan for the alternation of all of them.

16. Your petitioner further shows that by the last United States census the City of Paterson had a population of 125,600 and that it is constantly increasing; that it is the third city in size in this State and that the railway crossings in the two larger cities of Newark and Jersey City have been largely eliminated. Your petitioner shows that the crossings referred to in

this petition are the most important grade crossings in the State, that travel on these highways and especially Market street is impeded to an unusual extent. In the above tabulation your petitioner has not shown the number of persons carried over the crossings in street cars because of being unable to obtain such information; but your petitioner believes the number so carried is about equal to the number of pedestrians at the same crossings.

17. Your petitioner, therefore, prays that your honorable body order the said Erie Railroad Company and the Paterson and Hudson Railroad Company and the Paterson and Ramapo Railroad Company to alter such crossings according to plans to be approved by your board by substituting for each of such crossings a crossing not at the grade of such public highways either by carrying such public highways under or over such railroad or by reconstructing such railroad under or over such public highway or by vacating, relocating, changing the lines, width, direction or location of such highway and the opening of a new highway in place of the one or ones ordered vacant.

18. That your petitioner further shows and insists that is not practicable to change the grade of said highways or any of them so as to carry the same under or over the said railway. The said highways are all in the center of a thickly populated city and all contain large numbers of buildings which would be ruined or destroyed by any such change of grade.

19. Your petitioner insists that the said grade crossings should be altered by depressing the tracks of the said railroad so that the same will pass under the said highways or in case such a plan should be impracticable for any reason, that the said railroad should be elevated to pass over said highways.

Amended Petition.

20. Your petitioner therefore prays your honorable board to fix a time and place for a hearing before it upon this petition and shall give notice thereof to your petitioner and to the following corporations interested therein:

1. Erie Railroad Company.
   Paterson and Hudson River Railroad Company.
   Paterson and Ramapo Railroad Company.
2. Public Service Railway Company.
   Public Service Gas Company.
   Public Service Electric Company.
3. Passaic Water Company.
4. New York Telephone Company.
5. Paterson, Passaic and Suburban Telephone Company.

BOARD OF FINANCE, CITY OF PATERSON.
By WM. BERDAN,
President.

Attest:

JNO. J. BROPHY,
Clerk.

Approved

ANDREW F. MCBRIDE,
Mayor.

Amended Petition.

EXHIBIT "I."

RESOLUTION 1003.

BE IT RESOLVED, that the petition to the Board of Public Utility Commissioners for the removal of grade crossings upon the main line of the Erie Railroad at the following streets:

Madison Avenue,
Clay and Straight Streets,
Cedar Street,
Market Street and Park Avenue,
Ellison Street,
Van Houten Street,
Broadway,
Fair Street,
Hamilton Avenue,
Lafayette Street,
Franklin Street,
Keen Street,
Warren Street,
River and Putnam Streets,

and which petition was prepared by the City Counsel by the direction of this board, be filed as the petition of the Board of Finance of the City of Paterson, and that the Mayor and the Clerk of this Board authenticate the same.

Passed September 11th, 1913.

WM. BERDAN,
President of Board of Finance.

Attest:

JOHN J. BROPHY,
Clerk.

Approved Sept. 12, 1913.

ANDREW E. MCBRIDE,
Mayor.

Amendment to Petition.

BE IT RESOLVED, that the petition heretofore made to the Board of Utility Commissioners by the Board of Finance of the City of Paterson be amended by adding the following paragraph:

14a. And your petitioner further shows that running along the line of the said Erie Railroad Company and situate upon the same are a number of overhead wires some of which your petitioner believes are owned and operated by the said Railroad Company and other by the Western Union Telegraph Company but that it is unable to state which of said wires are owned by the Erie Railroad Company and which by the Western Union Telegraph Company.

Your petitioner shows that the number and height of said wires where they cross any of the streets above mentioned are shown upon the various maps accompanying the petition.

AND BE IT FURTHER RESOLVED, that his resolution properly authenticated be filed with the Board of Public Utility Commissioners of the State of New Jersey.

Passed October 23rd, 1913.

(Signed) WILLIAM BERDAN,
President of Board of Finance.

Approved October 24th, 1913.

(Signed) ANDREW F. McBRIDE,
Mayor.

Attest:

JNO. J. BROPHY,
Clerk of Board of Finance.

Answer of Erie Railroad Company.

STATE OF NEW JERSEY.

BEFORE THE BOARD OF PUBLIC UTILITY COMMISSIONERS

IN THE MATTER OF THE APPLICATION OF THE CITY OF PATERSON TO ALTER GRADE CROSSINGS ON LINE OF THE ERIE RAILROAD.

The respondent, Erie Railroad Company, answers the petition herein as follows:

1. Respondent has no knowledge of the allegations in paragraph 1, but says that if such petition was filed, this respondent has never received a copy thereof, or been informed as to its contents as required by law and the rules of your honorable board. Respondent admits, however, that it maintains certain grade crossings in the City of Paterson.

2. Respondent has no knowledge of the allegations in paragraph 2.

3. Respondent admits paragraph 3.

4. Respondent denies the allegations in paragraph 4, except it admits that in passing through the City of Paterson, the said railroad crosses several streets and highways at grade.

5. Respondent admits the allegations in paragraphs 5, 6 and 7, except it says that the correct corporate name of the railroad described in paragraph 6 of petition as "Paterson & Hudson River Railroad Company" is "The President and Board of Directors of Paterson & Hudson River Railroad Company"; and except that it says that the said leases were not made to this respondent, but to a corporation known as Union Railroad Company under date of September

10th, 1852, and that the junction between the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad is not correctly described and located in said petition, and respondent says that it acquired the right, title and interest of the Union Railroad Company in said leased property and franchises by means conveyances through the following named companies:

Union Railroad Company.
New York and Erie Railroad Company.
Erie Railway Company, and
New York, Lake Erie & Western Railroad Company.

6. Respondent has no knowledge of the allegations in paragraph 8, but says that if the same are true, they are immaterial.

7. Respondent admits the allegations of paragraph 9; as to paragraph 10, respondent says that while it is true that the respondent has had under informal discussion at various times with various civic bodies of the City of Paterson the question of the abolition of certain grade crossings in the city, such negotiations have not as yet been consummated for the reason that the proposition suggested by said civic bodies was such, that respondent was not financially able to comply therewith. Respondent further says that its engineers have prepared studies or preliminary plans with respect to said crossings, or some of them, for the purpose of making an approximate estimate of the cost of altering the grade thereof, but it has never had prepared any comprehensive plan including all of said crossings and has no said plan on hand.

8. Respondent admits the allegations in paragraphs 11 and 12, except that it says that said maps are not accurate or complete in that the said maps do not show all of the railroad tracks, nor any of the freight yards of this respondent, nor all sidings or

switches, or connections with the property of private individuals or corporations that rely upon this respondent for service, which would be affected by a change of grade of said railroad, nor do they show all of the grade crossings that would necessarily be affected by a change of grade of the crossings described in the petition, nor do they show any of the freight or passenger stations of this respondent in the City of Paterson, nor do they show the names of the owners of the land adjoining or abutting the streets within, nor all of the areas which may possibly be affected by any order made under said petition, and in many other respects the said maps are inaccurate, incomplete and misleading. Respondent further says that if an order is made to depress its tracks as prayed for in said petition, the present undergrade crossings of Essex, Governor, Fulton and Straight streets will be destroyed.

9. Respondent has no knowledge of the allegations in paragraph 13.

10. Respondent neither admits nor denies the allegations in paragraph 14, except as stated below and requires petitioner to make proof of all material facts therein contained. It says that said petition does not fully and accurately set forth the protection provided at said crossings, and respondent attaches hereto a complete schedule marked Schedule "A" showing the protection actually provided therefor, and it says that the said protection is reasonable and adequate; and it denies that said crossings or any of them, are dangerous to public safety, or that public travel thereon is impeded within the meaning of the statute.

11. With respect to the allegations in paragraph 15, respondent has not at the present time sufficient information to state whether or not the alteration of one of the crossings described in the petition will

necessarily involve all of the others, or any or either of them.

12. Respondent has no knowledge of the allegations in paragraph 16, except that it denies that the travel on said streets is impeded to an unusual extent, or is empeded at all within the meaning of the statute.

13. Further answering, respondent says that said petition is not made nor presented as required by Chapter 57 of the laws of 1913, or by the rules of this honorable board and that the Board of Public Utility Commissioners has not acquired jurisdiction to act under said law and respondent therefore objects to any further proceedings thereunder.

14. Respondent further says that the said board has no valid power or authority in law or otherwise to compel this respondent by order or otherwise to eliminate, change, or otherwise alter any of the streets or highway crossings referred to in the petition herein.

15. Respondent further says that the Act of the Legislature of the State of New Jersey, being Chapter 57 of the Laws of 1913, is unconstitutional and void in that, if the said Board of Public Utility Commissioners complies with the request of the petition herein, said statute will operate to take the property of this respondent, which property is private property, for a private use, and will also take property of this respondent for public use without just compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey.

16. Respondent, further answering, says that the said statute and the exercise of the power purporting to be conferred upon said board thereby, operates and will operate to take the property of this respondent, without affording to it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guarantee of enjoy-

ing, defending, possessing and protecting said property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey and in violation thereof.

17. Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1, of the Constitution of the State of New Jersey.

18. Respondent, further answering, says that the said statute is unconstitutional and void in that, contrary to Article IV, Section VII, Paragraph 4, of the Constitution of the State of New Jersey, the object of the said statute is not expressed in the title thereof and the said statute embraces more than one object.

19. Respondent further says that the said statute is unconstitutional and void under the constitution of the United States in that it operates and the requested action of the said Board of Public Utility Commissioners thereunder will operate to deprive this respondent of its property without due process of law, and denies and will deny to this respondent the equal protection of the law contrary to the XIV amendment to the Constitution of the United States.

20. Respondent, further answering, says that the said board has no valid power or authority in law or otherwise to entertain the said petition or to conduct hearings thereon or to compel this respondent by order or otherwise to eliminate, change or otherwise alter any of the streets or highway crossings referred to in the said petition, because, as respondent urges and insists, said petition is filed and this proceeding instituted, contrary to the provisions of said statute, being Chapter 57, Laws of 1913, in that more than one street

or highway crossing is embraced within the said petition.

21. Respondent further says that if an order is made as requested by the petitioner, such order will require changes of grade or location, or the removal or reconstruction of the property of the following persons and corporations, all of whom have sidings, switches and other physical connections with respondent's railroad and tracks and are entitled to notice and an opportunity to be heard herein to wit:

Leslie Elliott Co.,
Cooke Locomotive Works,
Passaic Steel Company,
R. H. McDonald,
G. A. Zabriskie,
Commercial Lumber & Mill Work Co.,
C. Kelly,
M. Goble,
National Wood Company,
Standard Oil Company,
John Agnew Company (two sidings),
Saml. Smith & Son Company,
Rogers Locomotive Works,
James Wilson & Son,
McNab & Harlin Mfg. Co. (two sidings),
Jas. A. Graham Brewing Co.,
National Biscuit Company,
Morris & Company,
Paterson Vehicle Company,
Paterson Beef Company,
E. M. Stiles,
Laffray & Herman Company,
Schwarzschild & Sulzberger Company,
David G. Rodgers Company,
Armour & Company,
Hinchcliffe Brewery,
Katz Brewery,
P. S. VanKirk Company,

A. H. Smith,
Myer & De Vogle,
Armstrong Sons Company,
A. H. Smith,
D. Fullerton & Company,
Atherton Grain Company,
J. A. Lydicker,
Public Service Gas Company (two sidings),
J. VanDenHendel,
Swift & Company,
H. M. Post,
Ashley & Esiley Company,
National Silk Dyeing Company,
Crasselli Chemical Company,
Weidman Silk Dyeing Company (two sidings),
L. Lapst,
Sutherland & Edwards Company,
Nicholson File Company.

22. Respondent further answering says that certain wires along the right of way of respondent in and through the City of Paterson and over and above the city streets or highways mentioned in the petition, are operated and maintained by the Western Union Telegraph Company under and by virtue of certain lease made between it and respondent under date of the 25th day of September, 1907, and that the Western Union Telegraph Company is, therefore, a necessary party to this proceeding and it is entitled to receive notice thereof and to be represented at any hearings held thereon.

23. Respondent does not own the franchise of the President and Board of Directors of Paterson & Hudson River Railroad Company and Paterson & Ramapo Railroad Company, nor the right of way of either of said companies, but is merely a tenant of them, and says that that part of the statute which imposes upon the operating company alone the obligation of paying

the expense of changes of grade renders the statute unconstitutional, in that it takes the property of the Erie Railroad Company without compensation, for the benefit of the President and Board of Directors of Paterson & Hudson River Railroad Company, and Paterson & Ramapo Railroad Company.

24. Respondent further answering, says that certain of said crossings mentioned in said petition were laid out and constructed by the City of Paterson across the existing tracks and right of way of the President and Board of Directors of the Paterson & Hudson River Railroad Company, incorporated under special act approved January 21, 1831 (F. L. 1830-1, p. 24) and of the Paterson & Ramapo Railroad Company under special act approved March 10, 1841 (P. L. 1840-1, p. 97), now operated by respondent, and subsequent to the construction and commencement of operation of said railroads, and as to these crossings the said Board of Public Utility Commissioners is without jurisdiction to order respondent at its own expense to alter or change the grade thereof, or to construct another crossing in the place or stead thereof not at grade.

25. Respondent further answering, says that the cost of eliminating said grade crossings as requested in said petition would exceed the value of all the property, real and personal, of the Paterson & Ramapo Railroad Company, and the President and Board of Directors of the Paterson & Hudson River Railroad Company, or either of them, and would make the property of either or both of said corporations incapable of earning, when used for railroad purposes a fair and reasonable return upon the amount invested therein, and would result in the confiscation of their property, and of respondent's property and interest in the leases hereinbefore mentioned, and would amount to a taking of the property of the Paterson & Ramapo

Railroad Company, the President and Board of Directors of the Paterson & Hudson River Railroad Company, and of respondent, without due process of law, contrary to Articles V and XIV, amendments to the Constitution of the United States.

26. Respondent, further answering, says that the President and Board of Directors of the Paterson & Hudson River Railroad Company was incorporated, and its railroad constructed under and by virtue of the provisions of a special act of the Legislature of the State of New Jersey, approved January 21, 1831 (P. L. 1830-1, p. 24), and the various supplements and amendments thereto, and that the Paterson & Ramapo Railroad Company was incorporated and its railroad constructed under and by virtue of the provisions of a special act of the Legislature of the State of New Jersey, approved March 10, 1841 (P. L. 1840-1, p. 97), and the various supplements and amendments thereto, and that said railroads under and by virtue of the provisions of these acts were constructed across certain of the streets mentioned in the petition as they then existed, and that the respondent has succeeded to all of the rights and privileges of the President and Board of Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, in the manner described in the fifth paragraph of this answer, and that therefore the act of the Legislature, being Chapter 57 of the Laws of 1913 is inapplicable to said crossings, and if held to be applicable, is unconstitutional and void, in that, contrary to Article I, Section X, Paragraph 1, of the Constitution of the United States, it will impair the obligation of contracts.

27. Respondent further answering says that it is informed and believes that this honorable board has made a classification of all the grade crossings existing within the State of New Jersey, for the purpose

of indicating in such classification the various degrees in which such crossings are dangerous to, or impede public travel, and that your honorable board has adopted a policy under which it proposes to accomplish the gradual elimination of such crossings in the order that they appear in said classification to be most dangerous; and respondent says that said petition does not show that all or any of the crossings therein mentioned are classified or considered to be among the most dangerous grade crossings in the State. Respondent further says that the crossings mentioned in the petition are not among the most dangerous existing in the State, both on account of the protection provided at each of said crossings and on account of the location of some of them and the small amount of travel on the highway at said crossings and for other reasons and respondent, therefore, says that even if the said act (being Chapter 57 of the Laws of 1913) is held to be constitutional and valid and to confer jurisdiction on the board to make an order eliminating any or all of said crossings, your honorable board should not order the elimination of the crossings mentioned in said petition.

WHEREFORE, respondent prays that the said petition be dismissed.

COLLINS & CORBIN,
Attorneys for Respondent.

Schedule "A."

ERIE RAILROAD COMPANY.

Statement showing kind of protection.

Streets at Grade.	No. Men.	Kind of Protection.
Madison Avenue	1 gates	6:30 AM—7:30 PM Bell also
Clay & Straight Sts.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Straight St.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Cedar St.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Side tracks & yd.	1 "	6:00 AM—6:00 PM
Market St. & Park Ave.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
	1 ground	6:00 AM—6:00 PM
	1 "	6:00 PM—11:30 PM
Ellison St.	1 gates	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
VanHouten Street	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Broadway	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
	1 ground	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Fair Street	1 gates	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Hmilton Avenue	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Lafayette Street	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Franklin Street	1 "	6:00 AM—7:00 PM
		Balance of day no protection
Keen Street	1 ground	6:30 AM—6:30 PM
		Bell balance of time.
Warren Street	1 gates	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
River & Putnam Sts.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
	1 "	6:00 AM—6:00 PM
(South side gates)	1 "	6:00 PM—6:00 AM

"Gates" means crossing protected by gates between the hours specified.

"Ground" means that a flagman is on the ground at the crossing between the hours specified.

First Amendment to Answer of Erie Railroad Co.

The respondent, Erie Railroad Company, hereby amends its answer filed in the above entitled matter on October 31, 1913, in the following particulars:

1. At the end of paragraph 10, add the following:

"Respondent further says that said statute, being Chapter 57, Laws of 1913, is unconstitutional and void under the Constitutions of the United States and of the State of New Jersey, in that it operates, and the requested action of the Board of Public Utility Commissioners thereunder will operate to take the property of Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, and the Paterson, Passaic & Suburban Telephone Company, or of some or all of them (which property is private property) for public use without just or any compensation, contrary to and in violation of Article 1, Section 16 of the Constitution of the State of New Jersey; and the said statute and any order of the board that may be made thereunder in the present proceedings, operates and will operate to deny to them and each of them the equal protection of the law, and to deprive them and each of them of their property, without due process of law, and abridges their privileges and immunities as citizens of the United States, contrary to and in violation of the 5th and 4th amendments of the Constitution of the United States."

known as 17-a, to read as follows:

2. Add to paragraph 17, a new paragraph to be

"17-a. Said statute is also unconstitutional and void because it deprives and will operate to deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the respondent Erie Railroad Company, or its lessors, The President and Board of Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, by mandamus or other appropriate proceeding to

perform the duties imposed by law upon this respondent or upon said The President and Board of Directors of the Paterson & Hudson River Railroad Company and Paterson & Ramapo Railroad Company, with respect to the construction and maintenance of said crossings, or some of them, contrary to the provisions of said Article 6, Section 1 of the Constitution of the State of New Jersey."

3. At the end of paragraph 21, add as part of said paragraph, the following:

"Respondent says that said statute is unconstitutional and void under the Constitutions of the United States and of the State of New Jersey, and that it operates and the requested action of said board thereunder will operate to take the property of some or all of the above named persons or corporations (which property is private property) for public use, without just or any compensation, contrary to and in violation of Article 1, Section 16, of the Constitution of the State of New Jersey; and said statute and any order of the board that may be made thereunder in the present proceedings, operates and will operate to deny to them and each of them the equal protection of the law, and to deprive them and each of them of their property, without due process of law, and abridges their privileges and immunities as citizens of the United States, contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States."

4. Add to paragraph 22, the following:

"And respondent says that said statute is unconstitutional and void under the Constitutions of the United States and of the State of New Jersey, in that it operates and the proposed action thereunder will operate to take the property of said Western Union Telegraph Company (which property is private property) for public use, without just or any compensation, contrary to and in violation of Article 1, Section 16 of the Constitution of the State of New Jersey; and said statute and any order of the board that may be made thereunder in the present proceedings, operates

and will operate to deny to it, the equal protection of the law, and to deprive it of its property without due process of law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States."

5. Add after paragraph 27, two new paragraphs to be called 28 and 29, as follows:

"28. Respondent further says that any order that may be made by said board in this proceeding will require changes in and the removal of the property or constructions of telegraph, telephone, gas, electric, lighting, power and water lines, and will also require changes in and the removal of the property and constructions of various companies or corporations, co-partnerships and individuals; and that said statute in so far as it operates to require said companies or corporations, co-partnerships and individuals, at their own expense to move or change the grade or location of their property or constructions in conformity with the order of said board, is unconstitutional and void, in that it takes the private property of such companies or corporations, co-partnerships and individuals for public use without just or any compensation, contrary to and in violation of Article 1, Section 16, of the Constitution of the State of New Jersey; and said statute and any order of the board made thereunder in the present proceedings, operates and will operate to deprive said companies or corporations, co-partnerships and individuals, of their property without due process of law, and denies to them the equal protection of the law, and abridges their privileges and immunities as citizens of the United States, contrary to and in violation of the Constitution of the United States."

"29. Said statute, in so far as it confers upon said board power to alter grade crossings according to plans to be approved by said board, whenever it appears to said board that the crossing of a public highway and a railroad at the same level

is dangerous to public safety, or that the public travel on such highway is impeded thereby, is unconstitutional and void, because it establishes no reasonable nor any standard for the guidance of said board in making orders thereunder, and delegates legislative power to said board with respect to such crossings, and confers arbitrary power on said board."

COLLINS & CORBIN,
Attorneys of Respondent.

Second Amendment to Answer of Erie Railroad Co.

The respondent, Erie Railroad Company, pursuant to request of the Board of Public Utility Commissioners of the State of New Jersey hereby amends its answer filed in the above entitled proceedings by substituting for paragraph 24 the following:

24. Respondent further answering says that certain of said crossings mentioned in said petition, namely, Madison avenue, Cedar street and Putnam street, were laid out and constructed by the City of Paterson across the existing tracks and right of way of the President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company subsequent to the construction and commencement of operation of said railroads, and respondent further says it has no knowledge as to whether the other streets mentioned in said petition or any of them were laid out and constructed across the tracks and right of way of said Railroad Companies before or subsequent to the construction and commencement of operation of said railroads and requires from said petitioner such proof concerning the same as it may be advised shall be necessary. Respondent therefore says that as to any and all of said crossings which were created by the laying out and construction of streets across the

tracks and right of way of said railroads, or either of them, subsequent to the construction and commencement of operation thereof, or of either of them, the said Board of Public Utility Commissioners is without authority or jurisdiction to order respondent, at its own expense, to alter or change the grade thereof, or to construct another crossing in the place or stead thereof not at grade.

COLLINS & CORBIN,
Attorneys for Respondent.

Answer of Paterson & Hudson River Railroad Co.

The respondent, THE PRESIDENT AND BOARD OF DIRECTORS OF THE PATERSON AND HUDSON RIVER RAILROAD COMPANY, answers the petition herein as follows:

1. Respondent has no knowledge of the allegations in paragraph 1 excepting the allegation that the Erie Railroad Company maintains certain grade crossings in the City of Paterson, which allegation it admits.

2. Respondent has no knowledge of the allegations in paragraph 2.

3. It admits paragraph 3.

4. It denies the allegations in paragraph 4, except that it admits that in passing through the City of Paterson said railroad crosses several streets and highways at grade.

5. It admits the allegations in paragraph 5 but says that said leases were not made to the Erie Railroad Company but to a corporation known as Union Railroad Company and said Erie Railroad Company acquired the right, title and interest of the Union Railroad Company in said leased property and franchises by mean conveyances from the following named companies; the Union Railroad Company, New York and

Erie Railroad Company, Erie Railway Company and the New York, Lake Erie and Western Railroad Company.

6. It admits paragraph 6.

7. It admits paragraph 7.

8. It has no knowledge of the allegations in paragraph 8, but says that if they are true they are immaterial.

9. It has no knowledge of the allegations of paragraph 9.

10. It has no knowledge of the allegations of paragraph 10.

11. Respondent admits the allegations in paragraphs 11 and 12 except that it says that said maps are not accurate or complete in that the said maps do not show all of the railroad tracks nor any of the freight yards of said Erie Railroad Company, nor all sidings or switches or connections with the property of private individuals or corporations that rely upon said Erie Railroad Company for service, which would be affected by a change of grade of said railroad, nor do they show all of the grade crossings that would necessarily be affected by a change of grade by the crossings described in the petition, nor do they show any of the freight or passenger stations of said Erie Railroad Company in the City of Paterson, nor do they show the names of owners of the land adjoining or abutting the streets within nor all of the areas which may be possibly affected by any order made upon said petition, and in many other respects the said maps are inaccurate, incomplete and misleading. Respondent further says that if an order is made to depress the tracks operated by said Erie Railroad Company as prayed for in said petition, the present undergrade crossings of Essex, Governor, Fulton and Straight streets will be destroyed.

12. Respondent has no knowledge of the allegations in paragraph 13.

13. Respondent has no knowledge of the allegations in paragraph 14, except as stated below and says that said petition does not fully and accurately set forth the protection provided at said crossings and begs leave to refer to Schedule A annexed to the answer of the Erie Railroad Company heretofore filed in this matter as showing the protection actually provided therefor, and it says that the said protection is reasonable and adequate; and it denies that said crossings, or any of them, are dangerous to public safety, or that public travel thereon is impeded within the meaning of the statute.

14. It has not sufficient information at present to state whether or not the alteration in one of the crossings described in the petition will necessarily involve all of the others.

15. It has no knowledge of the allegations in paragraph 16 except that it denies that the travel on said streets is impeded to an unusual extent, or is impeded at all within the meaning of the statute.

16. Respondent further says that the said board has no valid power or authority in law or otherwise, to compel this respondent by order or otherwise to eliminate, change or otherwise alter any of the streets or highway crossings referred to in the petition herein for the reason, among others, that this respondent is not the company operating the railroad mentioned in the said petition.

17. Respondent further answering says that certain of said crossings mentioned in said petition were laid out and constructed by the City of Paterson across the existing tracks and right of way of this respondent, now operated by said Erie Railroad Company and subsequent to the construction and commencement of operation of said railroad by this re-

spondent and as to these crossings the said Board of Public Utility Commissioners is without jurisdiction to order respondent at its own expense to alter or change the grade thereof, or to construct other crossings in the place or stead thereof not at grade.

18. Respondent further answering says that the cost of eliminating said crossings as requested in said petition would exceed the value of all the property, real and personal, of this respondent and would make its property incapable of earning when used for railroad purposes a fair and reasonable return upon the amount involved therein, and would result in the confiscation of its property and amount to a taking of its property without due process of law contrary to Article V and XIV amendments to the Constitution of the United States.

19. Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1 of the Constitution of the State of New Jersey. Said statute is also unconstitutional and void because it deprives and will operate to deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the Erie Railroad Company, or its said lessors by mandamus or other appropriate proceedings to perform the duties imposed by law upon said Erie Railroad Company or its said lessors, with respect to the construction and maintenance of said crossings or some of them, contrary to the provisions of said Article VI, Section 1 of the Constitution of New Jersey.

20. Respondent further says that by virtue of its act of incorporation and the various amendments thereto it constructed its said railroad across certain of the streets mentioned in the petition as they then

existed and that the Erie Railroad has succeeded to all of the rights and privileges of this respondent in the manner hereinbefore described and that therefore Chapter 57 of the Laws of 1913 of the State of New Jersey is inapplicable to said crossings and if held to be applicable is unconstitutional and void in that, contrary to Article I, Section X, paragraph 1 of the Constitution of the United States it will impair the obligation of contracts.

21. Respondent further says that the Act of the Legislature of the State of New Jersey, being Chapter 57 of the Laws of 1913, is unconstitutional and void in that, if the said Board of Public Utility Commissioners complies with the request of the petition herein, said statute will operate to take the property of this respondent, which property is private property, for a private use and will also take property of this respondent for public use without just compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey.

22. Respondent, further answering, says that the said statute and the exercise of the power purporting to be conferred upon said board thereby, operates and will operate to take the property of this respondent, without affording to it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guarantee of enjoying, defending, possessing and protecting said property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey and in violation thereof.

23. Respondent further says that the said statute is unconstitutional and void under the constitution of the United States in that it operates and the requested action of the said Board of Public Utility Commissioners thereunder will operate to deprive this respondent of its property without due process of law,

and denies and will deny to this respondent the equal protection of the law contrary to the XIV amendment to the Constitution of the United States.

WILLIAM I. LEWIS,
Attorney of Respondent.

Answer of Paterson & Ramapo Railroad Co.

The respondent, THE PATERSON & RAMAPO RAILROAD COMPANY, answers the petition herein as follows:

1. Respondent has no knowledge of the allegations in paragraph 1 excepting the allegation that the Erie Railroad Company maintains certain grade crossings in the City of Paterson, which allegation it admits.

2. Respondent has no knowledge of the allegations in paragraph 2.

3. It admits paragraph 3.

4. It denies the allegations in paragraph 4, except that it admits that in passing through the City of Paterson said railroad crosses several streets and highways at grade.

5. It admits the allegations in paragraph 5 but says that said leases were not made to the Erie Railroad Company but to a corporation known as Union Railroad Company and said Erie Railroad Company acquired the right, title and interest of the Union Railroad Company in said leased property and franchises by mean conveyances from the following named companies; the Union Railroad Company, New York and Erie Railroad Company, Erie Railroad Company and the New York, Lake Erie and Western Railroad Company.

6. It admits paragraph 6.

7. It admits paragraph 7.

8. It has no knowledge of the allegations in paragraph 8, but says that if true they are immaterial.

9. It has no knowledge of the allegations of paragraph 9.

10. It has no knowledge of the allegations of paragraph 10.

11. Respondent admits the allegations in paragraphs 11 and 12 except that it says that said maps are not accurate or complete in that the said maps do not show all of the railroad tracks nor any of the freight yards of said Erie Railroad Company, nor all sidings or switches or connections with the property of private individuals or corporations that rely upon said Erie Railroad Company for service, which would be affected by a change of grade of said railroads nor do they show all of the grade crossings that would necessarily be affected by a change of grade by the crossings described in the petition, nor do they show any of the freight or passenger stations of said Erie Railroad Company in the City of Paterson, nor do they show the names of owners of the land adjoining or abutting the streets within, nor all of the areas which may be possibly affected by any order made upon said petition, and in many other respects the said maps are inaccurate, incomplete and misleading. Respondent further says that if an order is made to depress the tracks operated by said Erie Railroad Company as prayed for in said petition, the present undergrade crossings of Essex, Governor, Fulton and Straight streets will be destroyed.

12. Respondent has no knowledge of the allegations in paragraph 13.

13. Respondent has no knowledge of the allegations in paragraph 14, except as stated below and says that said petition does not fully and accurately set forth the protection provided at said crossings

and begs leave to refer to Schedule A, annexed to the answer of the Erie Railroad Company heretofore filed in this matter as showing the protection actually provided therefor, and it says that the said protection is reasonable and adequate; and it denies that said crossings, or any of them are dangerous to public safety, or that public travel thereon is impeded within the meaning of the statute.

14. It has not sufficient information at present to state whether or not the alteration in one of the crossings described in the petition will necessarily involve all of the others.

15. It has no knowledge of the allegations in paragraph 16 except that it denies that the travel on said streets is impeded to an unusual extent, or is impeded at all within the meaning of the statute.

16. Respondent further says that the said board has no valid power or authority in law or otherwise, to compel this respondent by order or otherwise to eliminate, change or otherwise alter any of the streets or highway crossings referred to in the petition herein for the reason, among others, that this respondent is not the Company operating the railroad mentioned in the said petition.

17. Respondent further answering says that certain of said crossings mentioned in said petition were laid out and constructed by the City of Paterson across the existing tracks and right of way of this respondent, now operated by said Erie Railroad Company, and subsequent to the construction and commencement of operation of said railroad by this respondent and as to these crossings the said Board of Public Utility Commissioners is without jurisdiction to order respondent at its own expense to alter or change the grade thereof, or to construct other crossings in the place and stead thereof not at grade.

18. Respondent further answering says that the cost of eliminating said crossings as requested in said petition would exceed the value of all the property real and personal of this respondent and would make its property incapable of earning when used for railroad purposes, a fair and reasonable return upon the amount involved therein, and would result in the confiscation of its property and amount to a taking of its property without due process of law contrary to Article V and XIV amendments to the Constitution of the United States.

19. Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1 of the Constitution of the State of New Jersey. Said statute is also unconstitutional and void because it deprives and will operate to deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the Erie Railroad Company, or its said lessors by mandamus or other appropriate proceedings to perform the duties imposed by law upon said Erie Railroad Company or its lessors, with respect to the construction and maintenance of said crossings or some of them, contrary to the provisions of said Article VI, Section 1 of the Constitution of New Jersey.

20. Respondent further says that by virtue of its act of incorporation and the various amendments thereto it constructed its said railroad across certain of the streets mentioned in the petition as they then existed and that the Erie Railroad has succeeded to all of the rights and privileges of this respondent in the manner hereinbefore described and that therefore Chapter 57 of the Laws of 1913 of the State of New Jersey is inapplicable to said crossings and if held to

be applicable is unconstitutional and void in that, contrary to Article I, Section 10, paragraph 1 of the Constitution of the United States it will impair the obligation of contracts.

21. Respondent further says that the Act of the Legislature of the State of New Jersey, being Chapter 57 of the laws of 1913, is unconstitutional and void in that, if the said Board of Public Utility Commissioners complies with the request of the petition herein. Said statute will operate to take the property of this respondent, which property is private property, for a private use, and will also take property of this respondent for public use without just compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey.

22. Respondent, further answering, says that the said statute and the exercise of the power purporting to be conferred upon said Board thereby, operates and will operate to take the property of this respondent, without affording to it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guarantee of enjoying, defending, possession and protecting said property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey and in violation thereof.

23. Respondent further says that the said statute is unconstitutional and void under the constitution of the United States in that it operates and the requested action of the said Board of Public Utility Commissioners thereunder will operate to deprive this respondent of its property without due process of law, and denies and will deny to this respondent the equal protection of the law contrary to the XIV amendment to the Constitution of the United States.

WILLIAM I. LEWIS,
Attorney of Respondent.

Answer of Public Service Railway Co.

Changing of Grade Crossings.

The answer of Public Service Railway Company to the above petition respectfully shows:

That this respondent neither admits nor denies the allegations contained in the first thirteen sections of the complainant's complaint.

This respondent admits that it has street railway tracks crossing the tracks of the Erie Railroad Company at grade at Market street crossing, marked "D," in complainant's complaint; at Broadway crossing marked "G" in complainant's complaint, and at River street crossing marked "N" in complainant's complaint.

This respondent neither admits nor denies the allegations contained in the fifteenth to the nineteenth sections inclusive, of said complaint, but submits that the elimination of the grade crossing, if made, should be made without expense to this respondent.

Respectfully submitted,

PUBLIC SERVICE RAILWAY COMPANY.

By J. J. BURLEIGH,

Vice-President.

Dated, Newark, N. J.,

November 5, 1913.

Answer of Public Service Electric Co.

The answer of Public Service Electric Company to the above petition respectfully shows:

That this respondent neither admits nor denies the allegations contained in the first thirteen sections of the complainant's complaint.

This respondent admits that it has electric wires crossing the tracks of the Erie Railroad Company at Fulton and Straight streets, Governor street, Broadway, Grand street, Montgomery street, Cedar street, Warren street and River street.

The crossings at Fulton and Straight streets, Governor street, Broadway and Grand street, under an agreement between Public Service Electric Company and City of Paterson will have to be made underground. The other crossings will be overhead.

This respondent neither admits nor denies the allegations contained in the fifteenth to the nineteenth sections inclusive, of said complaint, but submits that the elimination of the grade crossing, if made, should be made without expense to this respondent.

Respectfully submitted,

PUBLIC SERVICE ELECTRIC COMPANY.

By J. J. BURLEIGH,

Vice-President.

Dated Newark, N. J.,

November 10, 1913.

Answer of Public Service Gas. Co.

The answer of Public Service Gas Company to the above petition respectfully shows:

That this respondent neither admits nor denies any of the allegations contained in complainant's petition except in so far as the same relates to the acts or property of this respondent.

This respondent admits that it has gas pipes beneath the surface of the following streets where the same are crossed by the tracks of the Erie Railroad Company; Madison avenue, Clay street, Cedar street, Market street, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Franklin street, Keene street, Warren street, Putnam street, Grand street, Governor street and Fulton street; and that the separation of the grades of the railroad and the streets above specified will necessitate large expense for removal and reconstruction of said pipes, but submits that the elimination of the grade crossings, if made, should be made without expense to this respondent.

Respectfully submitted,

PUBLIC SERVICE GAS COMPANY.

By GEO. J. ROBERTS,

Vice-President.

Dated, Newark, N. J.,

December 11, 1913.

Answer of New York Telephone Co.

October 29, 1913.

APPLICATION—CITY OF PATERSON TO ALTER GRADE CROSSINGS ON LINE OF ERIE RAILROAD COMPANY.

Board of Public Utility Commissioners,
Mr. A. N. Barber, Secretary,
Trenton, New Jersey.

Dear Sir:—

In answer to your letter dated October 18, 1913, relative to the above entitled matter, I submit the following statement, showing the present construction of this company at the points in question:

Madison Avenue—
No construction

Clay & Straight Streets—
No construction.

Cedar Street—
One (1) 100-pair No. 22 gauge aerial cable
Two (2) guys

Market Street—
Nine (9) subway ducts containing
Two (2) 600-pair No. 22 gauge underground cable
Two (2) 300-pair No. 19 gauge underground cable
One (1) 200-pair No. 19 gauge underground cable

Ellison Street—
No construction

Van Houten Street—
Six (6) subway ducts containing
Two (2) 600-pair No. 22 gauge underground cable
One (1) 300-pair No. 19 gauge underground cable

One (1) 200-pair No. 19 gauge underground cable

Broadway—

No construction

Fair Street—

No construction

Hamilton Avenue—

No construction

Lafayette Street—

One (1) 50-pair No. 22 gauge aerial cable

Franklin Street—

Twelve (12) open wire No. 14 gauge

Four (4) twisted pairs

Keen Street—

No construction

Warren Street—

No construction

River & Putnam Streets

One (1) Guy

Four (4) subway ducts containing

One (1) 200-pair No. 22 gauge underground cable

One (1) 100-pair No. 19 gauge underground cable

I desire to further advise you that this company does not maintain any construction at the following crossings, where the streets run under the tracks of the railroad:

Essex Street

Governor Street

Fulton Street

Straight Street

Yours very truly,

(Signed) J. L. SWAYZE, C.,

General Attorney.

ER/T

Answer of Western Union Telegraph Co.

Respondent, WESTERN UNION TELEGRAPH COMPANY, hereby answers the petition filed in the above entitled proceeding as follows:

(1) Respondent says that it has constructed and now maintains and operates certain wires along the right of way and across the several streets in the City of Paterson, as set forth in Schedule "A" which is attached hereto and made a part of this answer; that said wires and poles upon which they are strung were constructed and are operated and maintained under and by virtue of a certain lease or agreement made between it and the said Erie Railroad Company, under date of the 25th day of September, 1907, and respondent says that said statute is unconstitutional and void under the constitution of the United States and of the State of New Jersey, in that it operates, and the proposed action of said Board thereunder will operate to take property of this respondent (which property is private property) for public use without just or any compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any order of the Board that may be made thereunder in the present proceedings operates and will operate to deny to it the equal protection of the law and to deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States.

(2) The said Board has no valid power in law or otherwise to make any order for the alteration of said crossings or either of them, in such a manner as to require changes in or the removal of the property or constructions of respondent's telegraph lines and other property, or to compel respondent, at its own

expense, to move or change the grade or location of its property or constructions in conformity with any order of said Board.

(3) Respondent further says that the said statute and the exercise of the power purporting to be conferred upon said Board, thereby operates and will operate to take the property of this respondent without affording it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guaranty of enjoying, defending, possessing and protecting said property, given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements contrary to Article VI, Section 1, of the Constitution of the State of New Jersey.

(5) Respondent further says that said act is unconstitutional and void, in that it is contrary to article I, Section 10, paragraph 1, of the Constitution of the United States in that it will impair the obligation of contracts.

(6) Respondent further says that any order that may be made by said board in this proceeding will require changes in or the removal of the property or constructions of respondent consisting of telegraph wires and poles and that such statute in so far as it operates or in so far as any order of this board made thereunder shall operate, to require this respondent at its own expense to change, alter or remove the location of its said property or constructions so as to conform with such order of said board is unconstitutional and void, in that it takes the private property of this respondent for public use without just or any

compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any order of the Board made thereunder in the present proceedings, operate and will operate to deprive said respondent of its property without due process of law, and denies to it the equal protection of the law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the Constitution of the United States.

WHEREFORE, this respondent, WESTERN UNION TELEGRAPH COMPANY, prays that this proceeding be dismissed.

GEORGE H. FEARONS,
General Attorney.

195 Broadway, New York City.

SCHEDULE "A."

WESTERN UNION TELEGRAPH COMPANY has constructed and now maintains and operates poles and wires along the right of way of the Erie Railroad Company through the City of Paterson and across certain streets as follows:

(1) Madison Avenue, line of poles and wires on both sides of track, the line on the north side owned by Erie Railroad Company but leased to and maintained by the Western Union Telegraph Company, carries on top arm five telegraph and two signal wires operated by Erie Railroad Company. On the other arms all wires are signal wires operated by Erie Railroad Company. The line of poles and wires on the south side of tracks is owned and operated by Western Union Telegraph Company and carries two railroad company wires and eight Western Union wires.

(2) Between Newark Jct. and east end of the Paterson station opposite the telegraph office the lines

are consolidated on the north side. This joint line carries nine Erie Railroad telegraph wires, eighteen Western Union wires, and six Erie Railroad short line signal and telephone wires. The above wires are on six upper arms. The wires on arms below the sixth arm are Erie Railroad automatic signal wires.

(3) Between the east end of Paterson Station and a point opposite the Paterson City station of the N. Y. S. & W. R. R. There are seven Erie Telegraph wires and fourteen Western Union telegraph wires and a varying number of Erie R. R. short line telephone and signal wires and Public Service Electric light wires; also Erie Railroad automatic signal wires.

(4) Between a point opposite the N. Y. S. & W. R. R. Paterson City station and Broadway the line is consolidated and carries seven Erie R. R. telegraph wires; seven Western Union telegraph wires; three Railroad short line signal wires and two Erie R. R. short line telephone wires, with a varying number of Erie R. R. automatic signal wires.

(5) Between Broadway and River St. Station there are two pole lines one on either side of the tracks. The north side line carries seven Erie R. R. telegraph wires. Three Erie R. R. short line signal and two Erie R. R. short line telephone wires on the two upper arms and a varying number of automatic signal wires on the arms below the second crossarm. On the south side there are seven Western Union telegraph wires.

Answer of Paterson, Passaic & Suburban Telephone Company.

R. E. LINDSAY,
PATERSON, PASSAIC AND SUBURBAN TELEPHONE CO.,
181 Market St., Paterson, N. J.

November 1st, 1913.

Board of Public Utility Commissioners,
Trenton, New Jersey.

Gentlemen:—

The Paterson, Passaic and Suburban Telephone Company has no objection to the granting of the above petition, and will promptly carry out any instructions in the matter concerning the property of this company that may be issued by your Board.

Neither proposed plan for the elimination of the several crossing presents any engineering difficulty for the telephone company, but I find that the petition is in error regarding the ownership of certain aerial wires crossing railroad right of way, and am submitting herewith a corrected list of property of the Paterson, Passaic and Suburban Telephone Company involved in the proposed work.

Very truly yours,
(Signed) R. E. LINDSAY.

List of property of the Paterson, Passaic and Suburban Telephone Company crossing the right of way of the Erie Railroad in the City of Paterson, between Madison avenue and the Passaic River.

(B) Clay Street Crossing
30 Wires (15 Pair) No. 12 B & S Copper, Bare
38 feet above grade
South side of crossing City of Paterson right of way.

(D) Market Street Crossing
9—Ducts Underground Conduit
2—100 pair Lead Cables installed.

(C) Cedar Street Crossing
16 Wires (8 pair) No. 12 B & S Copper, Bare
38 feet above grade
North side of crossing Pat., Pass. & Sub. Tel. Right of Way

(E) Ellison Street Crossing
4 Wires (2 pair) No. 12 B & S Copper, Bare
42 feet above grade
South side of crossing City of Paterson Right of Way.

(G) Broadway
4 Ducts Underground Conduit
2—100 pair Lead Cables installed
Fulton Street
16 Wires (8 pair) No. 12 B & S Copper, Bare
32 feet above grade
South side of crossing Pat., Pass. & Sub. Tel. Right of Way.

(J) Lafayete Street
6 Wires (3 pair) No. 14 B & S Copper R. C.
40 feet above grade
North side of crossing.

(N) River Street
30 Wires (15 pair) No. 12 B & S Copper, Bare
1-25 pair Cable—Okonite
43 feet above grade
North side of River St. City of Paterson Right of Way
Sixth Ave.
16 Wires (8 pair) No. 12 B & S Copper Bare
30 feet above grade
South side of crossing Pat., Pass. and Sub. Tel. Right of Way

Answer of Respondent, Passaic Water Co.

Respondent, PASSAIC WATER COMPANY, a corporation of the State of New Jersey, answers the petition in this proceeding as follows:

1. It admits that it maintains water pipes and water mains, as set forth in paragraph fourteen of the petition herein, and says that the same were constructed, and are maintained, under and by virtue of the provisions of a special Act of the Legislature of the State of New Jersey (constituting its charter) entitled "An Act to Incorporate the Passaic Water Company," approved February 13, 1849, and the various supplements and amendments thereto, under and by which said charter it was fully authorized and empowered to lay its pipes beneath such public roads, streets, avenues and alleys in the City of Paterson (among other places) as it might deem necessary for supplying the City (then Town) of Paterson (and other places) with water sufficient for extinguishing fires, culinary and other family uses, water the streets and such other purposes as might conduce to the health and comfort of the citizens of Paterson; that so far as any of said streets abutting on said crossings mentioned in said petition were laid out and constructed before the tracks and right of way of the President and Board of Directors of the Paterson & Hudson River Railroad Company, and those of the Paterson and Ramapo Railroad Company, now operated by Erie Railroad Company, came into existence the said Railroad Company's title was subject to the burden of said streets, with all their incidents such as the public right to lay and maintain sewers, water pipes and gas pipes and electric conduits, etc., and with reference to any of said streets abutting upon said crossings mentioned in said petition, which were laid out and constructed by the City of Paterson across the then existing tracks and right of way of

said Railroad Company, the said Railroad Company received compensation once for all when said streets were opened, and that this respondent in laying its pipes under all of said crossings was merely exercising the public easement conferred upon it by its charter, to which the said Railroad Company, whether it owned the land or had only a right of way, was bound to submit.

2. Respondent says that the statute under which this proceeding is brought is unconstitutional and void under the constitutions of the United States and of the State of New Jersey, in that it operates, and the proposed action of said Board thereunder will operate, to take property of this respondent (which property is private property) for public use without just or any compensation, contrary to, and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any order of the Board that may be made thereunder in the present proceedings, operate, and will operate, to deny to it the equal protection of the law, and to deprive it of its property without process of law and abridge its privilege and immunities as a citizen of the United States, contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States.

3. Respondent further says that the Board of Public Utility Commissioners has no valid power in law or otherwise, to make any order for the alteration of said crossings, or any or either of them, in such manner as to require changes in or the removal of the property or construction of respondent's water pipes or water mains, or other property, or to compel respondent, at its own expense, to move or change the grade or location of its property or constructions in conformity with any such order.

4. Respondent further says that the said statute and the exercise of the power purporting to be conferred upon said Board, thereby operates and will operate to take the property of this respondent without affording it any opportunity to protect said property, and thereby this respondent is and will be deproved of its right and guaranty of enjoying, defending, possessing and protecting said property, given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey.

5. Respondent further says that the said statute is unconstitutional and void because it deprives, and will operate to deprive, the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1, of the Constitution of the State of New Jersey.

6. Respondent further says that said act is unconstitutional and void, in that it is contrary to Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that it will impair the obligation of contracts.

7. Respondent further says that any order that may be made by the said Board in this proceeding will require changes in or the removal of the property or constructions of respondent, consisting of water pipes and water mains, and that such statute in so far as it operates or in so far as any order of this Board made thereunder shall operate, to require this respondent at its own expense to change, alter or remove the location of its said property or constructions, so as to conform with such order of said Board, is unconstitutional and void, in that it takes the private property of this respondent for public use without just or any compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any

order of the Board made thereunder in the present proceedings, operates and will operate to deprive said respondent of its property without due process of law, and denies to it the equal protection of the law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the Constitution of the United States.

WHEREFORE, this respondent, PASSAIC WATER COMPANY, prays that this proceeding be dismissed.

HUMPHREYS & SUMMER,
Attorneys for Respondent,
Passaic Water Company.

Answer of D. Fullerton & Co.

The respondent, D. Fullerton & Co., makes answer as follows:

1. It admits paragraphs 1 and 2 of the petition filed herein and paragraph 3.

2. It has not sufficient knowledge as to paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18 to make answer thereunto.

3. Respondent says that as to paragraph 19, it believes that depressing the tracks of said railroad, is impracticable, and that if the grade of said railroad is altered at all, it should be elevated.

4. Respondent says it has been engaged in business of selling meats and provisions at wholesale in the City of Paterson since its incorporation, and prior to its incorporation, the stockholders of respondent conducted the same business as a partnership, and have continued to conduct said business for about forty years last past.

5. Respondent says its business is conducted upon property owned by it, consisting of a tract of land comprising the Northerly half of the plot bounded West by River Street; North by Keene Street and

East by Erie Railroad Company, upon which land respondent has erected buildings and installed equipment at a cost of more than One Hundred Thousand Dollars.

6. Respondent says that Erie Railroad Company has for more than twenty years last past maintained a switch of about one hundred feet in length, along the Easterly line of the property of respondent. Said switch is entirely upon lands of Erie Railroad Company and extends parallel with the tracks of said company, and lies between the main tracks of said company and the lands of respondent. Said switch crosses no thoroughfare, and is used exclusively by D. Fullerton & Company in its business, and train movements thereon amount to about twenty cars a weeks; cars are placed and re-placed on and off said switch two and three times each day.

7. Respondent says its buildings were erected with reference to the facilities afforded it by the Erie Railroad Company, and especially with reference to said switch; that such switch privilege is absolutely necessary for the conduct of the business of D. Fullerton & Co.

8. Respondent says that if the tracks of the Erie Railroad Company are depressed as set forth in the petition, it will be deprived entirely of its use of said switch and railroad service, and that if said tracks are elevated, it will be required to remodel and rebuild its said buildings, and re-arrange its equipment both inside and outside of said buildings.

8. Respondent further says that the statute, being chapter 57 of the laws of 1913, is unconstitutional and void, under the constitution of the United States and of the State of New Jersey, in that it operates and the requested actions of said board thereunder will operate to take the property of this respondent and others for public use without just or any compensa-

tion, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey; and said statute and any order of the board that may be made thereunder in the present proceedings, operates and will operate to deny to respondent, equal protection of the law, and to deprive it without due process of law of its property and abridges its privileges and immunities as a citizen of the United States contrary to and in violation of the 5th and 14th amendment of the Constitution of the United States.

9. Respondent further says that any order that may be made by the board in this proceeding, will require changes in and the removal of the property and buildings and equipment of respondent, and that said statute in so far as it operates to require respondent at its own expense to remove or change the grade or location of its property, buildings or equipment in conformity with the order of said Board, is unconstitutional and void, in that it takes the private property of respondent for public use without just or any compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and any order of the Board that may be made thereunder, in the present proceedings, and operates and will operate to deprive this respondent of its property without due process of law, and denies to it the equal protection of the law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the Constitution of the United States.

Respondent therefore prays that the petition filed herein shall be dismissed.

HUDSON & JOELSON,
Attorneys.

Answer of National Silk Dyeing Co.

The answer of the NATIONAL SILK DYEING COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it ex-

ists in reference to this respondent and other switch owners. It does not show the freight yard, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16, says that it admits the population of Paterson is correctly stated therein, and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A, and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says that it is a corporation engaged in business as silk dyers; that for the purpose of supplying its various dye houses

with coal it purchased some years ago property on Wait street, near Leon street, opposite the tracks of the Erie Railroad, and that it has expended a very large amount of money in adapting the same to such use; that its object in buying said property was because it adjoined the said Erie Railroad and would consequently have adequate facilities to unload its coal economically; that said property is connected with said railroad by a switch and this respondent depends upon such connection with said railroad to use its said property for the purpose for which it was purchased; that this respondent interposes no objection to the elevation of said tracks as prayed for by the said petitioner, as it would not work any serious damage to it, but it strongly resists any efforts made to depress the said tracks, as such change of grade would utterly destroy the value of the property of this respondent at the place aforesaid for the use for which it was purchased and improved, and would very seriously damage it for any purpose whatever.

14. Respondent further says that any change in the grade of the said railroad by depressing the same will deprive this respondent of the power to carry on its business as aforesaid, will be of the most serious damage, and will take its property for public use without compensation.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Fullers Express Co.

The answer of FULLERS EXPRESS COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch own-

ers. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says that it is a corporation of this state engaged in the business of transporting merchandise in the City of New York to the City of Paterson and from the City of Paterson to the City of New York over the line of the Erie

Railroad Company; that it has a leasehold estate in property abutting on the line of the Erie Railroad Company upon which switches are laid to afford facilities for said express business; that it has erected valuable buildings on the west side of said railroad at the junction of Ellison street in the City of Paterson, which it uses in its aforesaid business; that such buildings consist of freight houses in which merchandise, transported as aforesaid, is stored and handled; that these buildings are constructed so that the floor thereof and the platform surrounding the same will be on a level with the floor of cars standing alongside thereof; that such aforesaid buildings were constructed in that manner to facilitate the unloading of cars into said houses, and that if the grade of said tracks were changed it would make such property of this respondent useless for such purposes; that said land was obtained and said buildings were erected because of the propinquity of said railroad; that this respondent has materially improved the property and has spent large sums of money in the construction of said building; that without the privilege of switching it will be unable to carry on its said business and that to depress the tracks of the said railroad would utterly destroy the value of your respondent's property; that if said tracks were elevated the present buildings constructed as aforesaid by this respondent would become useless; that this respondent has no precise information and no clear understanding of how said tracks could be elevated without totally destroying this respondent's said business.

14. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid; will be of most serious damage and will take its property for public use without compensation.

15. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons;

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this state.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WM. B. GOURLEY,
Attorney of Respondent.

Answer of The Herman Co.

The answer of THE HERMAN COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph three.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public

safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that is it not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge con-

cerning the allegations that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further says that Ellison street upon which part of the buildings of this respondent is erected was laid out by the City of Paterson over and across the tracks of the Erie Railroad Company, or its predecessors in title, and that the respondent in constructing its buildings and adapting its property to the use to which it is put accepted this grade as established by the city and constructed its buildings in conformity therewith; that this recognized the level of the railroad as the street level and was used as a guide in the construction of its buildings in and along the line of said railroad, and that the petitioner cannot now cause the said grade to be changed without affording compensation therefor to this respondent.

14. Respondent further says that if said railroad is elevated it will, where its line crosses Ellison street, cause a high embankment to be erected immediately adjoining the property of this respondent in Ellison street and will materially damage such property.

15. Respondent further answering says that it is a corporation of this state, engaged in the business of wholesale grocers, and that its place of business is at Ellison street in said City of Paterson at the junction of said street with the said Erie Railroad; that it owns a tract of land abutting upon said railroad, on part of which has been erected a large brick building for its business; that respondent selected this site years ago because it bordered upon the line of said railroad; that it is of the utmost importance to this respondent in its competition with its competitors to have the quickest facilities for shipment of its purchases and sales; that it has a switch from the railroad to its property, and that this switch is the property of this respondent; that to depress the tracks at this point would be utterly to destroy the property of respondent for the purposes for which it is now used, and materially damage it for any purpose; that to elevate the tracks of the said railroad, while less damaging, would be of the most serious consequences to this respondent, and respondent is unable to understand how such elevation can be made without impairing the present value of its property.

16. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use

without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of John Agnew Co.

The answer of John Agnew Company, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns cretain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but

has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16, says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said

paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says that it is a corporation engaged in business as coal merchants, and has two places of business in the City of Paterson, one at Prince street and one at Ann and Governor streets, in the said City of Paterson; that its property at Prince street is connected with the Erie Railroad by tracks in the public street; that its property at Governor and Ann streets abuts upon the property of the Erie Railroad; that it has been doing business for over forty years as coal merchants; that both places were selected because it was advantageous for the business and particularly for the coal yard at Governor and Ann streets; that if the grade of the Erie Railroad is changed it will prevent this respondent from obtaining its coal to supply the yard at Prince street and will destroy the business of the respondent; that the tracks of the respondent connect at the prince street yard with the tracks of the Erie Railroad at the freight yard, which yard is used in common by the merchants of the whole city; that if there is any practical way—which the respondent does not think is practicable—of permitting the freight yard at this point to remain at its present level, no objection will be interposed by respondent to a change of grade of the main track.

14. Respondent further says that the yard at Governor and Ann streets would be affected by any change in the grade of said road and would seriously deprive the respondent of its property at this latter point without compensation.

15. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid, will be of the most serious damage and will take its property for public use without compensation.

16. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property of constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of James Wilson & Sons (Incorporated).

The answer of James Wilson & Sons (incorporated), respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in refer-

ence to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further says that this company is engaged in business as dealers in coal and has been so engaged for about forty years; that its property is

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situate on the west side of Railroad avenue, at the corner of Slater street, in said City of Paterson; that it purchased its said property and established its business and erected buildings thereon because it adjoined the said Erie Railroad and because of the facilities afforded in consequence thereof; that it is dependent upon its connection with the tracks of the Erie Railroad by means of an overhead coal conveyer; that it would work irreparable damage to this respondent if it was deprived of the right which it now enjoys; that the freight yard of the Erie Railroad Company is opposite the property of this respondent; that if the freight yard is allowed to remain upon the grade where it now is, this respondent would interpose no objection to any change sought to be made, as it would not in such case materially affect the interests of this respondent.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of P. S. Van Kirk Co.

The answer of P. S. VAN KIRK COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegations that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says that it is a corporation of this State, engaged in business as general contractors on Fulton street, in the said City of Paterson, and that it has property abutting on the line of the Erie Railroad, upon which switches are laid to afford it facilities for shipment; that the propinquity of said railroad to the property of this respondent is a valuable property right, adding materially to the value of the respondent's property; that said switch is used by tenants of said respondent, that is to say, by the Olive Oil Company and the Diamond Coal Company; that said land was purchased because it abutted on said railroad; that this respondent has materially improved the property, and has added thereto and has spent considerable sums of money in the construction of buildings on its said lands, that without the privilege of switching, it will be unable properly to carry on its business; that to depress the tracks of the railroad would be utterly to destroy the value of respondent's property.

14. Respondent further says that if there is any practical way by which the tracks can be elevated and the rights of the respondent protected, it would

not interpose any objection thereto; but this respondent, in the absence of precise information, has no clear understanding that such plan can be executed.

15. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid, will be of the most serious damage and will take its property for public use without compensation.

16. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this state.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Henry M. Post.

The answer of HENRY M. POST, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch

owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further says that he is engaged in business as a dealer in coal and masons' supplies, and has been so engaged for about thirteen years; that his property is situate on the westerly side of Wait street at its intersection with Lowe street; that

respondent purchased the said property because it adjoined the said railroad and because of the facilities afforded in consequence thereof; that respondent is dependent upon the connection with the tracks of the Erie Railroad by means of a switch for a great part of his business; and that the freight yard of the Erie Railroad Company is opposite the property of this respondent; and that if said tracks are depressed and elevated it would deprive this petitioner of the use of his property and materially affect its value.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Paterson Brewing and Malting Co.

The answer of the PATERSON BREWING AND MALTING COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph three.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of

Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says that it is a corporation engaged in business as brewers, and that it has been doing business for many years at its present site; that it owns property along the line of the Erie Railroad in said City at several places; that among them is one piece of property on the easterly side of Ramapo avenue on the corner of Cedar street; that the said piece of property of the respondent is known as the Graham Branch of its brewery; that it has at said point a switch which connects its property with that of the Erie Railroad; that this connection is of the highest advantage to this respondent, and that without this facility for carrying on business, its business would be materially abridged; that its property known as the Katz Branch on Governor street abuts the Erie Railroad, and that its property known as the Hinchliffe Branch on Governor street abuts the Erie Railroad; that through its various places adjoining the tracks of the said Erie Railroad, respondent has increased advantages for carrying on its business; that this is of great pecuniary advantage to it; that switches run from the said Erie Railroad over and along its property on which goods are shipped and supplies obtained; that any depression of the tracks or elevation of said tracks in and along the line of the road at the respective places aforesaid would be to seriously damage the properties of the respondent known as the Hinchliffe Branch and the Katz

Branch, and to materially destroy the value of said property; that said lands were purchased because of their availability for such service, and to make such contemplated changes in the line of said railroad, either by depressing or elevating the same would be to take the property of this respondent without compensation.

14. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Jacob Meyer and Kommer De Vogel, Partners, Etc.

The answer of JACOB MEYER AND KOMMER DE VOGEL, partners, trading and doing business as Meyer and De Vogel, respondents, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondents have no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that they admit that the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondents admit paragraph 3.

3. Respondents admit that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but have no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondents have no knowledge of the allegations of paragraph five.

5. Respondents have no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, say that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraph 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately

places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. These respondents further answering say that they are dealers in grain, flour, feed, hay and other supplies; that their place of business is at the junc-

tion of Franklin street and Summer street, in the said City of Paterson; that this tract of land is triangular in shape, and that the long side of the triangle fronts on the Erie Railroad, and that said land abuts on the property of the Erie Railroad, and that they have a switch upon their lands which connects with the Erie Railroad near Keen street; that said lands are very valuable to respondents for the purposes for which they were purchased, and that said lands were purchased because they abutted on the property of the Erie Railroad; that respondents have spent a large amount of money in making extensive alterations upon said property in constructing an elevator in which they have installed the most modern machinery; that either depressing said tracks or elevating them would be of the most serious damage to respondent; that to raise the tracks of said railroad twenty feet would bring them between the second and third stories of respondent's building; that respondents could not use the upper floors of their said building for the same purposes for which they now use the lower floors, as the upper structure of said building is not strong enough for such purposes, and besides such use would in other ways seriously incommode respondents in their business; these respondents say that the volume and frequency of travel at Franklin street is moderate, nor is travel seriously impeded.

14. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid, will be of the most serious damage and will take its property for public use without compensation.

15. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Leslie Elliott Company.

The answer of WILLIAM LESLIE AND DAVID ELLIOTT, partners, trading and doing business as Leslie Elliott Company, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossings.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraph 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, his respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondents further say that they are engaged in business as boiler makers and have been so engaged for eight years; that their property is situate on the east side of Railway avenue, near Iowa avenue in said City of Paterson; that respondents purchased said property and established their business there and erected buildings on said property because it adjoined said railroad tracks of the Erie Railroad and because of the facilities afforded in consequence thereof; that respondents are dependent upon their connection with the tracks of the Erie Railroad Company by means of a switch for a great part of their business, and that in the judgment of these respondents, either the depressing or elevating of the tracks of the Erie Railroad Company would deprive respondents of this right.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Samuel Smith & Sons Co.

The answer of SAMUEL SMITH & SONS COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and

switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further says that this company is engaged in business as boiler makers and has been so engaged for more than forty years; that its property is situate on the west side of Railroad avenue, between Slater street and Green street, in said City of Pater-

son; that its said property was purchased and its said business established in said place because it adjoined said Erie Railroad and because of the facilities afforded it in consequence thereof; that respondent is dependent upon its connection with the tracks of the Erie Railroad by means of a switch for a great part of its business; that it would work irreparable damage to this respondent if it was deprived of this right which it now enjoys; that the freight yard of the Erie Railroad Company is opposite the property of this respondent; that if the freight yard is allowed to remain upon the grade where it now is, this respondent would interpose no objection to any change sought to be made, as it would not in such case materially affect the interests of this respondent.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Morris & Co.

The answer of MORRIS & COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraph 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequently of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says that it is a corporation of this state engaged in the business of selling and transporting meat and provisions; that it has possession of property abutting on the line of the Erie Railroad Company in the City of Paterson between Ellison and Market streets upon which it has switches connected with the said tracks of the Erie Railroad; that it uses such property in its said business and has made valuable improvements thereon for such purposes; that such improvements have been made in reference to the tracks of the said railroad at their present grade and that if the grade of said tracks were changed it would make such property of this respondent useless for such purposes; that said land was obtained and said improvements made thereon because of the propinquity of said railroad; that this respondent has materially improved the property and has spent large sums of money in such improvements and in adapting it to its present use in conjunction with said railroad; that without the privilege of switching, it will be unable to carry on its said business; that to depress the tracks of said railroad would

utterly destroy the value of your respondent's property and if said tracks were elevated, the improvements placed upon the said land by this respondent for the purpose of adapting it to the uses aforesaid would become useless; that this respondent has no precise information and no clear understanding of how said tracks could be elevated without totally destroying this respondent's said business at said location in the City of Paterson; that this respondent has also acquired the property and control of the Paterson Beef Company, a corporation of this state, which has property also adjoining the said tracks of the Erie Railroad Company between Ellison and Market streets in said City of Paterson; that the business of the said Paterson Beef Company is the same as the business conducted by this respondent and the improvements made upon its property for the purpose of adapting it to its present uses in conjunction with the said railroad tracks at their present grade would be destroyed if said tracks were either elevated or depressed.

14. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New ersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of McNab & Harlin Manufacturing Company.

The answer of the McNab & Harlin Manufacturing Company, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade, as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, says that the Erie Railroad owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by

any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged; that as to the crossing at Cedar street near which the property of this respondent is situated and of which it has a more precise knowledge, this respondent says that the volume of travel is light; that the freight cars placed on the siding near this crossing does not materially affect the crossing.

10. Respondent says that it is not advised whether or not as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says, that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says, that it is a manufacturing corporation engaged in business as brass founders and finishers and manufacturers of plumbers supplies; that it has been doing business on part of its present site for over forty years; that such place was selected because it adjoined said railroad; that large sums of money have been expended in erecting buildings thereon; that its business has increased to such an extent that it has obtained possession of property along the line of this railroad in addition to its original tract; that its property abuts upon the property of the Erie Railroad Company; that this property is connected with switches with the Erie Railroad affording it the utmost facility in the operation of its works and better enabling it to compete in the market with its competitors; that these switches are essential to its business and without them it would be unable properly to carry on the same.

14. Respondent further says that any change in the grade of the railway by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business as aforesaid, will be of the most serious damage and will take its property for public use without compensation.

15. Respondent further says that Cedar street upon which part of the buildings of this respondent is erected was laid out by the City of Paterson over and across the tracks of the Erie Railroad Company, or its predecessors in title and that the respondent in constructing its buildings and adapting its property to the use to which it is put accepted this grade as established by the city and constructed its buildings in conformity therewith; that this recognized the level of the railroad as the street level and was used as a guide in the construction of its buildings in and along the line of said railway and that the petitioner cannot cause the said grade to be now changed without affording compensation therefor to this respondent.

16. Respondent further says that from Cedar street south its property abuts upon the land of the railroad upon which land of respondent there are private tracks connected with those of said railroad; that north of said Cedar street, the siding runs to the switch upon the land of the Erie Railway.

17. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

Report of Board.

(Dated January 11, 1915.)

REPORT.

Submitted November 4th, 1914.

E. F. Merrey and R. B. Lewis, for the City of Paterson.

H. A. Taylor, G. S. Hobart and D. E. Minard, for the Erie Railroad Company.

William S. Lewis, for Paterson & Ramapo Railroad and President and Directors of Paterson and Hudson River Railroad.

L. D. H. Gilmour, for Public Service Railway Company, Public Service Gas Company and Public Service Electric Company.

Humphreys & Summer, for Passaic Water Company.

John L. Swayze, for New York Telephone Company.

George H. Pearsons, for Western Union Telegraph Company.

William B. Gourley, for numerous switch and property owners.

W. R. Hudson, for D. Fullerton & Company and Swift Company.

Frank H. Sommer, for the Commission.

The Board of Finance of the City of Paterson (being the body having charge of municipal finances) filed its amended petition on September 15th, 1913, for the elimination of certain grade crossings on the main line of the Erie Railroad, in the City of Paterson, beginning with Madison avenue on the east and ending with River and Putnam streets on the west. In all, fifteen grade crossings are sought to be eliminated, to wit:

A. Madison avenue.
B. Clay and Straight streets (two crossings).
C. Cedar street (Taylor street substituted).
D. Market street and Park avenue (one crossing).
E. Ellison street.
F. Van Houten street.
G. Broadway.
H. Fair street.
I. Hamilton avenue.
J. Lafayette street.
K. Franklin street (Montgomery street substituted).
L. Keen street.
M. Warren street.
N. River and Putnam streets (one crossing).

The petition was filed under the fifth section of a supplement to the "Public Utilities Act," approved March 12th, 1913, P. L. 1913, p. 91, known as the "Fielder Grade Crossing Act." This provides, *inter alia,* that

> "the board or body having charge of the finances of any municipality wherein any such crossing exists, may present to the Board of Public Utility Commissioners in writing a petition setting forth the facts upon which relief under this act is sought * * * whereupon said Board of Public Utility Commissioners shall fix a time and place

for a hearing before it and shall give such notice thereof as it shall deem reasonable to the municipality and corporations, co-partnership or individuals interested therein and after such hearing, shall determine or order what, if any, alterations to or changes in or connected with such crossing and public highway shall be made."

Notice, as required by the statute, was given to the municipality and corporations, co-partnerships and individuals interested and likely to be affected by any order requiring changes or alterations at the crossings mentioned in said petition. Answers were filed by the railroad companies, some of the other utilities, switch owners, and others who might be affected.

The first section of the Act provides:

"Whenever a public highway and a railroad cross each other at the same level and it shall appear to the Board that such crossing is dangerous to public safety, or that the public travel on such highway is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad, within such time as said Board may fix, to alter such crossing according to plans to be approved by said Board, by substituting therefor a crossing not at the grade of such public highway either by carrying such public highway under or over such railroad, or by reconstructing such railroad under or over such public highway, or by vacating, relocating or changing the lines, width, direction or location of such highway and the opening of a new highway in the place of the one ordered vacated."

The answers of the railroad companies deny that the conditions as to danger and impediment to traffic contemplated by the statute exist at the crossings in question, and deny the power of the Board to act because it is claimed the statute is invalid and, further,

allege that the city has not done the things required to confer jurisdiction upon the Board.

Generally speaking, the other answers raise similar questions or submit the questions involved for the determination of the Board.

Inasmuch as the answer, and amendments to the answer, of the Erie Railroad Company, upon which company the heaviest burden would fall, raise most of the questions, it will be sufficient for present purposes to deal with some of the matters contained in its answer, and the amendments thereto.

Section 13 of the answer of the Erie Railroad Company avers that the petition is not filed under the act of 1913, or under the rules of the Board, and Section 20 raises the question that the petition is faulty because more than one crossing is embraced in the prayer of the petition.

No specific objection is made, but the claim is general that the petition is not filed under the act of 1913.

Obviously, the petition was filed under that act. The proper municipal body filed the petition, and it was intended to comply with the provisions of that act. There is no statutory requirement as to the form of the petition. The statute merely requires that the petition shall "set forth the facts upon which relief under this Act is sought."

The petition and amendments are quite full, and in the judgment of the Board, are a compliance with the statute, which is taken to mean that the petition must sufficiently set forth the facts relied upon as to put interested parties on notice of what the municipality intends to show to base its claim for relief under the act. The petition describes the physical conditions at each crossing as to protection, obstructions, volume of travel, proximity to other highways, property of other utilities likely to be affected, extent to which travel is impeded, and other facts concerning such crossings. The petition is, therefore, held to be a

compliance with the statute and sufficient to confer jurisdiction upon the Board.

The grade crossing act is designed to provide a means whereby railroad grade crossings that are found to be dangerous or which unduly impede travel may be eliminated. It is true that the phrase "a public highway" is used in the first section of the act, but certainly the Legislature never intended thereby to limit the filing of a petition to a single crossing, in vases where the elimination of one crossing would be impracticable and inadvisable. In a case like the present, to take such view would be to practically deny all relief, for the reason that separation of the grades of many of the crossings involved in this proceeding cannot be satisfactorily accomplished without affecting other crossings. It may be that each crossing must be dealt with and found to require change or alteration, but the whole legislative scheme, as found in the act, negatives the idea that each crossing must be dealt with independently of, and not in connection with, other crossings in the same locality and upon the same line of railroad. The Board is of opinion that a separate proceeding is not required by the act for each crossing, and that more than one crossing may be embraced in a petition.

Many objections are urged to the constitutionality of the act. These are questions which must be determined by the courts. It is not the function of this Board to pass upon the constitutionality of legislative acts. Whenever this Board is directed by statute to act upon finding a state of facts to exist, its duty is to follow such mandate, leaving to the courts determination as to the validity of the statute.

Inasmuch as some of the questions raised by respondents have heretofore been dealt with by this Board, and others are now in the Courts, a lengthy discussion of such questions at this time would not appear to be necessary or profitable. It is sufficient

that the rights of all parties to have such questions passed upon by a proper tribunal are preserved to them.

Having concluded that the petition is properly filed under the act, and that the Board is required to act whenever the conditions specified in the statute are found to exist, the first question of fact to be determined by this Board seems to be whether the crossings in question appear to the Board to be, in the language of the act, "dangerous to public safety, or that the public travel on such highway is impeded thereby."

Seventeen streets in the built-up section of the City of Paterson which now cross the railroad at grade are involved in this proceeding. At each of these crossings some form of protection in provided. At twelve, gates are operated continuously, namely, Clay street, Straight street, Cedar street, Market street, Park avenue, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Warren street, River and Putnam streets. At two, Market street-Park avenue, and Broadway, there is an additional man on the ground. At three, Madison avenue, Cedar street side tracks and yard, and Franklin street, gates are operated only during the day time; at Madison avenue and Keen street, there is bell protection when the gates are not operated at night; at Franklin street, there is no protection when the gates are not operated at night. At Keen street, there is a flagman on the ground between 6.30 A. M. and 6.30 P. M., and there is bell protection during the balance of the twenty-four hours.

Testimony was produced to show what the physical conditions are at each of the crossings in question. From all the testimony, it appears that the crossings in question are dangerous to safety; that a number of accidents have occurred at many of the crossings, resulting in injury and death; and that a high degree of protection is necessary in order to avoid more fre-

quent accidents. For such protection the railroad company showed (Ex. R. 12) that it expends $14,736,-87 for employees and $2,101.59 for costs of maintenance each year. A statement of such expense is appended hereto and marked Schedule "A." This sum is the interest at 5% upon approximately $350,000. Notwithstanding the measures adopted to prevent accidents, the testimony shows that they have occurred at some of these crossings within the year 1913 (p. 234). That some of the crossings are regarded as especially dangerous is further evidenced by the fact that at two of them two men are constantly on duty, one operating gates and one on the crossing.

Paterson is one of the busiest and most populous cities in the State. Many thousands use the crossings every day. It is shown that there is an average of 210 train movements over a single crossing in eighteen hours. Schedule "B," attached to this report contains a statement based upon testimony as to the view at each crossing. The terms "Good," "Fair," "Poor" and "Bad" as used in this schedule, indicate the judgment of the Board as to the view obtainable at each crossing, from a point about 35 feet from the nearest rail, and may generally be defined as follows:

Good—A clear view; anything beyond 1,000 feet.

Fair—From 1,000 feet to 500 feet.

Poor—From 500 feet to 100 feet, and

Bad—Below 100 feet.

The statute provides that whenever the Board finds that public travel on the highway is impeded by the presence of the railroad, the Board may order a change of alteration of the grade.

Counts were made by the petitioner, as shown in the petition, by the Board of Trade, by the Street Commissioners of Paterson and by the Erie Railroad. Such testimony has been charted and is shown in Schedule "B."

While the several counts vary, having been made at different times and different seasons of the year, they indicate that from one thousand to thirty thousand pedestrians pass over each of the crossings in eighteen hours, and that hundreds of vehicles use each of the crossings during the same period of time. On October 4th, 1913 (Ex. p. 4), it is shown that 34,517 pedestrians, 593 trolley cars, 1,901 horse-drawn vehicles, 1,700 automobiles, and 827 bicycles passed over Market street crossing between 5 A. M. and 11 P. M. During the same period of time, the gates were lowered 207 times, and 104 passenger trains, 13 freight trains and 47 drill engines passed over the crossing.

It was testified that the gates were down from 30 seconds to three to four minutes on each occasion (pp. 95, 209). Mr. Hattersley testified (p. 95) that he took observations of the time gates were down on Market street for a period of 4½ hours and found the average to be fifty-three seconds. Assuming this to be a fair average, it appears that traffic was blocked on the fourth of October, at Market street, for something over three hours out of the eighteen hours covered by the count, or about one-sixth of the time. The Erie Railroad Company's testimony showed that an average of about 103 trains passed over all of the crossings during eighteen hours. Assuming the same average time of fifty-three seconds consumed in lowering and raising gates, we find the streets blocked for a period of one hour and thirty-one minutes out of eighteen hours, or that traffic is interfered with about one-twelfth of the entire time.

From the foregoing, it will be readily seen that public travel is seriously impeded at all of these crossings.

The Board, therefore, finds and determines that the crossing of each of the streets involved in this proceeding and the railroad tracks of Erie Railroad Company at the same level appear to this Board to be dangerous

to public safety, and that public travel on such highways is impeded thereby.

Having determined that at each of the crossings involved a condition exists such as was designed to be remedied by the "Grade Crossing Act," the question arises as to whether it is practicable and feasible to change or alter such crossings.

While the Railroad Company, in its answer, protested against the inclusion of more than one crossing in the petition, the consideration of the entire subject is simplified by the acquiesence of all parties to the proceeding, that all of the crossings mentioned in the petition must be considered in any plan of elimination. From the beginning to the conclusion of the hearings, there was no intimation from anyone that a change at a particular crossing only should be considered. We will, therefore, deal with the proceeding as involving the adoption of one comprehensive plan or scheme covering all of the crossings. It was never questioned but that a general plan for the separation of grades at the crossings was practicable. Differences of opinion between engineers for the municipality and the utilities affected occurred as to some details, but the chief objection raised was to the expense.

The estimates of cost varied from that of the city of $2,587,024.95 to that of the Erie Railroad of $3,384,084.88, if the work was all done at one time. The city's estimate did not include certain elements of cost included in the railroad's estimate.

In considering this matter the Board has been mindful of the claim of the Erie Railroad Company that it is not now financially able to make the expenditure necessary to do the work. The testimony discloses that the Company contemplates spending larger sums than would be required for this purpose, in doing work that, in the judgment of the Board, is not so immediately necessary. It seems to the Board that some of the money intended to be used for other purposes might more appropriately be used in this work,

should it be found necessary to divert it. Nor does the testimony satisfy us that the Company will not be able to secure the necessary funds:

Having reached the conclusion that the crossings are such that the grades should be changed in accordance with the prayer of the petition, as provided by the statute, it now remains to consider plans to accomplish the purpose.

Plans were submitted by the City of Paterson, showing how the grades of the streets and railroad can be altered.

In the territory covered by the streets in question are three streets which at the present time pass under the railroad, namely, Essex street, Governor street and Fulton street.

The plans of the city provide for substituting for Cedar street the opening of a new street under the railroad one block east at Taylor street, and for substituting for the present crossing at Franklin street a new undergrade crossing at Montgomery street.

The plans submitted by the city extend the territory to be considered for elimination westward of River street in two schemes—the first one, known as Plan No. 2, is but the harmonizing of the existing grade with the elimination scheme outlined in the petition, and leaves the situation at Sixth avenue practically as it is, and the crossing at Fifth avenue at grade.

The second scheme, known as Plan No. 1, contemplates a new grade line from a point west of the proposed crossing of River street, running down to the present grade line at a point west of the Passaic river near the present overhead crossing of the Susquehanna railroad. This scheme contemplates the elimination of the grade crossing at Fifth avenue and the creation of a new undergrade crossing at Sixth avenue. In this scheme the Passaic river bridge would have to be raised 6.9 feet. The part of the city's plan known as Plan No. 1 is not included in the petition.

Of the existing undergrade crossings, the Essex street bridge will have to be renewed at a higher elevation, because the street is to be widened. The Governor street and Fulton street bridges would be raised to accommodate the new line. The heaviest grade on the existing line through the city is .78%, and on the line as proposed by the city a .95% grade, which occurs on the run-off west of the River street bridge down to grade at Fifth avenue according to Plan No. 2. Plan No. 1 changes this particular part of the grade to .55%, leaving the maximum grade, .78%, from Lafayette street to Governor street. The proposed grades are therefore well below the ruling grade of the New York division, which is a little over 1% (p. 422). 1.00% grades are used temporarily on the division of work into sections proposed by the railroad company.

The City of Paterson submitted a profile (Exhibit P-2, p. 85) dated March, 1908, showing a scheme for eliminating the Market street and River street group of streets in separate sections; Madison avenue, Fifth avenue, Clay and Straight streets, and Main street on the Newark branch, were also included in the elimination. On this plan permanent approach grades run as high as 2%. James C. Patterson, for the Erie Railroad, comments on this as not being a "plan" but only a "scheme" (page 421) and indicates the objections to or defects of the plan as follows (p. 422):

First, the profile shows a proposed 2% east-bound grade approximately 2,000 feet long; 500 feet of this grade would be equivalent to 2.14% since it is located on a four degree curve, or what appears to be a four degree curve from the map. As .035 per degree is allowed for the resistance of the curve, .14% which added makes 2.14% which a portion of this grade would be equivalent to.

"Q What have you to say about the practicability of that from a railroad proposition?

"A I should say the grade was prohibitive.

"Q What is the ruling grade now of the New York division?

"A The ruling grade of the New York division at the present is a little over 1%.

"Q When you say the ruling grade, what do you mean?

"A The ruling grade is the one that limits the tonnage of a division.

"Q What limits this division?

"A The limits of the New York division are Port Jervis and Jersey City."

There are various other utilities affected by the proposed changes, the principal one being the Public Service Railway Company whose lines would be interfered with by the city's plan at Madison avenue, Straight and Clay streets, Park avenue and Market street, Broadway and River street. Detailed estimates of the cost of making changes at these points have been placed in evidence, the result of which are tabulated in parallel columns below:

PATERSON ESTIMATES—STREET WORK ONLY.

	P. S. Ry.	City.	Erie R. R.
Park Ave. and Market St.....	$18,816.12	$10,899.90	$11,955.40
Madison St. and Railway Ave.	14,621.33	5,223.79	7,606.31
Straight and Clay Sts.....	5,351.52	5,926.80	6,196.20
Broadway	14,830.80	10,156.52	10,825.18
River Street	8,659.00	7,797.79	8,320.42
	$62,278.77	$40,004.80	$44,903.51
Excess P. S. Ry. over others..	.....	22,273.97	17,375.26
	$62,278.77	$62,278.77	$62,278.77

Damages to other utilities affected are included in the estimates, details of which are in evidence. Some of these other utilities will be affected very little. Estimates have been made by the city covering the entire work, which are shown in detail in a pamphlet entitled "Report on Proposed Elimination of Grade Crossings, Along the Erie Railroad in Paterson, N. J., H. J. Harder, City Engineer," and this is dated May 21st, 1914. It is summarized in Exhibit P-48. The

detailed estimates cover items for changes to all the utilities affected.

A comparative table is annexed (Schedule "C") considering the entire work to be done at one time, showing the totals of the estimates made by the city and Erie Railroad on the same basis, and one made by the Erie Railroad including the various items omitted by the city. They are arranged in parallel columns for convenience, showing estimates for the complete plan and three suggested modifications—(1) Leaving Fifth avenue at present grade; that is, following city's Plan No. 2; (2) Leaving both Fifth and Madison avenues at the present grade; that is, following city's Plan No. 2 without Section D; (3) Leaving Madison avenue at present grade, but raising Fifth avenue; that is, following city's Plan No. 1 without Section D.

It being obvious that the complete plan must be considered, Mr. Brameld, the engineer of grade crossings of the Erie Railroad Company, at the hearing of July 9th, 1914 (p. 712), suggested the division of the work into five sections. These sections were designated by the letters from A to E, inclusive, in the order of their assumed importance, and in the order in which it was believed they could be taken up so as to give the relief sought at the earliest possible time.

Section A covers the district from a point east of Essex street, and provides for the elimination of Market street, Ellison street, Van Houten street, Broadway, Fair street, and Hamilton avenue. It would leave Governor and Fulton streets open as they now are. It would separate the grades at Lafayette street, open a new street, Montgomery street, and permanently close Franklin street, and temporarily close Keen street. Warren street would be temporarily maintained as a grade crossing by raising it about three feet.

Section B provides for raising the grade from Hamilton avenue to Fifth avenue, at the elevation shown

on the city's plan. Included in this section would be the elimination of crossings of Keen street, Warren street and River street, using the city's Plan No. 2 west of River street to grade at Fifth avenue.

Section C provides for eliminating crossings at Straight street and Clay street, providing an undergrade crossing at Taylor street, in place of Cedar street, which would be closed, and widening Essex street, as proposed by the city.

Section D provides for the elimination of the crossing of Madison avenue, in accordance with the city's plan.

Section E provides for the elimination of the crossing of Fifth avenue, the opening undergrade of Sixth avenue, according to the city's Plan No. 1.

Mr. Brameld, for the Erie Company, testified (pp. 714 and 715) as follows:

"Q Now, Mr. Brameld, have you given sufficient study to this subject to be able to state whether or not this division of the whole work for these sections would be practicable and possible without interfering substantially with the city's plan?

"A Yes, sir. The only change in the city's plan would be the temporary closing of Keen street, and they have sufficient access to Keen street by using Lafayette street, and the raising of Warren street temporarily three feet. It does change the elimination of Lafayette street by depressing the street probably a foot and a half more, but the railroad is on a knoll there, and it means just cutting the knoll down one and a half feet.

"Q It disposes of the same crossings as the city's plan proposes to eliminate?

"A It is the city's plan.

"Q With regard to the sidings does it have substantially the same effect on the sidings as the city's plan?

"A Yes, temporarily they would have to make some slight changes to meet the temporary grade, but eventually the situation is the same as proposed by the city.

"Q Now, have you prepared an estimate of the cost of each of these sections?

"A I have.

"Q Let me ask you first does your total of the entire work of the five sections amount to any more than the estimate you made of doing the entire work?

"A Yes, sir, due to the necessity of duplication of trestle, raising track and ballasting and surfacing track.

"About how much more would it amount to?

A Roughly about $115,000 to $120,000."

Objection was made by the Erie Railroad Company to the scheme proposed by the city for eliminating Madison avenue, known as "Section D," because it involves a heavy rock cut, and did not provide width enough for the tracks with the necessary drainage through the cut. An alternative plan, Exhibit R-105, was submitted, showing the railroad grade for this entire section to remain as it is at the present time, and carrying Madison avenue over the railroad track with a bridge having the standard clearance of 22 feet, located on the westerly side of Madison avenue, in such manner as not to disturb the grade of the streets around the crossing; thus Madison avenue, East Railway avenue and California avenue, the first two of which carry tracks of the Public Service Railway Company, would not have to be changed. The estimate for this substitution by the Erie Company effects a saving of $192,133.92 in the cost of "Section D."

This plan provides for grade approaches of 5% and gives the standard 22 feet clearance over the railroad, and effects such a large saving that it commends itself

to the Board. The Board will, therefore, adopt the plan of the Erie Railroad Company, known as Exhibit R-105, for the elimination of Madison avenue, instead of "Section D" of the plan submitted by the city.

The proposal of Erie Railroad Company, Exhibits R-106 and R-107, for the elimination of Keen, Warren and River streets, does not commend itself to the Board and is not adopted. It appears to the Board that the highway grades on approaches to Keen street bridge and on the approach to the viaduct crossing at River street are excessive, and that the right angled turn on the viaduct which would carry the traffic of a highway as important as River street is dangerous. In addition the platforms provided in this plan are shorter than they should be, according to the claim of the Railroad Company (p. 699). The objections more than balance the possible saving in cost.

A further estimate is made by the Erie Railroad Company (Exhibit R-108, p. 744) which provides for the elimination of Fifth and Sixth avenues, on the city's plan, but with the railroad grades changed so as to allow River street to be carried over the railroad according to plan (Exhibit R-107).

The Board having declined to adopt the suggestion contained in Exhibit R-107, the proposal contained in Exhibit R-108 falls with it.

The suggestions of Mr. Falconer, engineer for Erie Railroad Company, as to using a standard floor at some of the bridges, and placing columns in River and Market streets are adopted by the Board as being more economical and, at the same time, rendering possible a reasonable solution of a difficult problem, that otherwise would seem well nigh impossible.

The request for the consolidation of Straight and Clay streets does not appeal to the Board. The general lay-out of the ground in such that, in the judgment of the Board, both streets should be maintained at their present location. No plan covering such con-

solidation was submitted, and it does not seem desirable under present conditions.

Other modifications proposed by the Erie Railroad Company and by Public Service Railway Company, were as to matter of detail only. In all matters of this kind some little adjustments for such matters as arranging vertical curves, slight alterations in grade, clearances, etc., are to be expected and can readily be met when the plans are advanced to a stage of accurate detail. The plans submitted, as modified, show that the scheme for elevation proposed is entirely feasible.

The results of the various estimates for dividing the work into sections, and the various modifications thereunder, are shown in tabular form in "Section D" attached hereto.

In addition to the utilities mentioned and others whose property will be affected, there are sixty-one private siding owners served by sixty-eight railroad sidings. Testimony was taken with respect to many of these sidings, and as to some no testimony was taken.

With Section D modified according to the Erie Railroad plan, no switch owners east of Newark Branch Junction would be affected, neither would the Newark branch be affected. It appears, from present plans, five industries would be left without any switch connections, and two industries would be moved to a new location with switching facilities equal to the ones they now enjoy. Alterations will have to be made in connections to 31 industries by Plan No. 1 and 26 by Plan No. 2, some apparently resulting advantageously and others not so much to their advantage; and 20 on Plan No. 1 and 25 on Plan No. 2 will have no change in their present accommodations. At present one has no siding.

It is unfortunate that a few interests served by sidings along the railroad may be required to suffer some inconvenience and expense, but when the magnitude

and importance of the work is considered, it appears that the inconvenience to the property and switch owners is reduced to a minimum.

If the city's plan is adopted, with Section D modified according to the Erie plan, the total cost based on the Erie Railroad estimate would be for Plan No. 1, $3,320,708.90; and for Plan No. 2, $2,937,858.44, which would be modified by including the Public Service Railway's estimates for street work to $3,331,069.14 for Plan No. 1 and $2,948,218.68 for Plan No. 2. A division of the work would be more expensive than to do the work at one time, but would result in an advantage to the city in that traffic in only part of the territory involved would be interfered with at one time. This method accords with the Railroad Company's suggestion.

Upon consideration of all questions involved, the Board is of opinion that the work of elimination should be ordered at the earliest practicable time; that the plan to be approved should be that generally outlined in Plan No. 2 of the City of Paterson, as modified in the respect hereinbefore referred to, and that the work should be permitted to be done in sections as requested, and in the order suggested by Erie Railroad Company.

There remains but a single question to be considered, namely, the time within which work should be commenced and completed. To secure the views of parties interested, the Board hereby fixes Friday, February 5th, at eleven A. M., at Newark, to hear discussion upon the questions of the times to be provided in the order within which the work included in each section and in its entirety, is to be commenced and completed. Meantime, and sufficiently in advance of such hearing to permit study, copies of this report and the plan and profile, embodying these conclusions, will be made available to the parties hereto.

After said hearing, an order will issue in accordance with the conclusions reached.

Dated, January 11, 1915.

"SCHEDULE A."

ERIE RAILROAD COMPANY.

Statement showing kind of protection.

Streets at Grade.	No. Men.	Kind of Protection.	Cost of Protection Per Annum.	Cost of Maintenance Per Annum.
Madison Avenue	1	gates 6:30 A. M.— 7:30 P. M. $1.25 Bell also	$ 456.25	$ 177.25
Clay and Straight Streets	1	gates 6:00 A. M.— 6:00 P. M. 1.00		
	1	" 6:00 P. M.— 6:00 A. M. 1.00		
(Straight Street)	1	" 6:00 A. M.— 6:00 P. M. 1.25		
	1	" 6:00 P. M.— 6:00 A. M. 1.25	1,642.50	222.50
Cedar Street	1	" 6:00 A. M.— 6:00 P. M. 1.25		
	1	" 6:00 P. M.— 6:00 A. M. 1.25		
(Side Tracks and Yard)	1	" 6:00 A. M.— 6:00 P. M. 1.25	1,368.75	150.62
Market Street and Park Avenue	1	" 6:00 A. M.— 6:00 P. M. 1.50		
	1	" 6:00 P. M.— 6:00 A. M. 1.50		
	1	ground 6:00 A. M.— 6:00 P. M. 1.25		
	1	" 6:00 P. M.—11:30 P. M. .75	1,825.00	150.62
Ellison Street	1	gates 6:00 A. M.— 6:00 P. M. 1.25		
	1	" 6:00 P. M.— 6:00 A. M. 1.25	912.50	150.62
Van Houten Street	1	" 6:00 A. M.— 6:00 P. M. 1.25		
	1	" 6:00 P. M.— 6:00 A. M. 1.25		

"SCHEDULE A."—Continued.

Broadway	1	gates	6:00 A. M.— 6:00 P. M.	$1.25		
	1	"	6:00 P. M.— 6:00 A. M.	$1.25	$912.50	$131.25
Broadway (continued)	1	ground	6:00 A. M.— 6:00 P. M.	1.25		
	1	"	6:00 P. M.—11:30 P. M.	.62½	1,596.87	150.62
Fair Street	1	gates	6:00 A. M.— 6:00 P. M.	1.25		
	1	"	6:00 P. M.— 6:00 A. M.	1.25	912.50	120.30
Hamilton Avenue	1	"	6:00 A. M.— 6:00 P. M.	1.25		
	1	"	6:00 P. M.— 6:00 A. M.	1.25	912.50	150.62
Lafayette Street	1	"	6:00 A. M.— 6:00 P. M.	1.25		
	1	"	6:00 P. M.— 6:00 A. M.	1.25	912.50	139.67
Franklin Street	1	"	6:00 A. M.— 7:00 P. M.	1.00		
	Balance of day—no protection,				365.00	120.30
Keen Street	1	ground	6:30 A. M.— 6:30 P. M.	1.00	365.00	166.30
	Bell balance of time.					
Warren Street	1	gates	6:00 A. M.— 6:00 P. M.	1.00		
	1	"	6:00 P. M.— 6:00 A. M.	1.00	730.00	139.67
River and Putnam Streets	1	"	6:00 A. M.— 6:00 P. M.	1.25		
	1	"	6:00 P. M.— 6:00 A. M.	1.25		
(South Side Gates)	1	"	6:00 A. M.— 6:00 P. M.	1.25		
	1	"	6:00 P. M.— 6:00 A. M.	1.25	1,825.00	131.25
					$14,736.87	$2,101.59

STREETS CARRIED UNDER.

Essex Street .....Under grade.
Governor Street ..... " "
Fulton Street ..... " "
Straight Street ..... " "

SCHEDULE "B."

		VEHICLES.						TRAIN MOVEMENTS.				REMARKS.	VIEWS. (operating direction).
		Pedestrian.	Horse Drawn.	Auto.	Bicycles.	Motorcycles.	Gates Down.	Passenger.	Freight.	Drill Engs.	Street Ry. Cars.		
MADISON AVE.	Petition	2200 to 2500	500	250				73	Large No. of trains.				From south side, poor.
	Board of Trade												From north side, good.
	Street Comm'rs	2148	481	236				73					
	Erie R.R.	1168	429	151	34	5	76	69	12	17		Average of 2 days.	
CLAY ST.	Petition	2500 to 3000	250	90				103	Large No. of trains.				
	Board of Trade	5691	871	218	122		194	104	12	98		Average of 2 days.	From south side, poor.
	Street Comm'rs	3244	314	51				159					From north side, poor.
	Erie R. R.	2945	421	66	32	4	161	99	11	98		Average of 3 days.	
STRAIGHT ST.	Petition											Straight St., included with Clay St.	
	Board of Trade												From south side, fair.
	Street Comm'rs	2488	222	90				153					From north side, fair.
	Erie R. R.	1955	318	105	22	4	161	101	11	98		Average of 3 days.	
CEDAR ST.	Petition	3200 to 3500	300	25				103	Much switching.				
	Board of Trade												From south side, fair.
	Street Comm'rs	3151	251	16				68					From north side, bad.
	Erie R. R.	2332	365	24	7	1	163	98	6	84		Average of 2 days.	
MARKET ST. (incl. Park Ave.)	Petition	28000 to 35000	2000	1100				103			1000		
	Board of Trade	28812	1795	1487	749		198	104	14	44	582	Average of 3 days.	From south side, poor.
	Street Comm'rs	27136	1847	1051				73					From north side, fair.
	Erie R. R.	30932	1573	1374	429	51	188	103	13	69	592	Average of 3 days.	
ELLISON ST.	Petition	4000 to 5000	600 to 700	50				103					
	Board of Trade												From south side, bad.
	Street Comm'rs	3822	524	22				115					From north side, bad.
	Erie R. R.	4121	617	109	31		120	103	8	21		Average of 2 days.	
VAN HOUTEN ST.	Petition	4000 to 5000	500	300				103					
	Board of Trade												From south side, bad.
	Street Comm'rs	3608	450	273				97					From north side, bad.
	Erie R. R.	2679	400	366	110	8	120	103	9	9		Average of 2 days.	

SCHEDULE "B."—Continued.

SCHEDULE "B."—Continued.

	Petition	12000 to 15000	400 to 500	300 to 400				103				Automobile travel heavier on Saturdays and Sundays than here shown.	From south side, poor.
BROADWAY	Board of Trade	8278	380	518	144		133	104	12	13	602	Average of 2 days.	From north side, poor.
	Street Comm'rs	10484	345	288				⌐——97——⌐					
	Erie R. R.	7479	391	332	75	8	122	99	10	17	590	Average of 3 days.	
	Petition	2000 to 2500	200 to 250	50 to 100				103					From south side, poor.
FAIR ST.	Board of Trade												From north side, poor.
	Street Comm'rs	1366	161	47				⌐——88——⌐					
	Erie R. R.	1031	138	37	37	1	116	103	8	10		Average of 2 days.	
	Petition	4000 to 5000	500 to 600	150 to 200				103					From south side, poor.
HAMILTON AVE.	Board of Trade												From north side, fair.
	Street Comm'rs	3258	433	108				⌐——90——⌐					
	Erie R. R.	2401	272	160	67	4	117	100	10	11		Average of 2 days.	
	Petition	5000 to 6000	400 to 500	50				103					From south side, fair.
LAFAYETTE ST.	Board of Trade												From north side, poor.
	Street Comm'rs	4611	327	35				⌐——86——⌐					
	Erie R. R.	2277	309	52	14	2	119	106	10	21		Average of 2 days.	
	Petition	1500 to 2000	100 to 200	25				103	Switching frequent.				From south side, poor.
FRANKLIN ST.	Board of Trade												From north side, poor.
	Street Comm'rs	1188	91	7				⌐——120——⌐					
	Erie R. R.	1100	76	8	10	1	90	98	9	17		Average of 2 days.	
	Petition	2000 to 3000	200 to 300	50 to 100				103	Switching very great.				From south side, bad.
KEEN ST.	Board of Trade												From north side, poor.
	Street Comm'rs	1367	131	28				⌐——113——⌐					
	Erie R. R.	1238	141	23	21			99	10	22		Average of 2 days.	
	Petition	2500	200	50 to 100				103					From south side, poor.
WARREN ST.	Board of Trade												From north side, fair.
	Street Comm'rs	1520	115	48				⌐——110——⌐					
	Erie R. R.	1285	162	25	30	1	125	98	10	23		Average of 2 days.	
	Petition	12000 to 15000	800 to 1000	300 to 400				103			230	Average of 3 days.	River Street, both sides fair.
RIVER ST. (incl. Putnam)	Board of Trade	7579	979	352	306		136	105	12	35			Putnam Street, both sides poor.
	Street Comm'rs	10913	756	279				⌐——108——⌐			192	Average of 3 days.	
	Erie R. R.	5373	756	332	148	28	121	97	8	21			

NOTE.—The count given under **"Petition"** is taken for the amended petition.

Board of Trade's count is shown on Exhibits P-4, P-5 and P-6, taken Oct. 4th, 6th and 7th, 1913. Time covered from 5 A. M. to 11 P. M.

Street Commissioner's count is shown on Exhibits P-33, P-34, P-35 and P-36, taken in March and April, 1914. Time covered 6 A. M. to 7 P. M.

Erie R. R.'s count is shown on Exhibit R-25, made in November and December, 1913, from 5 A. M. to 11 P. M.

SCHEDULE "C."

PATERSON ESTIMATES.

Considering Entire Work Done at One Time.

	By City, Ex. P-48, Page 675. Not including property damages nor operating costs due to interference with regular schedules.	By Erie R. R., Ex. R-101, Page 710. Not including property damages nor operating costs due to interference with regular schedules nor rearranging industries off right of way.	By Erie R. R., Ex. 102, Page 711. Total cost, including various items not in city's estimate.	Revision, if excess claimed by Public Service Railway Co. is included in Erie R. R. Company's estimate of total cost. Exhibit 102.
Complete Plan....	$2,587,024.95	$2,969,037.88	$3,384,084.88	$3,401,460.14
Plan leaving Fifth Avenue at present grade	2,351,277.35	2,702,268.42	3,072,690.42	3,090,065.68
Plan leaving both Fifth Avenue and Madison Avenue at grade	2,038,024.85	2,426,659.75	2,776,081.75	2,786,441.99
Plan leaving Madison Avenue at grade but raising at Fifth Avenue	2,273,772.45	2,693,429.21	3,087,476.21	3,104,851.47

SCHEDULE "D."

PATERSON ESTIMATES.

Division of Work Into Five Sections, A, B, C, D and E.

	By Erie R. R. Ex. R-103, Page 716. Division of work into sections. Complete estimate.	By Erie R. R. Ex. R-104, Page 728. Referring to Plan Ex. R-105, Page 729, for carrying Madison Ave. over present grade of Erie R. R. at 22 ft. above tracks.	By Erie R. R. Ex. R-106, Page 734. Referring to Plan R-107, Page 735, for the elimination of Keen, Warren and River Sts., after section A is built. Provides for under grade crossing at Keen St., Pedestrian Subway at Warren St., overhead crossing north of River St. and 20 ft. driveway between Keen and River Streets. Complete.	By Erie R. R. Ex. 108, Page 744. Fifth and Sixth Ave. elimination on city's plan as far as streets are affected; but with railroad grades changed to allow River St. carried over railroad as per plan Ex. R-107.	By Erie R. R. Ex. 109, Page 744. Savings in favor of railroad company's plan by substituting Estimate R-104, R-106 and R-108 for corresponding parts of Ex. R-103.
SECTION A.					
Market to Lafayette. 1% Grade Essex to Market. 1% Grade Hamilton to Keen. Closing of Franklin and Keen temporarily	$1,666,037.03				
SECTION B.					
Eliminating Keen, Warren and River Streets	491,366.96		$339,800.96		$151,566.00
SECTION C.					
Straight to Market Street	652,979.70				
SECTION D.					
Eliminating Madison Avenue	319,608.67	$127,474.75			192,133.92
SECTION E.					
Eliminating Fifth Avenue after River Street is eliminated	382,850.46			$350,247.97	32,602.49
TOTAL.					
Sections A to E.	$3,512,842.82				$376,302.41

Petition of Respondent, Erie Railroad Co., for Further Hearing.

(Filed February 5, 1915.)

To the Honorable, The Board of Public Utility Commissioners of the State of New Jersey:

Erie Railroad Company, one of the respondents in the above matter, respectively shows as follows:

1. On the 11th day of January, 1915, this Board filed its report herein, in which it stated:

(a) That the crossing of each of the streets involved in this proceeding, and the railroad tracks of this respondent at the same level, appeared to the Board to be dangerous to public safety, and that public travel on such highways was impeded thereby.

(b) That said crossings are such that the grades should be changed in accordance with the prayer of the petition of the City of Paterson, as provided by the statute;

(c) That it would deal with the proceeding as involving the adoption of one comprehensive plan or scheme covering all of said crossings;

(d) That this respondent contemplates spending larger sums than would be required for the purpose of eliminating the crossings in question in making other improvements which, in the judgment of the Board, are not considered so immediately necessary, and that some of the money intended to be used for such other improvements might be more appropriately used in this work, should it be found necessary to divert it.

(e) That the testimony offered by this respondent for the purpose of showing its financial ability to pay the cost of eliminating said crossings (if said cost should be imposed upon it), did not satisfy said Board that his respondent would not be able to secure the necessary funds:

(f) That the work of elimination of said grade crossings should be ordered at the earliest practicable

time, and that the plan to be approved should be that generally outlined in what is described in the preceding as Plan No. 2 of the City of Paterson, with certain modifications thereof, and that the work should be permitted to be done in sections:

(g) That the question of the time within which work should be commenced and completed would be heard by the Board on February 5th, 1915.

2. Respondent, Erie Railroad Company, represents that it infers from the said report that it is the intention of this Board when it issues its order upon said report, to direct that the expense of the elimination of said grade crossings shall be paid by this respondent, except such proportion of the expense as may be legally chargeable to Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company, Western Union Telegraph Company, the City of Paterson; and also except such proportion of said expense as may be legally chargeable to the owners of adjacent sidings or other property.

3. Respondent therefore respectfully calls the attention of the Board to the fact that its answer and amended answer, and undisputed testimony offered on its behalf at the hearings, show that this respondent is not the owner of the right of way upon which said railroad tracks are constructed, and over which this respondent runs certain trains, but that the fee of the same, and the franchise to operate a railroad thereon, are, and for many years past have been, owned by two other companies, part of said right of way and franchises being owned by a corporation organized under the laws of the State of New Jersey, known as the President and Board of Directors of the Paterson and Hudson River Railroad Company,

and part thereof being owned by a corporation organized under the laws of the State of New Jersey, known as Paterson and Ramapo Railroad Company; the testimony shows that this respondent runs trains over said right of way of said companies by virtue of certain leases made under date of September 9, 1852, by said President and Board of Directors of the Paterson and Hudson River Railroad Company, and said Paterson and Romapo Railroad Company, to a corporation known as Union Railroad Company, and that this respondent has succeeded to the rights of said Union Railroad Company in said leased property and franchises; the testimony further shows that this respondent does not own or control the fee of any of the right of way or property where said grade crossings are proposed to be eliminated, except that it owns or controls certain property adjacent to said right of way, consisting of various parcels of real estate upon which are located certain side tracks, switches and station buildings. The testimony shows in detail which portions of said right of way and other property are owned or controlled by said Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent, respectively.

4. Respondent further shows that it does not own any of the right of way upon which said trains are run, but that it runs trains over the crossing in question only as lessees under the two leases above referred to, and in so far as the obligation to the State is concerned, it runs the same only as an agent of said Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, and that the obligation to the State of New Jersey and the people thereof for the operation of said railroad, is imposed by their respective charters solely upon the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company; and that there-

fore the said two companies, and each of them, are the companies operating such railroad, within the meaning of Chapter 57 of the Laws of 1913, upon which this proceeding is based. Wherefore, this respondent urges and insists that any order made by this Board should direct that said two companies should eliminate said crossings, and bear the expense thereof as their respective interests may appear, and that no part of the expense thereof should be borne by this respondent, except so much, if any, as it may be legally chargeable with under Section 4 of said statute.

5. Respondent further urges and insists that if this Board should find that this respondent is one of the companies operating said railroad, or any part thereof, within the meaning of said statute, then and in that event any order made by this Board with respect to the elimination of said crossings, or any or either of them, should direct that said crossings be eliminated jointly by said Paterson and Hudson River Railroad Company, Paterson and Ramapo Railroad Company and this respondent, so that the cost thereof may thereafter be apportioned between and among the said Paterson and Hudson River Railroad Company, Paterson and Ramapo Railroad Company and this respondent by appropriate proceedings as now provided by law.

6. Respondent further says that from said report it appears that the Board has decided to adopt a plan for the elimination of said crossings which will cost approximately $2,950,000.00; it also appears from said report that the Board has decided to divide the work of eliminating said crossings into five sections, as shown in schedule "D" attached to said report; that of said five sections numbered from "A" to "E," inclusive, sections "A," "B" and "E," the cost of eliminating which according to the estimate of this respondent would amount to approximately $2,400,000.00, are on the right of way of the Paterson and Rama-

po Railroad Company; that sections "C" and "D," the cost of eliminating which, according to estimates of this respondent, would amount to about $980,000.-00, are on the right of way of the Paterson and Hudson River Railroad Company.

Respondent further says that it appears from Exhibit R-19 offered in this proceeding, that the entire valuation of the property of the Paterson and Ramapo Railroad Company within the State of New Jersey amounts to $1,836,688.00, and from Exhibit R-18 offered in this proceeding, that the entire valuation of the property of the Paterson and Hudson River Railroad Company within the State of New Jersey amounts to $2,881,603.00.

Respondent further says that the assessed valuation of all property, including the franchise, of the Paterson and Ramapo Railroad Company located within the limits of the City of Paterson, amounts to the sum of $495,474.00, and that the assessed valuation of all property, including the franchise, of the Paterson and Hudson River Railroad Company located within the limits of the City of Paterson, amounts to $593,290.-00; that the total amount assessed upon the Paterson and Ramapo Railroad Company in the State of New Jersey, as the value of the franchise, is the sum of $10,000.00; and that the total assessment for franchise upon the Paterson and Hudson River Railroad Company is the sum of $40,000.00.

This respondent therefore says that the proportion of the expense for the elimination of said crossings proposed to be charged to that portion of the railroad in question embracing the crossings mentioned in sections "A," "B" and "E" will far exceed the total assessed valuation of the entire railroad, including franchise, of the Paterson and Ramapo Railroad Company; and that the cost of eliminating the crossings which fall within sections "C" and "D" of said report, and which lie within that portion of the right of way

of the railroad in question owned by Paterson and Hudson River Railroad Company will far exceed the total assessed valuation of all character of property, including franchise, of said company lying within the limits of the City of Paterson.

That the cost of such elimination, as stated in the Board's opinion, exceeds the value of the leasehold interest of this respondent in the property of either or both of said two companies, which is subject to termination by the State without adequate provision for reimbursement of this respondent for the expense incurred by it in such elimination. Your petitioner therefore urges and insists that any order made by this Commission in accordance with said report will exceed the authority or power conferred upon this Commission by Chapter 57 of the Laws of 1913, or possessed by the State of New Jersey, and amounts to the confiscation of the property of this respondent within the meaning of the Constitution of the State of New Jersey and of the United States, as set forth in more detail in the answer and amended answer filed in this proceeding.

7. Respondent further says that the conclusion of the Board, above referred to, (d), to the effect that this respondent contemplates spending larger sums than would be required for the purpose of eliminating the crossings in question, in making other improvements, and the position of the Board, above referred to, (e), that it is not satisfied that this respondent will not be able to secure the necessary funds to eliminate the crossings in question, indicate that the uncontradicted evidence submitted to the Board by this respondent was not understood and that the Board has mistaken the Company's desire to make needed improvements for its ability to secure or expend the sums required therefor; that as a matter of fact, the respondent does not now and at the time of the giving of the testimony in this proceeding did not con-

template the spending of larger sums than would be required for the elimination of these crossings, nor indeed any considerable sums, in making other improvements, for the reason, as the evidence submitted shows, that the respondent did not at that time have, nor has it now, nor can it at the present time obtain, the necessary funds or any considerable part thereof beyond what it actually required for the continuance of safe operation on its railroad, either for the making of such other improvements or for the elimination of the crossings in question; that as shown by the evidence heretofore submitted, this respondent's net income available for expenditure on improvements during the fiscal year ending June 30th, 1914, was $662,295.87, being its entire net income less such amounts as were required to be devoted to sinking and other reserve funds under prior existing mortgages. That the result of the Company's operations for the six months following June 30th, 1914, indicate that the amount of income available for expenditure on improvements will not exceed, if it equals, the amount available during the proceeding year, and even this result can be obtained only by the exercise of the most rigid economy in operation and postponement of expenditures actually required. That the company has already during the six months ending December 31st, 1914, been required to expend for necessary improvements, principally in the interest of safety in operation, such as the furnishing of additional ballast, heavier rails and tie plates and reconstructing and strengthening bridges, safety appliances and steel underframes on cars and locomotives, over $600,000.00, and expenditures of this character must continue to large amounts. Your respondent is also under legal obligation to spend large sums for improvements under existing contracts, or orders of the courts or of public authorities, as set forth in Section 8 below. There are also expenditures required immediately in

the interests of safety in operation as set forth in Section 9 below. Your respondent has no capital funds outside of its income, to devote to these purposes except the remaining proceeds of certain capital obligations heretofore issued, amounting to approximately $300,000.00, all of which is required by an obligation heretofore incurred, to be devoted to a particular work now in the course of construction, under order of the public authorities; that your respondent has no additional capital obligations available for issue and disposition for the purpose of securing new capital funds over and above what is required for the payment of capital obligations about to mature.

8. Respondent further says that it will be required during the remaining portion of the year ending June 30, 1915, by obligations already incurred under orders of public authorities, or contracts heretofore made, to expend for improvements the amount of $885,900.00, as shown more in detail on schedule "A" attached hereto; that during the next twelve months this respondent will be obliged to expend under similar obligations the amount of $2,052,400.00, as shown more in detail on schedule "A" attached hereto, and that the total amount of such obligations for improvements so imposed upon respondent is the sum of $4,042,700.00, as shown more in detail on schedule "A" attached hereto; that it will be impossible for the respondent to obtain funds for the elimination of grade crossings in question in this case from the diversion of funds from the expenditures mentioned in this paragraph, as respondent is bound by law to make the same.

9. Respondent further says that during the next twelve months, repairs and renewals of bridges on its railroad will be absolutely necessary for safety in the operation of its railroad as an estimated cost of $1,094,825.00, details of which are shown on schedule "B" attached hereto; that it will be impossible for

this respondent to divert funds from such work for the purpose of eliminating the grade crossings now in question, because such work is absolutely necessary for safety, and the failure on the part of this respondent to make the same might result in serious accident and loss of life, and subject this respondent to suits for heavy damages, or result in prosecution of this respondent, its officers, or directors, for failure to properly perform its or their duty.

10. Respondent further says that the various improvements set forth in the evidence heretofore presented by it in this proceeding should be made, and that in particular the sum of upwards of $12,000,000.00, as set forth more in detail in schedule "C" attached hereto, should be expended at once upon improvements and settlements of its railroad and property for the purpose of enabling it to render safe, adequate and proper service in the transportation of the traffic in interstate commerce which is now offered to it, and any order made in this proceeding whereby any substantial part of the cost of eliminating said crossings, or any or either of them, is imposed upon this respondent, will inevitably impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers because, such order would compel this respondent to expend, for the purpose of eliminating said crossings, to the extent that it complied with the same, moneys which would otherwise be available for, and could be used by this respondent in the making of the changes and improvements, or some of them, referred to in Sections 7 to 10 hereof, and particularly those specified in schedules "A" to "C" inclusive, and such order would to that extent prevent this respondent from making such necessary changes and improvements.

11. Respondent further shows that from and by the report of the said Board, it appears that it is the

determination of the Board that the heaviest burden of expense for the elimination of said crossings will fall upon this respondent, but said report does not announce any determination of the Board as to what, if any, other persons or corporations will share in the cost of such eliminations, or to what extent they or either of them should so share; this respondent respectfully calls the attention of this Board to the provisions of Section 2, Chapter 57, Laws of 1913, under which this proceeding is brought, providing as follows:

> "The entire expense of such alterations, changes, relocation or opening, including the damages to adjacent property, shall be paid by such railroad, unless a street railway uses such crossings, in which event the Board may order not exceeding ten per centum of such expense directly chargeable to the crossing, by the street railway company, to be paid by the company operating said street railway and the balance to be paid by the company operating such railroad."

Respondent shows that the Public Service Railway Company is a street railway, and as such, uses the crossings at Market street, Broadway and River street —three of the crossings involved in the one comprehensive plan or scheme which the Board has adopted in its report as a general plan covering all of the crossings involved in this proceeding; and this respondent respectfully urges and insists that said Public Service Railway Company should be chargeable with ten per cent. of the total cost of eliminating all of said crossings involved in said plan or scheme so adopted by said Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company or made necessary by reason of changes in, or the removal of, property, constructions, tracks, wires, poles or other appurtenances thereto, which may be necessary to conform its property or

constructions to any order which this Board may make in this proceeding.

12. Respondent further says that in and by said report the Board finds, among other things, that the crossing of each of the streets involved in this proceeding and the railroad tracks of this respondent at the same level, is dangerous to public safety, and that public travel on such highways is impeded thereby; these conclusions are predicated upon the finding of the Board that a large number of freight trains, passenger trains and drill engines pass daily over said crossings, or some of them, thereby endangering public safety and impeding public travel; that inasmuch as this respondent cannot assume the cost which would be imposed upon it by an order of the Commission requiring it to eliminate the grade crossings in question, this respondent urges that if the Board concludes that under existing circumstances such an order must be made, an opportunity should be given this respondent to present plans whereby the number of trains or engine movements, or the manner of the same, or both, over said crossings, may be changed so as to remove the danger and impediment to public travel.

Wherefore, this respondent, expressly reserving, and not waiving, any and all objections heretofore made, and saving all legal rights or defenses heretofore asserted or claimed, respectfully prays that further hearing be granted for the purpose of considering the following matters, and taking testimony thereon so far as may be necessary.

(a) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company as the railroad companies operating the railroad over the crossings in question within the meaning of Chapter 57, Laws of 1913.

(b) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent jointly, so that the cost thereof may be apportioned between and among said companies by appropriate proceedings.

(c) Whether this respondent is financially able to carry out the terms of any order made in this proceeding if the heaviest burden of the cost thereof falls upon it.

(d) Whether such order would impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

(e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the total cost of eliminating all of the crossings involved in said plan or scheme adopted by the Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company under Section 4 of said statute.

(f) If the Board reaches the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this respondent will submit.

Dated February 5th, 1915.

H. A. TAYLOR,
GEO. S. HOBART,
DUANE E. MINARD,
Attorneys for Respondent,
Erie Railroad Company.

SCHEDULE "A."

Work Required to be Done by Existing Contracts, Statutes or Orders of Courts or Commissions. The Railroad's Proportion of the Cost Only.

	From Date to June 30, 1915.	From Date to Jan. 1, 1916	From Date to Complete.
ELIMINATION OF GRADE CROSSINGS.			
*Jamestown, NY	$57,000.	$160,000.	$396,000.
Youngstown, O.	115,000.	570,000.	1,730,000.
Union Avenue, Cleveland, O.	35,000.	98,000.	98,000.
*Buffalo, NY General	265,000.	335,000.	918,000.
*Corning, NY	10,000.	10,000.	10,000.
Rivare, Ind.		20,000.	25,000.
*Midvale, NJ	6,000.	6,000.	6,000.
*Chester, NY	21,000.	21,000.	21,000.
Mill Village, Pa.		15,000.	15,000.
Dunmore, Pa.	10,000.	10,000.	10,000.
Haverstraw, NY		5,000.	5,000.
*Waverly, NY	500.	500.	500.
*Gowanda, NY	500.	500.	500.
*Nanuet, NY	1,500.	1,500.	1,500.
*Laketon, Ind. to Akron, Ind.	1,000.	18,000.	18,000.
Double Track Sharon RR through Sharon, Pa.	168,000.	386,000.	386,000.
Detour of Penna. RR at Belfast, NY	30,000.	100,000.	100,000.
*Interlocking "SJ" Tower, Lima, O.	12,000.	12,000.	12,000.
*Interlocking at North Judson, Ind.	15,000.	15,000.	15,000.
*Molasses Tanks at Weehawken, NJ	29,900.	29,900.	29,900.
*Additions to Corning station, Corning, NY	2,000.	2,000.	2,000.
Ridgewood, NJ Improvements,	59,000.	116,000.	122,300.
New Station at Niles, Ohio,	15,000	20,000.	20,000.
Dock at Farmer's Point, Buffalo, NY	28,500.	95,000.	95,000.
Bridge 198.3 C & E Divn. Gold ditch	4,000.	6,000.	6,000.
	$885,900.	$2,052,400.	$4,042,700.

NOTE:—The * denotes work now under construction.

Erie Railroad Company,
Office of Supt. of Construction,
New York, N. Y.,
Feb. 4, 1915.

SCHEDULE "B."

Work Which is Absolutely Necessary for Safety.

NOTE:—This list covers a period of one year only.

Bridge 383.27, Rochester Division	$76,825.
Bridge 5.49, Newark Branch, Newark, N. J.	235,000.
Bridges 13.73 and 15.11, Tioga Divn.	160,000.
Bridge 3, Jefferson Division	30,000.
Various bridges all over the system covered by bridge program of 1913 and 1914 in addition to above	385,000.
Bridge Program for 1914 and 1915	208,000.
	$1,094,825.

NOTE:—After all the items above have been taken care of, we will have an annual expense of about $250,000. to renew various bridges which are now nearing the limit of their usefulness.
Erie Railroad Company,
Office of Supt. of Construction,
New York, N. Y.,
Feb. 4, 1915.

SCHEDULE "C."

Completing double track Marion to Lomax	$580,000.
Extension to yards and terminal facilities at division points,	600,000.
Coal Unloader, Cleveland, O.	105,000.
Docks at Columbus Road and Scranton Ave. Cleveland	150,000.
Extension to North Randall Ore Docks	72,000.
18th St. Float Bridge, Chicago,	20,000.
Erie St. Yard Chicago,	107,000.
23rd St. Ferry Rack, New York City	1,200.
Freight House, Akron, Ohio,	233,000.
Coal Dock at Buffalo, N. Y.,	350,000.
Bulkhead Shed Pier 7, East River, N. Y.	10,000.
Extension of Piers 20 and 21, North River, N. Y.,	500,000.
Automatic Signals and Interlocking as follows:—	
Alleghany Division	200,000.
Meadville Division, Salamanca to Pymantuning	262,000.
C & E Division, Lomax to Griffith	43,000.
Leavittsburg	12,000.
Distant Signals on Greenwood Lake, Rochester and Alleghany Divisions	13,000.
New Engine House and Facilities at Croxton, N. J.	335,000.
Pier 56, North River	150,000.
Second Track and Grade Reduction, Lomax to Griffith	2,051,000.
Second Track Canal Branch, Youngstown, O.	40,000.
Second Track and Grade Reduction Steamburgh to Jamestown	2,110,000.
Second Track and Grade Reduction Buchanan Jct. to Shenango	1,204,000.
Second Track M. P. 401 to "CY" Tower Alleghany Divn.	514,000.
Webster Ave. Yard, Chicago,	100,000.
Pier Shed 49th St. New York	6,000.

Ferry Coaling Station, Jersey City	$16,000.
Jersey City Terminal, Pier, renewals and extensions	1,800,000.
Terminal 150th St. and Harlem River, New York	200,000.
Terminal, Weehawken, New Jersey	307,000.
	$12,091,200.

Erie Railroad Company,
Office of Supt. of Construction,
New York, N. Y.,
Feb. 4, 1915.

Order of Board.

Dated April 20, 1915.

STATE OF NEW JERSEY.
BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN THE MATTER OF THE APPLICATION OF THE CITY OF PATERSON FOR ALTERATION OF GRADE CROSSINGS ON THE LINE OF THE ERIE RAILROAD. } *Order.*

The Board of Finance of the City of Paterson, a municipality of this state, having presented to, and filed with, the Board of Public Utility Commissioners, a petition in writing, and an amendment to said petition, likewise in writing, praying that, by virtue of the powers conferred by an Act of the Legislature of this State entitled, "A Supplement to an Act concerning Public Utilities; to create a Board of Public Utility Commissioners, and to prescribe its duties and powers, approved April 21, 1911," which supplement was approved March 12, 1913, and which constitutes Chapter 57 of the Laws of 1913, the Board order the alteration of the crossing of Madison Avenue, Clay and Straight Streets (two crossings), Cedar Street, Market Street and Park Avenue (one crossing), Ellison Street, Van Houten Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Franklin Street, Keen Street, Warren Street, River and Putnam Streets (one crossing), each of which streets and highways is a public highway in said City of Paterson, where the same cross at the same level the railroad of the Erie Railroad Company, in said City of Paterson, "according to plans to be approved by said board by substituting for each of such crossings a crossing not at the grade of such public highways either by carrying such public highway under or over such railroad or by recon-

structing such railroad under or over such public highway or by vacating, relocating or changing the lines, width, direction or location of such highway, and the opening of a new highway in place of the one or ones ordered vacated," and which petition set forth the facts upon which relief under said statute was sought, and the Board having fixed a time and place for a hearing before it upon said petition, and having given notice thereof to the said municipality, the Erie Railroad Company, the Paterson and Ramapo Railroad Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, and all corporations, co-partnerships and individuals interested, all in accordance with the provisions of said act, and the said Erie Railroad Company having filed its answer to said petition, which answer was later amended, and the Paterson and Ramapo Railroad Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, Passaic Water Company, Western Union Telegraph Company, National Silk Dyeing Company, Fullers' Express Company, The Herman Company, John Agnew Company, James Wilson & Sons (Inc.), P. S. Van Kirk Company, Henry M. Post, Paterson Brewing and Malting Company, Public Service Electric Company, Public Service Gas Company, Public Service Railway Company, D. Fullerton & Company, Meyer & DeVogel, Leslie Elliott & Co., Samuel Smith & Sons Company, Morris & Company, McNab & Harlin Manufacturing Company, New York Telephone Company, and Paterson, Passaic & Suburban Telephone Company having likewise filed answers, and all of the parties in interest who appeared having been duly heard, the Board of Public Utility Commissioners filed a report of its findings and determinations on January 11th, 1915, which report is made part of this order by reference thereto herein, and it

Now appearing to said Board that the Board of Finance of the City of Paterson is the board or body

having charge of the finances of said municipality, and that said Madison Avenue (Clay Street, Straight Street), Cedar Street, Market Street, Park Avenue, Ellison Street, Van Houten Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Franklin Street, Keen Street, Warren Street, River Street and Putnam Street is each a public highway; and that the said public highways, and each of them, and the railroad of the Erie Railroad Company in said city cross each other at the same level, and that such crossings are, and each of them is, dangerous to public safety and that the public travel on such highways, and each of them is impeded thereby and that the said Erie Railroad Company is operating said railroad, and that said crossings, and each of them, should be altered according to a plan and profile approved by the board, and such a plan and profile having been prepared.

Now, therefore, it is on this twentieth day of April, nineteen hundred and fifteen, ORDERED, and the said Board of Public Utility Commissioners by virtue of the power and authority vested in it by the aforesaid act, does hereby ORDER the Erie Railroad Company to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof, entitled "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings Plan for Elimination of Grade Crossings on Main Line of Erie Railroad from Madison Avenue to River Street, Paterson, N. J. Based on Surveys Made by the City of Paterson, H. J. Harder, Eng'r. Scale, 1 in. = 50 ft. January, 1915, Approved Chas. A. Mead, Chief Inspector Div. of Bridges and Grade Crossings," and profile of same also annexed to and made part hereof, entitled "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings. Profile for Elimination of Grade Crossings on Main Line of Erie Railroad from Madison Ave. to River St., Paterson, N. J. Based in surveys made by the City of Paterson, H. J. Harder, Eng'r. Scales:

Hor. 1″ = 100′ Vert. 1″ = 4′. January, 1915, Drawn by J. L. Vogel, Approved Chas. A. Mead, Chief Inspector Div. of Bridges & Grade Crossings," which said plan and profile are hereby approved; by substituting therefor crossings not at the grade of the public highways known as Madison Avenue, Straight Street, Clay Street, Market Street and Park Avenue, Ellison Street, Van Houten Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Keen Street, Warren Street, Putnam and River Streets; by changing the lines, width and direction thereof and carrying so much theerof as so changed under the said railroad, except in the case of Madison Avenue, which is carried over the railroad, according to and as shown on said plan and profile for said purpose, and by vacating the remaining parts of said highways within the lines of the right of way of said railroad company, and further by vacating that part of Madison Avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison Avenue; by substituting for the existing crossings at Cedar Street a crossing under the railroad at Taylor Street and for the existing crossing at Franklin Street a crossing under the railroad at Montgomery Street and also by widening and altering the existing highways known as Essex Street, Governor Street and Fulton Street, adjusting the structures spanning them to the proposed grade or grades (which said new highways shall be located, and of the width, length and direction and carried over or under the said railroad where so indicated); by reconstructing said railroad and highways and by performing all other work required according to and as shown on the said plan and profile.

Any telegraph, telephone, gas, electric, lighting, water, oil, pipe, line or other company, or corporation, co-partnership or individual whose property or construction it may be necessary to change or remove to carry said plan and this order into effect, shall change or remove the same, according to said plan.

AND IT IS FURTHER ORDERED, that the said Erie Railroad Company and the City of Paterson, and Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company and Western Union Telegraph Company, and all other parties to this proceeding, and each and every of them proceed with due diligence to the execution of this order, and comply with all of the requirements thereof and the duties imposed upon them thereby, and by the said Act under which this order is made, and the laws of this State, and that to that end, they and each of them exercise in good faith, all of the powers conferred upon them and each or any of them by the Laws of this State.

AND IT IS FURTHER ORDERED, that the said Erie Railroad Company begin the actual work of construction required in the performance and execution of this order on or before the first day of August, nineteen hundred and sixteen, and continuously carry on the same thereafter and perform and fully comply with the directions and requirements of this order, and complete all of the work required to be done, within eight years from the date hereof, and that in the continuous prosecution of said work it takes up in the order named the divisions thereof in said profile marked and designated "A," "B," "C," and "D"; the work required in connection with Section "A" thereof to be begun on or before August 1st, 1916, and to be completed within four years and three months from the date hereof; the work required in connection with Section "B" to be begun within four years and three months from the date hereof and completed within five years and six months from the date hereof; the work required in connection with Section "C" to be begun within five years and six months from the date hereof and completed within seven years and three months from the date hereof; and the work in connection with Section "D"

to be begun within seven years and three months and completed within eight years from the date hereof.

And it appearing to the Board that the street railway operated by Public Service Railway Company uses the said crossings at (1) Park Avenue and Market Street, (2) Broadway, and (3) River Street, the Board in accordance with the power and authority vested in it by said act further ORDERS the Public Service Railway Company to pay ten per centum of the expenses of the alterations, changes, relocating and opening, required by this order, including damages to adjacent property, directly chargeable to the crossings, and each of them, so used by the said street railway operated by it.

And the said Erie Railroad Company and said Public Service Railway Company are ordered to keep specific and complete records of the expenses directly chargeable to the crossings, and each of them, so used by said street railway of said Public Service Railway Company and leave is hereby given to said companies, or either or them, to make application to the Board for further order in the event that they cannot agree upon the amount of such expenses so directly chargeable to said crossings used by the street railway operated by said Public Service Railway, or any of them.

This order shall take effect May 20th, 1915.

Dated April 20th, 1915.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By
(Signed) RALPH W. E. DONGES,
President.

(SEAL)

Attest:
(Signed) ALFRED N. BARBER,
Secretary.

I HEREBY CERTIFY the foregoing to be a true copy of Order adopted by the Board of Public Utility Commissioners, at a meeting held Tuesday, April 20th, 1915, and recorded in the minutes of said meeting.

(Signed) ALFRED N. BARBER,
Secretary.

Report of Board.

(Filed April 20, 1915.)

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN THE MATTER OF THE APPLICATION OF THE CITY OF PATERSON FOR ALTERATION OF GRADE CROSSINGS ON THE LINE OF THE ERIE RAILROAD.	*On Petition for Further Hearing. Report.*

E. F. Merrey, for the City of Paterson.

G. S. Hobart, D. E. Minard and H. A. Taylor, for Erie Railroad Company.

William B. Gourley, for numerous switch and property owners.

L. D. H. Gilmour, for Public Service Railway Company, Public Service Gas Company and Public Service Electric Company.

Frank H. Sommer, for the Board.

The Board filed its conclusions in this proceeding, and fixed a date for hearing upon the single question as to the time to be allowed for the commencement and completion of the work found to be necessary to be done. At such hearing the Erie Railroad Company made application for leave to file a petition for a further hearing upon certain matters set forth in such petition. The Board granted leave to file the petition, and also afforded counsel an opportunity to discuss the merits of the application contained therein.

The petition prayed that the Board take further testimony upon six questions, namely:

"(a) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company and the Paterson and

Ramapo Railroad Company as the railroad companies operating the railroad over the crossings in question within the meaning of Chapter 57, Laws of 1913.

"(b) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent jointly, so that the cost thereof may be apportioned between and among said companies by appropriate proceedings.

"(c) Whether this respondent is financially able to carry out the terms of any order made in this proceeding if the heaviest burden of the cost thereof falls upon it.

"(d) Whether such order would impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

"(e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the total cost of eliminating all of the crossings involved in said plan or scheme adopted by the Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company under Section 4 of said Statute.

"(f) If the Board reaches the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this respondent will submit."

This proceeding was pending for a number of months, during which time ample opportunity was afforded to all parties interested to present fully and completely all the testimony desired to be submitted.

Testimony was in fact submitted touching all questions, except that arising from the suggestion to reduce train movements, and the Board had before it and considered such proofs in arriving at the conclusion. Since the filing of the petition for further hearing, the Board has given further consideration to the testimony taken, and the suggestions contained in the petition of the railroad company.

The Board concludes that as the petitioner had ample opportunity to submit all and any material evidence, and the Board had before it and actually considered the questions raised, that the prayer for an opportunity to submit further testimony on such questions should be denied.

As to the reduction of train movements, the company was afforded every opportunity to furnish such proof, if it had any, and did not avail itself of such opportuuity. In addition, the offer on this score was so indefinite that it does not appear reasonable to delay the proceeding for the purpose.

The prayer of the petition will be denied.

Dated April 20th, 1915.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By
(Signed) RALPH W. E. DONGES,
(SEAL) *President.*

Attest:

(Signed) ALFRED N. BARBER,
Secretary.

I HEREBY CERTIFY the foregoing to be a true copy of Report made and filed by the Board of Public Utility Commissioners at a meeting held Tuesday, April 20th, 1915.

(Signed) ALFRED N. BARBER,
Secretary.

Writ of Certiorari.

(Erie Railroad Company.)

NEW JERSEY, *ss.*

(L. S.) The State of New Jersey to the Board of Public Utility Commissioners, GREETING:

We being willing for certain reasons, to be certified of a certain order of said Board dated April 20, 1915, in a certain proceeding entitled "In the Matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; do command you that the said order, together with the said petition, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915), and the report and order of the Board with respect thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915), and all other proceedings by or before said Board concerning the same, as fully and entirely as before you they remain or are in your custody or control, you do certify and send, together with this writ, to our Supreme Court at Trenton, on the sixth day of July, 1915, that we may cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D. 1915.

WM. C. GEBHARDT,
Clerk.

COLLINS & CORBIN,
Attorneys.

Endorsed:

NEW JERSEY SUPREME COURT.

Erie Railroad Company,
Prosecutor,
vs.
Board of Public Utility Commissioners, City of Paterson and Board of Finance of said city,
Defendants.

WRIT OF CERTIORARI.

COLLINS & CORBIN,
Attorneys of Prosecutor,
Jersey City, N. J.

I allow this writ. Let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,
J. S. C.

Writ of Certiorari.

(Public Service Railway Company.)

NEW JERSEY, *ss.*

The State of New Jersey to Alfred N. Barber, Secretary of the Board of Public Utility Commissioners, GREETING:

We being willing for certain reasons to be certified of and concerning a certain order of the Board of Public Utility Commissioners made on the twentieth day of April, in the year of our Lord one thousand nine hundred and fifteen, requiring Public Service Railway Company to pay ten per centum of the cost of abolishing certain grade crossings of the Erie Railroad Company in the City of Paterson, to wit, at Park avenue and Market streets, Broadway, and River street, and all things touching and concerning the same;

We do command that the said order, together with all proceedings had and taken by the Board of Public Utility Commissioners upon which the same is founded, and all the testimony of witnesses and other evidence taken thereon with all things touching and concerning the same, as fully as before you they appear and remain, you do certify and send over your seal to our Justices of our Supreme Court at Trenton on the sixth day of July, 1915, that we may cause to be done thereon what according to law and the constitution of the State of New Jersey ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, in the year of our Lord one thousand nine hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

FRANK BERGEN,
Attorney.

Endorsed:

NEW JERSEY SUPREME COURT.

Public Service Railway Company, *Prosecutor,* vs. Board of Public Utility Commissioners and City of Paterson, *Defendants.*	*On Certiorari.*

WRIT OF CERTIORARI.

Returnable July 6th, 1915.

FRANK BERGEN,
Attorney of Prosecutor,
755 Broad Street,
Newark, N. J.

Allocatur:

JAMES F. MINTURN,
J. S. C.

Writ of Certiorari.

(Passaic Water Company.)

NEW JERSEY, *ss.*

The State of New Jersey to the Board of Public Utility Commissioners, GREETING:

We being willing, for certain reasons, to be certified of a certain order of said Board dated April 20, 1915, in a certain proceeding entitled "In the Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company, Passaic Water Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order into effect, should change or remove the same, according to said plan; do command you that the said order, together with the said petition, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board with respect thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings by or before said Board concerning the same, as fully and entirely as before you they remain

or are in your custody or control, you do certify and send, together with this writ, to our Supreme Court at Trenton, on the sixth day of July, 1915, that we may cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D. 1915.

WM. C. GEBHARDT,
Clerk.

HUMPHREYS & SUMNER,
Attorneys.

Endorsed:

NEW JERSEY SUPREME COURT.

Passaic Water Company,
Prosecutor,
vs.
Board of Public Utility Commissioners, City of Paterson and Board of Finance of said city,
Defendants.

WRIT OF CERTIORARI.

HUMPHREYS & SUMNER,
Attorneys of Prosecutor.

Paterson, N. J.

I allow this writ; let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,
J. S. C.

Writ of Certiorari.

(Western Union Telegraph Company.)

NEW JERSEY, *ss.*

The State of New Jersey to the Board of Public Utility Commissioners, GREETING:

We being willing, for certain reasons, to be certified of a certain order of said Board dated April 20, 1915, in a certain proceeding entitled "In the Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company, Western Union Telegraph Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order into effect, should change or remove the same, according to said plan; do command you that the said order, together with the said petition, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board with respect thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915), and all other proceedings by or before said Board concerning the same, as fully and entirely as

before you they remain or are in your custody or control, you do certify and send, together with this writ, to our Supreme Court at Trenton, on the sixth day of July, 1915, that we may cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D. 1915.

WM. C. GEBHARDT,
Clerk.

COLLINS & CORBIN,
Attorneys.

Endorsed:

NEW JERSEY SUPREME COURT.

Western Union Telegraph Company,
Prosecutor,
vs.
Board of Public Utility Commissioners, City of Paterson and Board of Finance of said city,
Defendants.

WRIT OF CERTIORARI.

COLLINS & CORBIN,
Attorneys of Prosecutor,
Jersey City, N. J.

I allow this writ. Let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,
J. S. C.

Writ of Certiorari.

(D. Fullerton & Company.)

NEW JERSEY, *ss.*

The State of New Jersey, To The Board of Public Utility Commissioners, GREETING:

We being willing, for certain reasons, to be certified of a certain order of said Board dated April 20, 1915, in a certain proceeding entitled "In the Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company, D. Fullerton & Co. and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and order into effect, should change or remove the same, according to said plan; do command you that the said order, together with the said petition, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board with respect thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915), and all other proceedings by or before said Board concerning the same, as fully and entirely as before you they remain or are in your custody or con-

trol, you do certify and send, together with this writ, to our Supreme Court at Trenton, on the sixth day of July, 1915, that we may cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D., 1915.

WM. C. GEBHARDT,
Clerk.

HUDSON & JOELSON,
Attorneys.

Endorsed:

NEW JERSEY SUPREME COURT.

D. Fullerton & Co.,
Prosecutor,

vs.

Board of Public Utility Commissioners, City of Paterson and Board of Finance of said city,
Defendants.

WRIT OF CERTIORARI.

HUDSON & JOELSON,
Attorneys of Prosecutor,
Paterson, N. J.

I allow this writ. Let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,
J. S. C.

Writ of Certiorari.

(Meyer & De Vogel.)

The State of New Jersey to The Board
(L. S.) of Public Utility Commissioners of the State of New Jersey, GREETINGS:

We being willing for certain reasons to be certified of a certain order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company, and Jacob Meyer and Kommer De Vogel, partners, trading and doing business as Meyer & De Vogel, *et al,* were respondents directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of Grade Crossings in the line of the Erie Railroad."

We do command you, that the aforesaid order made by the said Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, 1915, with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, together with all things touching and concerning the making of said order as fully and entirely as before you they remain to our Justices of the Supreme Court of Judicature at Trenton on the sixth day of July, nineteen hundred and fifteen, you certify and send together with this our writ that therein may be done what of right and according to the laws of this state should be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this six-

teenth day of June, in the year of our Lord one thousand nine hundred and fifteen.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

WILLIAM C. GEBHARDT,
Clerk.

Endorsed:

NEW JERSEY SUPREME COURT.

Jacob Meyer and Kommer De Vogel, partners, as Meyer & De Vogel,
Prosecutors,
vs.
Board of Public Utility Commissioners of the State of New Jersey, and City of Paterson,
Defendants.

WRIT OF CERTIORARI.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

Returnable July 6th, 1915.

The writ is allowed. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

Writ of Certiorari.

(Fullers Express Company.)

The State of New Jersey to The Board of Public Utility Commissioners of the State of New Jersey, GREETINGS:

(L. S.)

We being willing for certain reasons to be certified of a certain order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company, and Fullers Express Company, *et al,* were respondents directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of grade crossings in the line of the Erie Railroad."

We do command you, that the aforesaid order made by the said Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, 1915, with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, together with all things touching and concerning the making of said order as fully and entirely as before you they remain to our Justices of the Supreme Court of Judicature at Trenton on the sixth day of July, nineteen hundred and fifteen, you certify and send together with this our writ that therein may be done what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton this sixteenth day of June, in the year of our Lord one thousand nine hundred and fifteen.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

WILLIAM C. GEBHARDT,
Clerk.

Endorsed:

NEW JERSEY SUPREME COURT.

Fullers Express Company,
Prosecutor,

vs.

Board of Public Utility Commissioners of the State of New Jersey and City of Paterson,
Defendants.

WRIT OF CERTIORARI.

WILLIAM B. GOURLEY,
Atty. of Prosecutor.

Returnable July 6th, 1915.

This writ is allowed. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

Writ of Certiorari.

(Morris and Company.)

(L. S.) The State of New Jersey to the Board of Public Utility Commissioners of the State of New Jersey, GREETINGS:

We being willing for certain reasons to be certified of a certain order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company, and Morris and Company, *et al.,* were respondents, directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of Grade Crossings in the line of the Erie Railroad.

We do command you, that the aforesaid order made by the said Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, 1915, with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, together with all things touching and concerning the making of said order as fully and entirely as before yet they remain to our Justices of the Supreme Court of Judicature at Trenton on the sixth day of July, nineteen hundred and fifteen, you certify and send together with this our writ that therein may be done what of right and according to the laws of this state should be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth

day of June, in the year of our Lord one thousand nine hundred and fifteen.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

WILLIAM C. GEBHARDT,
Clerk.

Endorsed:

NEW JERSEY SUPREME COURT.

Morris and Company,
Prosecutor,
vs.
Board of Public Utility Commissioners of the State of New Jersey and City of Paterson,
Defendants.

WRIT OF CERTIORARI.

WILLIAM B. GOURLEY,
Atty. of Prosecutor.

Returnable July 6th, 1915.

This writ is allowed. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

Return.

To the Honorable the Judges of the Supreme Court of Judicature of the State of New Jersey:

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain order made by said Board on the twentieth day of April, one thousand nine hundred and fifteen, together with the record and proceedings of said Board, and all things touching and concerning the same, as fully and entirely as before said Board they remain, as it is within commanded.

In witness whereof the seal of said Board is hereto affixed and certified by the subscriber.

ALFRED N. BARBER,
Secretary of the Board of Public Utility Commissioners of New Jersey.

(Copy of testimony will be found in Volume 1 of Printed Book; copy of exhibits in Volumes 2 and 3, and copy of pleadings and other proceedings before said Board in Volume 4.)

Rule Re Return.

Filed September 11, 1915.

NEW JERSEY SUPREME COURT.

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Rule.*

A writ of *certiorari* having been sued out by the prosecutor in the above stated cause, returnable on the sixth day of July, nineteen hundred and fifteen, and the proceedings sought to be brought up for review by said writ having been duly returned to this court under the command of a certain writ of *certiorari* returnable the same day wherein the Erie Railroad Company is prosecutor, and it having been agreed that reasons should not be filed herein until after the return was made to said last-mentioned writ, and that such rule or rules should be made and entered in this cause as should be necessary, and it having been since further agreed that the prosecutor's reasons should be filed on or before the twentieth day of September, nineteen hundred and fifteen, and this rule being consented to;

It is ordered that the return under the writ of *certiorari* wherein the Erie Railroad Company is prosecutor, above recited, be deemed and taken to be the return to this writ, and that the reasons of the prose-

cutor for reversal be filed herein on or before the twentieth day of September, 1915.

Rule entered this eleventh day of September, nineteen hundred and fifteen.

On motion of

FRANK BERGEN,
Attorney for Prosecutor.

We consent to the above rule:

FRANK H. SOMMER,
Attorney for Board of Public Utility Commissioners, Defendant.

EDWARD F. MERREY,
Attorney for City of Paterson, Defendant.

(Similar rules entered for Passaic Water Co., Western Union Telegraph Co., D. Fullerton & Co., Meyer & De Vogel, Fullers Express Co., Morris & Co.)

Reasons of Erie Railroad Company.

Filed September 15, 1915.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Reasons.*

The prosecutor files the following reasons upon which it will rely for the reversal of the proceedings under review in this case:

(1) The conclusions or findings of the Board of Public Utility Commissioners that the crossings, and each of them, at the same level of the following highways, and each of them, known respectively as (A) Madison avenue, (B) Clay and Straight streets (two crossings), (C) Cedar street, (D) Market street and Park avenue (one crossing), (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Franklin street, (L) Keen street (M) Warren street, (N) River and Putnam streets (one crossing), and the railroad stated in the order under review to be the railroad of the Erie Railroad Company in the City of Paterson are dangerous to public safety and that the public travel on said highways and each of them is impeded thereby, were not, nor was either of them, justified nor reasonably supported as to any

or all of said crossings, by the evidence taken before said Board.

(2) There was no evidence before said Board to support reasonably the order under review with respect to said crossings named in Reason (1), or any or either of them.

(3) According to the whole of the evidence taken before said Board, the said order under review, so far as the same relates to the crossings of the said highways, and each of them, named in Reason (1), and the railroad stated in said order to be the railroad of Erie Railroad Company is unreasonable as to each and all of said crossings.

(4) The evidence taken before said Board shows that at the crossings at the same level of the highways, and each of them, named in Reason (1) and the railroad stated in said order to be the railroad of Erie Railroad Company, the prosecutor has provided and maintains safeguards that measure up to the danger to be encountered by the public at said crossings and each of them; and further shows that the said highway crossings are not, nor is any or either of them, dangerous to public safety; and that the public travel at the crossings of the said highways, and each of them, is not impeded by said crossings, or any or either of them, within the meaning of Chapter 57, Laws of 1913.

(5) The evidence shows that the action of said Board in ordering that the crossings at the same level of the highways, and each of them, named in Reason (1) and the railroad stated in said order to be the railroad of Erie Railroad Company be altered in the manner and according to the plan described in the said order, is, as to each and all of said crossings—

(a) purely arbitrary, or

(b) without reasonable basis upon which to rest,

or

(c) unsupported by the facts laid before said Board, and should therefore be declared null and void and ordered to be set aside.

(6) If the conclusions or findings of said Board that all of the said crossings, and each of them named in Reason (1) are dangerous to public safety and that the public travel on all of said highways, and each of them, is impeded thereby, are justified, or reasonably supported, by the evidence taken before said Board so far as it relates to some one or more of said crossings, nevertheless, the said conclusions or findings are not justified, or reasonably supported, so far as relates to the other crossings, or any or either of them; and said conclusions or findings cannot, under the evidence be applied to the other crossings, or any or either of them, so as to support or justify like conclusions or findings as to said other crossings, and each and all of them.

(7) If there was some evidence before said Board to support reasonably the order under review, with respect to some one or more of the said crossings named in Reason (1), nevertheless, there was no evidence to support reasonably the order under review with respect to the other crossings, or any or either of them; and the conclusions or findings as to some one or more of said crossings cannot, under the evidence, be applied to the other crossings, or any or either of them, so as to permit like conclusions or findings or a similar order as to said other crossings, and each and all of them respecting which there was no evidence to support reasonably the conclusions or findings, and the order based thereon.

(8) According to the whole of the evidence taken before said Board, the said order under review is unreasonable so far as relates to at least some one or more of the said crossings named in Reason (1); and even if, according to the whole of the evidence, the

said order is unreasonable as to some one or more of said crossings, that fact does not permit the Board to enlarge and extend its order so as to include the other crossings, or any or either of them, as to which said order is unreasonable.

(9) The evidence taken before said Board shows that at least some one or more of the said crossings named in Reason (1), the prosecutor has provided and maintains safeguards that measure up to the danger to be encountered by the public at said crossings, or some one or more of them; and further shows that at least some one or more of said crossings named in Reason (1) are not dangerous to public safety, and that public travel is not impeded thereby, within the meaning of Chapter 57, Laws of 1913; and, even if the evidence shows that, at some one or more of said crossings the prosecutor has not provided and does not maintain such safeguards, and even if the evidence shows that some one or more of said crossings are dangerous to public safety, and that public travel is impeded thereby, within the meaning of said statute, those facts do not permit the Board to enlarge and extend its order so as to include the other crossings, or any or either of them, at which the prosecutor has provided and maintains such safeguards, and which are not dangerous to public safety, and by which public travel is not impeded within the meaning of said statute.

(10) The evidence shows that the action of said Board in ordering that the crossings at the same level at the highways and each of them named in Reason (1) and the railroad stated in said order to be the railroad of Erie Railroad Company be altered in the manner and according to the plan described in the said order is, as to at least some one or more of said crossings—

(a) purely arbitrary, or

(b) without any reasonable basis upon which to rest, or

(c) unsupported by the facts laid before said Board, and even if the order is not purely arbitrary, nor without any reasonable basis upon which to rest, nor unsupported by the facts laid before said Board as to some one or more of said crossings, that fact does not permit the Board to enlarge and extend its order so as to include the other crossings, or any or either of them.

(11) The petition of the Board of Finance of the City of Paterson was not made or presented as required by Chapter 57 of the Laws of 1913, or by the rules of the Board of Public Utility Commissioners, and said Board therefore did not acquire any jurisdiction to take any proceedings under said statute or to make any order by virtue thereof, because more than one highway grade crossing was involved and embraced in said petition, proceedings and order.

(12) Said order under review is unreasonable and invalid because the fact, if it be a fact, that some one or more of the public highway crossings named in Reason (1) are dangerous to public safety or that public travel on such highways is impeded thereby (within the meaning of Chapter 57 of the Laws of 1913) does not confer upon said Board of Public Utility Commissioners power or jurisdiction under said statute to order, at the expense of the prosecutor, the alteration or the elimination of other highway grade crossings that may be affected by, or involved in, the alteration or elimination of such crossing, or crossings, as are dangerous to public safety or impede public travel, within the meaning of said statute.

(13) The conclusions or findings of said Board that the railroad which crosses at the same level the highways named in Reason (1) was the railroad of

Erie Railroad Company were not justified, or reasonably supported by the evidence taken before said Board.

(14) There was no evidence before said Board to support reasonably the order under review with respect to the ownership of said railroad by Erie Railroad Company at said highway crossings named in Reason (1).

(15) According to the whole of the evidence taken before said Board the said order under review is unreasonable so far as it is based upon the conclusions or findings of said Board that the railroad which crosses at the same level the highways named in Reason (1) is the railroad of Erie Railroad Company.

(16) The evidence taken before said Board shows that the railroad which crosses the said highways named in Reason (1) is not the railroad of Erie Railroad Company.

(17) The evidence shows that the action of said Board in finding that the railroad which crosses the said highways named in Reason (1) is the railroad of Erie Railroad Company is—

(a) purely arbitrary, or

(b) without reasonable basis upon which to rest, or

(c) unsupported by the facts laid before said Board.

(18) The conclusions or findings of said Board that Erie Railroad Company was, within the meaning of Chapter 57, Laws of 1913, operating the railroad which crosses at the same level the highways named in Reason (1), were not justified nor reasonably supported by the evidence taken before said Board.

(19) There was no evidence before said Board to support reasonably the order under review, with re-

spect to the operation of said railroad, within the meaning of Chapter 57, Laws of 1913, by Erie Railroad Company at said highway crossings named in Reason (1).

(20) According to the whole of the evidence taken before said Board, the said order under review is unreasonable so far as it relates to the operation of said railroad, within the meaning of Chapter 57, Laws of 1913, by Erie Railroad Company, at the said highways named in Reason (1).

(21) The evidence taken before said Board shows that Erie Railroad Company was not, within the meaning of Chapter 57, Laws of 1913, operating the railroad which crosses the said highways named in Reason (1).

(22) The evidence shows that the action of said Board in finding that the said Erie Railroad Company was operating said railroad within the meaning of Chapter 57, Laws of 1913, at the said highways named in Reason (1) is—

(a) purely arbitrary, or

(b) without reasonable basis upon which to rest, or

(c) unsupported by the facts laid before said Board.

(23) The evidence taken before said Board shows that the railroad which crosses at the same level the highways known as (A) Madison avenue, (B) Clay and Straight streets, (C) Cedar street and (D) Market street and Park avenue, is the railroad of a corporation known as "The President and Board of Directors of the Paterson and Hudson River Railroad Company."

(24) The evidence taken before said Board shows that the railroad which crosses at the same level the highways known as (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Frank-

lin street, (L) Keen street, (M) Warren street, and (N) River and Putnam streets, is the railroad of a corporation known as "Paterson and Ramapo Railroad Company.

(25) The evidence taken before said Board shows that a corporation known as "The President and Board of Directors of the Paterson and Hudson River Railroad Company" is the company operating the railroad which crosses at the same level the highways known as (A) Madison avenue, (B) Clay and Straight streets, (C) Cedar street, and (D) Market street and Park avenue, within the meaning of Chapter 57, Laws of 1913.

(26) The evidence taken before said Board shows that a corporation known as "Paterson and Ramapo Railroad Company" is the company operating the railroad which crosses at the same level the highways known as (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Franklin street, (L) Keen street, (M) Warren street, and (N) River and Putnam streets, within the meaning of Chapter 57, Laws of 1913.

(27) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways known as (A) Madison avenue, (B) Clay street and Straight street, (C) Cedar street, (D) Market street and Park avenue, for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street), whereas said order, if, under the evidence, any order is justified, should have directed that the expense of such alterations,

changes, re-locations and opening (less the amount to be paid by Public Service Railway Company), should be paid by The President and Board of Directors of the Paterson and Hudson River Railroad Company.

(28) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways known as (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Franklin street, (L) Keen street, (M) Warren street, (N) River and Putnam streets, for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street), whereas said order—if, under the evidence, any order is justified—should have directed that the expense of such alterations, changes, re-location and opening (less the amount to be paid by Public Service Railway Company), should be paid by Paterson and Ramapo Railroad Company.

(29) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways named in Reason (1) for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street, whereas said order—if, under the evidence, any order is justified—should have directed that the expense of such alterations, changes, re-location and opening (less the amount to

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be paid by Public Service Railway Company), should be paid by The President and Board of Directors of the Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, as their respective interests may appear, or be determined by appropriate proceedings.

(30) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways named in Reason (1), for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street), whereas said order —if, under the evidence any order is justified—should have directed that the expense of such alterations, changes, re-location and opening (less the amount to be paid by Public Service Railway Company), should be paid jointly by said Erie Railroad Company, The President and Board of Directors of Paterson and Hudson River Railroad Company, and Paterson and Ramapo Railroad Company, so that the cost thereof might be apportioned between and among said Erie Railroad Company, The President and Board of Directors of Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, by appropriate proceedings, as provided by law, in accordance with the respective interests of said companies.

(31) Said order and the statute upon which the same is based, to wit, Chapter 57, Laws of 1913, are void, for the reason that the same are in violation of, and contrary to, the Constitution of the State of New Jersey in the following particulars:—

(a) Said order and statute take the private property of the prosecutor for a private use and also take

the property of the prosecutor for public use without just compensation, contrary to Article I, Section 16, reading as follows:

"Private property shall not be taken for pub-
"lic use without just compensation."

(b) Said order and statute take the property of the prosecutor without affording to it any opportunity to protect its said property, thereby depriving the prosecutor of its right and guaranty of enjoying and defending, acquiring, possessing and protecting said property, contrary to Article I, Section 1, reading as follows:

"All men are by nature free and independent
"and have certain natural and unalienable rights,
"among which are those of enjoying and defend-
"ing life and liberty, acquiring, possessing and
"protecting property, and of pursuing and ob-
"taining safety and happiness."

(c) Said order and statute deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article III, Section 1, reading as follows:

"The powers of the government shall be divi-
"ded into three distinct departments—the legis-
"lative, executive and judicial; and no person or
"persons belonging to, or constituting one of
"these departments shall exercise any of the pow-
"ers properly belonging to either of the others,
"except as herein expressly provided."

and contrary to Article VI, Section 1, reading as follows:

"The judicial power shall be vested in a court
"of errors and appeals in the last resort in all
"causes as heretofore; a court for the trial of im-
"peachment; a court of chancery; a prerogative
"court; a supreme court; circuit courts, and such
"inferior courts as now exist, and as may be here-
"after ordained and established by law, which in-

"ferior courts the legislature may alter or abolish,
"as the public good shall require."

(d) Said order and statute deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the prosecutor or its lessors, The President and Board of Directors of the Hudson River Railroad Company, and the Paterson and Ramapo Railroad Company, by mandamus or other appropriate proceedings to perform the duties imposed by law upon the prosecutor or upon its said lessors, or either or both of them, with respect to the construction and maintenance of such crossings particularly named in said order, or some one or more of them, contrary to the provisions of said Article III, Section 1, and Article VI, Section.

(e) The object of the said statute is not expressed in the title thereof and the said statute embraces more than one object, contrary to Article IV, Section VII, paragraph 4, reading as follows:

"To avoid improper influence which may result
"from intermixing in one and the same act such
"things as have no proper relation to each other,
"every law shall embrace but one subject, and
"that shall be expressed in the title."

(32) Said order and statute upon which the same is based, to wit, Chapter 57 of the New Jersey Laws of 1913, are void for the reason that the same are in violation of and contrary to the Constitution of the United States in the following particulars:

(a) Said order and statute deprive the prosecutor of its liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of said Constitution, reading as follows:

"ARTICLE V."

"No person shall be * * * deprived of life, liberty or property, without due process of law."

"ARTICLE XIV."

"Nor shall any state deprive any person of life, liberty or property without due process of law."

(b) Said order and statute deny to prosecutor the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

(c) Said order and statute abridge the privileges or immunities of the prosecutor, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

(d) Said order and statute take the private property of the prosecutor for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

"Nor shall private property be taken for public use without just compensation."

(e) Said order and statute create a burden upon and operate as a regulation of, and an interference with interstate commerce, contrary to Article I, Section VIII, paragraph 3, reading as follows:

"The Congress shall have power * * *. 3. To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes."

(f) Said order and statute impair the obligation of contracts between the State of New Jersey and the prosecutor, contrary to Article I, Section X, paragraph 1, reading as follows:

"No State shall pass any * * * law impairing the obligation of contracts."

(33) The statute upon which the order under review is based (being Chapter 57, Laws of 1913), is

unreasonable, unconstitutional and invalid for the reason that it establishes no reasonable, or any, standard whereby the Board of Public Utility Commissioners may determine when or under what circumstances a highway grade crossing is dangerous to public safety, or that the public travel on said highway is impeded thereby, within the meaning of said statute, and delegates legislative power to said Board with respect to such crossings and the orders that may be made concerning the same.

(34) The statute upon which the order under review is based (being Chapter 57, Laws of 1913), is unreasonable, unconstitutional and invalid for the reason that, when and if the Board finds that a highway grade crossing is dangerous to public safety, or that the public travel on the highway is impeded by such crossing, the said statute confers upon said Board arbitrary power to order or to refuse to order that such crossing be altered.

(35) Said order is unreasonable and unconstitutional for the reason that it appears that the cost to Erie Railroad Company of complying with said order will greatly exceed the value of the leasehold interest of said company in the property of the President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company, or both of them combined, without any compensating advantage to said Erie Railroad Company, and therefore is, in effect, a confiscation of the property of said Erie Railroad Company, and takes the property of said Erie Railroad Company for the benefit of said The President and Board of Directors of Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, contrary to the provisions of the Constitutions of the State of New Jersey and of the United States as hereinbefore set forth.

(36) Said order is unreasonable and unconstitutional for the reason that the cost of complying therewith will exceed the total combined value of all the property, real and personal, of the corporations known as The President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company and the value of the prosecutor's interest therein, and will make the interest and investment of the prosecutor in said properties, or either of them incapable of earning, when used for railroad purposes, a fair and reasonable return upon the amount invested therein, and will confiscate prosecutor's property and interest therein.

(37) Said order, with the plan thereto annexed, in so far as they require, changes in the location or grades or other property of the corporations known respectively as, "The President and Board of Directors of Paterson and Hudson River Railroad Company," and "Paterson and Ramapo Railroad Company," and the construction, relocation or rebuilding thereof in whole or in part, as indicated on said plan, is invalid and beyond the jurisdiction of said Board, for the reason that the said changes, relocations, constructions, reconstructions and rebuildings confiscate the property of the prosecutor for the benefit of the said The President and Board of Directors of the Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, and take the property of the prosecutor for public use without just compensation, contrary to the provisions of the Constitutions of the State of New Jersey and of the United States, as hereinbefore set forth.

(38) The statute upon which said order is based (being Chapter 57, Laws of 1913), if construed to permit or require the Board of Public Utility Commissioners to order the company operating the rail-

road at the highway crossings named in Reason (1) to alter said corssings, or any or either of them, at the expense of said company so operating such railroad (less such amount as may be ordered to be paid by the street railway company using such crossing or crossings), is unconstitutional and void because it takes the property of the prosecutor for private use, and also takes its property for public use without just compensation and otherwise violates the provisions of the constitutions of the State of New Jersey and of the United States, as hereinbefore set forth.

(39) Said order is unreasonable and invalid and impossible of performance, for the reason that the cost to the prosecutor of complying therewith will be approximately the sum of three million dollars (exclusive of property damage), whereas the testimony taken before said Board shows that prosecutor did not have, and in all, reasonable probability will not have, sufficient funds available for such purpose; and has not and in all reasonable probability will not have, any means of securing funds whereby it might be enabled to comply with said order within the time limited therein.

(40) Said order is unreasonable, and the statute upon which the same is based is unconstitutional and invalid, for the reason that each of them fails to give to the railroad the alternative of decreasing or eliminating the danger to public safety and the impediment to public travel by decreasing the number of train movements over said crossings, or some of them, or by abandoning the railroad at said crossings, or some of them.

(41) Said order and the statute upon which the same is based, in so far as they require changes in, or the removal of, the property or constructions (or changes in the grade or location thereof), of persons or corporations other than telegraph, telephone, gas,

electric, lighting, power, water, oil or pipe lines companies (as specified in Section 4 of Chapter 57, Laws of 1913), or other persons or companies owning or controlling or operating or managing within the State of New Jersey any steam railroad, street railway, traction railway, canal, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, telegraph system, plant or equipment for public use under privileges granted by the State of New Jersey, or by any political sub-division thereof, are unconstitutional and invalid for the reason that none of said persons or corporations is included within the description of the term "public utility" as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor are any of them otherwise subject to the jurisdiction of said Board.

(42) Said order and statute in so far as they require that the expense of removing, relaying or relocating municipal water or sewer pipes or other municipal pipes, conduits or subways to be borne by the municipality owning the same, and in so far as they require the expense of paving, curbing and flagging the highway, or highways, constructed as the result of changes of grade to be borne by the municipality, are unconstitutional and invalid, for the reason that a municipality is not included within the description of the terms, "public utility," as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners, and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is it otherwise subject to the jurisdiction of said Board.

(43) Said statute (being Chapter 57, Laws of 1913), is in violation of and contrary to Article III, Section VII, paragraph 4, of the Constitution of the State of New Jersey, in that the object of the said statute is not expressed in the title thereof and the said statute embraces more than one object, in that said statute purports to empower the Board of Public Utility Commissioners to exercise jurisdiction over municipalities, companies, or corporations, copartnerships or individuals which are not included within the description of the term, "public utility," as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), to which said statute is a supplement.

(44) Said order is impossible of performance, in that it has no effective provision requiring changes in the property or construction of the various companies, copartnerships and individuals mentioned in the testimony taken before said Board, whose lands, buildings, facilities or other property will, as shown on the plan annexed to said order, be affected, or destroyed, or rendered useless thereby.

(45) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to acquire certain property for the purpose of complying therewith, to reconstruct the said railroad and highways, to perform all other work required according to and as shown on the plan and profile attached to said order, and to proceed with due diligence to the execution of said order, and to comply with all of the requirements thereof, and the duties imposed on it thereby, and by the said act under which said order was made and the laws of this state, and that to that end it exercise in good faith all of the

powers conferred upon it by the laws of this State, for the following reasons:—

(a) The prosecutor is not now required, or empowered, by law, to carry out the said commands of said order, or any or either of them.

(b) Said Board has no power to issue such commands or any or either of them, to the prosecutor.

(c) Said commands, and each of them, interfere unlawfully with the judgment and discretion of the board of directors of the prosecutor and deprive said directors of the right given them by law to exercise their judgment and discretion in the management of the prosecutor's business.

(46) Said order with the plan thereto annexed, so far as they require changes in the location or grade of various switches, sidetracks, leads, bridges, yards, structures and other facilities and property of the prosecutor, and other companies, corporations, copartnerships, or individuals, and the construction, relocation or rebuilding thereof, in whole or in part, as indicated on said plan, is invalid and beyond the jurisdiction of said Board for the following reasons:

(a) The petition of the Board of Finance of the City of Paterson, upon which said order is based, was limited to a prayer for the elimination of certain highway crossings, and did not include therein any prayer for the relocation or reconstruction or rebuilding of said property of prosecutor, and said other companies, corporations, copartnerships or individuals.

(b) Said Board has no power to order said changes, relocations, constructions, reconstructions and rebuildings, or any or either of them, upon the petition filed by said Board of Finance of the City of Paterson.

(c) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(d) Said order was not made after hearing, upon notice, as required by law.

(e) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, any part of the duties or obligations imposed by law upon the prosecutor, or upon said other companies, corporations, co-partnerships or individuals.

(f) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, reasonably necessary, or required, or appropriate for the elimination of said crossings named in Reason (1), or any or either of them.

(g) Said changes, relocations, constructions, reconstructions and rebuildings impose a burden upon the interstate traffic of the prosecutor and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

(47) Said order is invalid in so far as it requires the construction or reconstruction and the relocation of the station buildings and facilities at or near Market street and the station buildings and facilities at or near River street, or either of them, in the City of Paterson, other than the station buildings and facilities respectively now occupied and maintained by the prosecutor, for the following reasons:

(a) The petition of the Board of Finance of the City of Paterson, upon which said order was based, was limited to a prayer for the elimination of certain highway crossings, and did not include therein any prayer for the construction or reconstruction or relocation of said station buildings and facilities, or either of them.

(b) There is no evidence to show that said existing station buildings and facilities, or either of them, are not safe, adequate or proper.

(c) It was not made, after hearing, upon notice, as required by law.

(d) It does not appear that said constructions, or reconstructions, or relocations, or any or either of them, are reasonably necessary, required or appropriate for the elimination of the highway crossings named in Reason (1), or any or either of them.

(e) It deprives the prosecutor of its property without due process of law, as no hearing has been given to the prosecutor on the question as to whether said present station buildings and facilities, or either of them, are safe, adequate and proper, or on the question whether, in order to have the same safe, adequate and proper, it is necessary or reasonable to construct or reconstruct or relocate said station buildings and facilities, or either of them, in the manner required by said order.

(48) Said order is invalid in so far as it requires the prosecutor as a part of the construction, reconstruction and relocation of its station buildings and facilities at or near Market street in the City of Paterson, to take, occupy and use certain property on the approach of the Paterson City station of the New York, Susquehanna and Western Railroad Company indicated on said plan under the name of "Crosby Place," and owned by said New York, Susquehanna and Western Railroad Company.

(49) Said order is invalid in so far as it requires the prosecutor as a part of the construction, reconstruction and relocation of its station buildings and facilities at or near River street in the City of Paterson, to build and maintain a sidewalk in the public street and to take, occupy and use part of a public street for the purpose of said construction, reconstruction and relocation.

(50) Said order is invalid in so far as it requires the prosecutor as a part of the construction, recon-

struction and relocation of its station buildings and facilities at or near River street in the City of Paterson, to devote part of its right of way to the use of the public in the form of a sidewalk on said right of way, and to construct and maintain the same as shown on said plan.

(51) Said order is invalid in so far as it requires the prosecutor to remove from its present location the buildings and facilities, and each of them, now used respectively by Fullers Express Company and Morris & Company, and to relocate, rebuild, reconstruct and maintain the same upon the respective sites indicated on the plan and profile attached to said order, for the following reasons:—

(a) Said Board is without authority or jurisdiction to make an order requiring the prosecutor to take any action whatever involving or affecting said buildings and facilities, or either of them.

(b) Said Board is without authority or jurisdiction to require the prosecutor to remove, rebuild, relocate and maintain said buildings and facilities or either of them at the respective sites indicated on the said plan and profile.

(c) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or either of them, to private purposes for the benefit of said Fullers Express Company and Morris & Company, or either of them.

(d) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or either of them, to public or any purposes other than the public purposes to which the same, or either of them, are now devoted.

(e) The evidence does not show that the removal of said buildings and facilities, or the relocation, rebuilding, reconstruction and maintenance of the same or either of them, are reasonably necessary, or required, or appropriate for the

elimination of the highway crossings named in Reason (1), or any or either of them.

(52) Said order is invalid in so far as it requires the Prosecutor to relay, relocate, rebuild, reconstruct and maintain the tracks, poles and wires of Public Service Railway Company on the several sites indicated on the plan and profile attached to said order, for the following reasons:—

(a) Said Board is without authority or jurisdiction to make an order requiring the prosecutor to take any action whatever involving or affecting said tracks, poles, wires, or any or either of them.

(b) Said Board is without authority or jurisdiction to require the prosecutor to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires at the respective sites indicated on said plan and profile.

(c) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or any or either of them, so far as the same or some of them are on the right of way or other property of the prosecutor, to private purposes for the benefit of said Public Service Railway Company.

(d) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or any or either of them, so far as the same or some of them are on the right of way or other property of the prosecutor, to public or any purposes other than the public purposes to which the same or some of them are now devoted.

(e) The evidence does not show that the relaying, relocation, rebuilding, reconstruction, or maintenance of said tracks, poles and wires, or any or either of them, are reasonably necessary or appropriate for the elimination of the highway crossings named in Reason (1), or any or either of them.

(f) The prosecutor has no legal duty or right to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires, or any or either of them.

(g) The legal duty and right to relay, relocate, rebuild, reconstruct and maintain said tracks, poles and wires rests on persons or corporations other than the prosecutor.

(h) The existing contracts between the prosecutor or its predecessors, and other persons or corporations, or their predecessors, respectively, with respect to the relaying, relocating, rebuilding, reconstruction and maintenance of said tracks, poles and wires, and each of them, are impaired and destroyed.

(i) There is no right in the prosecutor to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires in, along, or through public streets, except under the limitations imposed by law.

(53) Said order of said Board is invalid in so far as it requires the prosecutor to substitute for the existing crossings at Cedar street a crossing under the railroad at Taylor street and for the existing crossing at Franklin street a crossing under the railroad at Montgomery street, for the reason that:—

(a) Such substitution amounts to the opening of new streets across the railroad at Taylor street and Montgomery street and the closing of existing streets at Cedar street and Franklin street, and the power to open and close said streets respectively is not within the authority or jurisdiction conferred upon said Board by law.

(b) The opening or closing of said streets respectively does not constitute the altering of such crossings by substituting therefor a crossing not at the grade of such public highway, either by carrying such public highway over or under said railroad or by reconstructing such railroad under or over such public highway, or by vacating, re-

locating or changing the lines, width, direction or location of such highway and the opening of a new highway in place of the one ordered vacated, within the meaning of Chapter 57, of the Laws of New Jersey for 1913.

(54) Said order is invalid in so far as it requires the prosecutor to widen and alter the undergrade crossings at Essex street, Governor street and Fulton street, and each of them, and to adjust, relocate and reconstruct the existing abutments and other structures at said streets and each of them, for the following reasons:—

(a) The petition of the Board of Finance of the City of Paterson, upon which said order was based, did not pray for any change in said undergrade crossings, or any or either of them, nor for the widening, nor alteration thereof, nor for the adjustment, reconstruction or relocation of the said abutments, and other structures, or any or either of them.

(b) Said order was not made after hearing, upon notice, as required by law.

(c) Said order deprives the prosecutor of its property without due process of law, because the prosecutor has had no hearing in regard thereto or concerning the propriety thereof.

(d) Said Board is without authority or jurisdiction to make any order requiring any action whatever to be taken for the widening or alteration of said undergrade crossings, or any or either of them, or the adjustment, reconstruction or relocation of the existing abutments, or other structures, at said undergrade crossings, or any or either of them.

(e) It does not appear that the widening and alteration of said undergrade crossings, or any or either of them, and the adjustment, reconstruction and relocation of said abutments and other structures are reasonably necessary, re-

quired or appropriate for the elimination of the highway crossings named in Reason (1), or any or either of them.

(f) None of said highways cross the railroad of the prosecutor at the same level.

(55) Said order is invalid in so far as it requires the prosecutor to change the lines, width and direction of the highways named in Reason (1), or any or either of them, and to carry so much thereof as so changed under said railroad (except in the case of Madison avenue), and to carry Madison avenue over said railroad, according to and as shown on said plan and profile for said purpose, and to vacate the remaining parts of said highways within the lines of the right of way of the prosecutor, and to vacate that part of Madison avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison avenue, for the following reasons:—

(a) The prosecutor is under no legal duty or obligation to change the lines, width or direction of the said highways, or any or either of them, nor to carry any part thereof as so changed under the said railroad, nor to vacate the remaining parts of said highways, or any or either of them, within the lines of said right of way, nor to vacate said part of said Madison avenue.

(b) The prosecutor has no power, or authority to change the lines, width or direction of the said highways, or any or either of them, nor to carry any part thereof as so changed under the said railroad, nor to vacate the remaining parts of said highway, or any or either of them, within the lines of the said right of way, nor to vacate said part of said Madison avenue.

(c) Said order imposes upon the prosecutor the entire expense of such changes, relocations and vacations, including damages to adjacent property (except such expenses as by statute are

expressly imposed upon municipalities, or other persons or corporations), without affording to the prosecutor any hearing as to the propriety or necessity of such changes, relocations and vacations, and without affording to the prosecutor any hearing as to the cause of such changes, relocations or vacations and the method or the amount of the assessment, or assessments, therefor.

(d) The power or authority to order the prosecutor to change the lines, width or direction of said highways, or any or either of them, and to carry any part thereof as so changed under the said railroad and to vacate the remaining parts of said highways, or any or either of them, within the lines of the said right of way, and to vacate said part of said Madison avenue has not been conferred by law upon said Board of Public Utility Commissioners, and can only be exercised by the proper municipal, or other authorities, in the manner provided by law.

(e) No appropriate proceedings have been taken and the necessary consents have not been given by or in behalf of the prosecutor, or other interested property owners, for the said changes, relocations and vacations of said highways, or any or either of them, as required by the Charter of the City of Paterson and by the laws of the State of New Jersey.

(56) The statue upon which said order is based is unreasonable, invalid and unconstitutional, in so far as it permits or requires said Board of Public Utility Commissioners to order the prosecutor to vacate, relocate or change the lines, width, direction or location of the highways named in Reason (1), or any or either of them; and in so far as it permits or requires the opening of new highways in the place of those ordered vacated, for the following reasons:—

(a) The prosecutor is under no legal duty or obligation to vacate, relocate or change the lines,

width, direction or location of said highways, or any or either of them, or to open new highways in the place of those ordered vacated.

(b) The prosecutor has no power or authority to vacate, relocate or change the lines, width, direction or location of said highways, or any or either of them, or to open new highways in the place of those ordered vacated.

(c) Said statute attempts to impose upon the prosecutor the entire expense of such changes, relocations, or openings, including damages to adjacent property (except such expenses as by statute are expressly imposed upon municipalities or other persons or corporations), without affording to the prosecutor any hearing as to the propriety or necessity of such changes, relocations, or openings; and without affording to the prosecutor any hearing as to the cost of such changes, relocations or openings and the method or the amount of the assessment or assessments therefor.

(d) The power or authority to vacate, relocate or change the lines, width, direction or location of such highways and to open new highways in the place of those ordered vacated, has not been conferred by law upon said Board of Public Utility Commissioners and can only be exercised by the proper municipal or other authorities in the manner provided by law.

(e) No appropriate proceedings have been taken, and the necessary consents have not been given, by or in behalf of the prosecutor or other interested property owners for the vacation, relocation or change of the lines, width, direction or location of such highways, or any or either of them, or for the opening of new highways in the place of those ordered vacated, as required by the Charter of the City of Paterson and by the laws of the State of New Jersey.

(57) Said order is invalid in so far as it requires the prosecutor to reconstruct the railroad over the

public highways named in Reason (1) (except Madison avenue), by elevating the railroad at such public highways, and each of them, and by depressing the grade of said highways, and each of them, in order to pass under the railroad when thus elevated.

(58) The statute upon which the order under review is based is unreasonable and invalid and deprives the prosecutor of its property without due process of law, because it requires grade crossings to be altered and eliminated by substituting therefor a crossing not at the grade of the public highway, either by carrying the public highway over or under such railroad, or by reconstructing such railroad over or under such public highway, without permitting the Board of Public Utility Commissioners in its discretion to alter and eliminate such crossings by depressing or elevating the public highway in part and depressing or elevating the railroad in part.

(59) Said order and the statute upon which the same is based are illegal, unconstitutional and void in so far as they permit or require the prosecutor to construct or maintain bridges or passages over or under the railroad at the said crossing, or some one or more of them, named in Reason (1), for the reason that the highways at said crossings, or some one or more of them, were opened and laid out subsequent to the construction of the railroad at said crossings.

(60) The statute upon which the order under review is based (being Chapter 57, Laws of 1913) is unreasonable, unconstitutional and invalid because it deprives the prosecutor of its property without due process of law, and impairs the obligation of prosecutor's contracts by permitting the Board of Public Utility Commissioners to alter and amend the charters of the several predecessors in interest of the prosecutor, to whose rights the prosecutor has succeeded.

(61) The statute upon which the order under review is based (being Chapter 57, Laws of 1913) is unreasonable, unconstitutional and invalid because it purports, or attempts to delegate, to the Board of Public Utility Commissioners, the power in its discretion to alter and amend the charters of the predecessors in interest of the prosecutor, to whose rights the prosecutor has succeeded.

(62) Said order and the statute upon which the same is based are illegal, unconstitutional and void in so far as they permit or require the prosecutor to relocate and reconstruct the highways mentioned in Reason (1), and to change the grade thereof, or parts thereof, outside of the right of way of the prosecutor at said crossings.

(63) The statute upon which said order is based is unreasonable and in violation of the Constitution of the United States, because it takes the property of the prosecutor without just compensation and without due process of law, and denies to it the equal protection of the laws and impairs the obligation of the prosecutor's contracts as follows:—

(a) The contracts made by the prosecutor with the holders of its stocks, bonds, notes and other obligations.

(b) The contracts made between the State of New Jersey and the prosecutor or its predecessors in interest, to whose rights prosecutor has succeeded.

(c) The contracts made between the prosecutor or its predecessors in interest, to whose rights the prosecutor has succeeded, and the Public Service Railway Company, or its predecessors in interest.

(d) The contracts made between the prosecutor, or its predecessors in interest, to whose rights prosecutor has succeeded, and the various corporations, copartnerships and individuals in pos-

session or enjoyment of various sidings, switches and other facilities, as described in the evidence and in the plan attached to said order.

(e) The contracts made between the corporations known respectively as "The President and Board of Directors of Paterson and Hudson River Railroad Company," and "Paterson and Ramapo Railroad Company"; and the prosecutor, or its predecessors in interest, to whose rights the prosecutor has succeeded.

in that the said statute imposes upon the prosecutor the entire expense of the alterations, changes, relocations or openings, including damages to adjacent property, caused by the alteration of crossings in the manner described in said statute—except such part of such expense not exceeding ten per cent., which may be imposed upon the street railway using such crossings, and except such part of such expense as the statute requires to be borne by the municipality, and except such part of such expense as the statute requires to be borne by any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe lines or other companies, or corporations, co-partnerships or individuals.

(64) Said order and the statute upon which the same are based are unconstitutional, unreasonable and invalid in so far as they limit the proportion of expense of the alterations, changes, relocations or openings (as specified in said statute) to be paid by the street railway using such crossing, or crossings, for the following reasons:

(a) Said proportion is not commensurate with, or in proportion to, the danger to public safety or the impediment to public travel created by and chargeable to said street railway at such crossings, and each of them; nor is it commensurate with, or in proportion to, the protection made necessary by such danger or impediment.

(b) Said proportion is not a fair or reasonable amount of the expense of such alterations, changes, relocations or openings.

(c) Said proportion is less than that imposed upon, and assumed by, the street railway under the terms and conditions of existing agreements between said street railway company, or its predecessors, and the prosecutor or its predecessors, respecting the use, maintenance and protection of said crossings, and each of them.

(65) Said order is unreasonable and invalid in so far as it requires the prosecutor to alter said highway crossings named in Reason (1), and each of them, according to a plan which is more expensive to the prosecutor than is necessary for the purpose of removing danger to the public safety, or impediment to public travel at said crossings and each of them.

(66) Said order is unreasonable and invalid in so far as the Board of Public Utility Commissioners does not adopt the proposal of the prosecutor for the elimination of the highway grade crossings at Keen, Warren and River streets.

(67) Said order is unreasonable and invalid in so far as the Board of Public Utility Commissioners does not adopt the proposal of the prosecutor for the consolidation of the highway grade crossings at Straight and Clay streets.

(68) Said order is unreasonable and invalid in so far as it specifies the date on or before which the prosecutor is required to begin the actual work of construction in the performance and execution of said order, and the dates on or before which the prosecutor is required to begin and complete the divisions of said work, respectively marked and designated on the profile attached to said order as "A," "B," "C" and "D."

(69) Said order is unreasonable and invalid in so far as it arbitrarily requires the actual work of construction in the performance and execution of said order to be done according to certain divisions marked and designated in the profile attached to said order as

"A," "B," "C" and "D"; and in so far as it requires said work to be prosecuted in the sequence of divisions named in said order.

(70) Said order is unreasonable and invalid, and the statute upon which same is based is unconstitutional and invalid, for the reason that the testimony shows that it is impossible for the prosecutor to obey said order; but on failure to obey, the prosecutor becomes subject to a penalty of one hundred dollars per day for every day during which default continues; and the prosecutor and its officers, agents and employees, on such neglect or default, become liable to indictment for misdemeanor.

(71) Said order is unreasonable and invalid and in violation of the Constitution of the United States in that the cost to the prosecutor of compliance therewith is so great that it imposes a burden upon the interstate traffic of the prosecutor and interferes with and impairs its ability to perform its duty as an interstate carrier of freight and passengers, for the reason that said order compels the prosecutor to raise and expend moneys which (if available for any purpose), would otherwise be available for, and in the ordinary course of events, would be used by the prosecutor in the making of changes and improvements which are essential for the purpose of enabling the prosecutor to carry on its interstate traffic.

(72) Said order is in violation of the Constitution of the State of New Jersey in that it takes the private property of the prosecutor for a private use, and takes the property of the prosecutor for public use without just compensation; and takes the property of the prosecutor without offering to it any opportunity to protect said property, thereby depriving the prosecutor of its right and guaranty of enjoying and defending, acquiring, possessing and protecting its said property, Said order is likewise in violation of the Constitution

of the United States, in that it deprives the prosecutor of its liberty and property without due process of law, denies to the prosecutor the equal protection of the laws, abridges the privileges and immunities of the prosecutor, takes the private property of the prosecutor for public use without just compensation, creates a burden upon and operates as a regulation of and an interference with, interstate commerce, and impairs the obligation of contracts, for the reason that the effect of said order will be to deprive the prosecutor of the rights, benefits, advantages, privileges and contracts now possessed by it with reference to certain sidings in the following respects (numbers correspond to numbers of sidings on maps marked "Exhibit 23" and "Exhibht 23-A") :—

(a)	Passaic Steel Co.	No. 3
	R. H. McDonald	No. 4
	Paterson Vehicle Co.	No. 19
	Paterson Beef Co.	No. 20
	David C. Rodgers Co.	No. 24

Said order requires the destruction of each of said sidings.

(b)	G. A. Zabriskie	No. 5
	Commercial Lumber and Mill Work Co.	No. 6
	Christopher Kelly	No. 7
	M. Gobel	No. 8
	National Wood Co.	No. 9
	Standard Oil Co.	No. 10

Said order requires the destruction of the existing siding and the construction of three other sidings in lieu thereof at different locations; and said new sidings, if constructed as required by said plan, will be unavailable for use.

Said order further requires the construction of a bridge across Taylor street for the purpose of carrying two of said new sidings to G. A. Zabriskie Commercial Lumber and Mill Work Co., Christopher Kelly, M. Gobel and National Wood Co.; and requires the con-

struction of another bridge across Taylor street for the purpose of carrying said third new siding to Standard Oil Company.

(c) John Agnew Co. No. 11

Said order requires the destruction of the two sidings located between Hamilton avenue and Governor street; and the construction of two new sidings, each at an elevation of about sixteen feet above the present grade upon the land of John Agnew Co., and also requires the construction of a bridge over Hamilton avenue for the purpose of carrying one of said new sidings.

(d) McNabb & Harlin No. 15
Graham Brewing Co. No. 16
National Biscuit Co. No. 17
Hygeia Ice Co. No. 47
Paterson Consolidated Ice Co. No. 50
Bon Arbor Chemical Co. No. 55

Said order requires the destruction of the lead by which each of said sidings is reached, and requires the construction of a new and longer lead through a public street in order to reach said sidings and each of them, which said new lead is partially on and partially off the right of way and property of the prosecutor.

Said order further requires the maintenance of each of said sidings along, in and through a public street.

(e) Morris & Co. No. 18
Fullers Express Co. No. 50

Said order requires the destruction of each of said sidings and the construction of two other sidings at the locations indicated on said plan.

(f) Herman Co. No. 22
Sulsberger & Sons Co. No. 23

Said order requires the destruction of the siding and the construction of a new siding at an elevation of fifteen feet above the grade of the present siding and the construction of a bridge over Ellison street for the purpose of carrying said new siding—said new siding

being partially on and partially off the right of way and property of the prosecutor.

(g) Armour & Co. No. 25

Said order requires the destruction of the lead by which said siding is connected with the main line, and the construction of a new lead and of bridges at Lafayette, Montgomery, Fulton and Governor streets on which to carry said new lead.

(h) Hinchliffe Brewery. No. 26

Said order requires the destruction of said siding and the construction of a new siding at an elevation of sixteen and one-half feet above the present grade.

(i) Katz Brewery No. 27

Said order requires the destruction of said siding and the construction of a new siding at a different place and grade.

Said order also requires the construction of a new lead, and of new bridges at Lafayette, Montgomery, Fulton and Governor streets, on which to carry said new lead.

(j) P. S. Van Kirk Co. No. 28
Diamond Coal Co. No. 53
Olive Oil Soap Co. No. 61

Said order requires the destruction of each of said sidings and the construction of new sidings at a different grade and off of the right of way and property of prosecutor.

(k) A. H. Smith No. 29

Said order requires the destruction of said siding and the construction of a new siding on a different elevation and place, partly on and partly off the right of way and property of the prosecutor.

(l) Meyer and De Vogel No. 30

Said order requires the destruction of said siding and the construction of a new siding at an elevation of about fifteen feet above the present grade.

(m) Armstrong Sons Co. No. 31

Said order requires the destruction of said siding and the construction of a new siding at an elevation about seventeen feet above the present grade.

Said order further requires the construction of a bridge across Montgomery street on which to carry said new siding.

(n) A. H. Smith No. 32
D. Fullerton & Co. No. 33

Said order requires the destruction of said sidings and the construction of other sidings at an elevation of about sixteen feet above the present grade.

(o) Atherton Grain Co. No. 34
J. A. Lydecker No. 35

Said order requires the destruction of the siding and the construction of a new siding at an elevation of about sixteen feet above the present grade.

Said order further requires the construction of a bridge over Keen street on which to carry said new siding.

(p) Public Service Gas Co. No. 36

Said order requires the partial destruction of the two existing sidings and the construction of a new siding in a different location through a public street and off the right of way and property of the prosecutor.

(q) J. Van Den Hendell No. 37
Swift & Co. No. 38
H. M. Post No. 39
Ashley & Bailey No. 40
National Silk Dyeing Co. No. 41
Grasselli Chemical Co. No. 42
Auger & Simon Co. No. 49
Center Paper Box Co. No. 56
Waldo Silk Ribbon Co. No. 57

Said order requires the destruction of the leads and connections by which each of said sidings is now reached, and requires the construction of new leads and connections.

(73) Said order is illegal and unconstitutional in so far as it requires the construction and maintenance of sidings—

(A) on the right of way and other property of the prosecutor;

(B) off the right of way and other property of the prosecutor on the property of other persons or corporations;

(C) in, along and through public highways, for the reason that—

(a) The prosecutor has no legal duty or right to construct and maintain said sidings or any or either of them.

(b) The legal duty and right to construct and maintain the same rests on persons or corporations other than the prosecutor.

(c) No hearing has been given to the prosecutor as to whether said sidings, or any of them, should be constructed or maintained by it, nor as to the terms under which said sidings or any of them should be constructed or maintained.

(d) Existing contracts between the prosecutor and other persons or corporations with respect to the construction and maintenance of said sidings and each of them are impaired or destroyed.

(e) There is no right in the prosecutor to construct or maintain sidings in, along or through public streets, except under the limitations imposed by law.

(f) There is no power of jurisdiction in said Board of Public Utility Commissioners in this proceeding to order the prosecutor to construct or maintain the said sidings or any or either of them in the manner required by said order and plan.

(g) The order imposes a burden upon the interstate traffic of the prosecutor and interferes with and impairs its ability to perform its duty as an interstate carrier of freight and passengers.

(h) The construction and maintenance of said sidings, and each of them, by the prosecutor as required by said order would constitute an unjust discrimination, preference or advantage between interstate shippers, in violation of the provisions of the Interstate Commerce Act.

(74) Said order is invalid and unreasonable because it arbitrarily requires the alteration of said crossings named in Reason (1) according to and as shown on said plan and profile, without making any provision for such changes or modifications of the details of said plan and profile as may become necessary during the progress of the work for engineering, or other reasons.

(75) Said order is invalid and beyond the jurisdiction of the said Board of Public Utility Commissioners, because it prevents or impairs the right of the prosecutor to change the construction or use of switches, sidetracks, leads, bridges, yards, structures, facilities and other property of the prosecutor, comprehended in said plan, in such manner and to such extent as the necessities of its business may from time to time demand; and requires the prosecutor arbitrarily to devote and surrender its said structures, facilities and other property to the uses and purposes limited in and prescribed by said order and plan, and to maintain the same accordingly, and divests the prosecutor of the powers, duties and obligations imposed upon and delegated to it by law, with respect to the construction, use and maintenance of said structures, facilities and other property.

(76) The action of the Board in denying the prayer of the prosecutor for a further hearing was arbitrary, unjustified and unreasonable.

(77) Said Board should have granted the prayer of the prosecutor for a further hearing for the purpose of considering some one or more of the following

matters, as specified in the prosecutor's petition for such further hearing, to wit:—

(a) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company as the railroad companies operating the railroad over the crossings in question within the meaning of Chapter 57, Laws of 1913.

(b) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent jointly, so that the cost thereof may be apportioned between and among said companies by appropriate proceedings.

(c) Whether this respondent is financially able to carry out the terms of any order made in this proceeding if the heaviest burden of the cost thereof falls upon it.

(d) Whether such order would impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

(e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the total cost of eliminating all of the crossings involved in said plan or scheme adopted by the Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company under Section 4 of said statute.

(f) If the Board reaches the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this respondent will submit.

(78) The conclusion of said Board whereby it denied the prayer of prosecutor's petition for a further hearing with respect to the matters described in Reason (77), sub-division F, was arbitrary, unreasonable and unjustified, and was made without hearing and without any evidence in support thereof.

COLLINS & CORBIN,
Attorneys of Prosecutor.

Amendment to Reasons of Erie Railroad Company.

(Filed October, 1915.)

Prosecutor files the following amendment to the Reasons heretofore filed by it in the above cause:

1. Add to Reason (53) the following:

53 (c). The evidence taken before said Board does not show, nor does the said Board find, that the width and character of the bridges and passages ordered to be constructed at Taylor street and Montgomery street respectively are such as are suitable to the locality in which the same are situated.

2. Add to Reason (54) the following:

54 (g). The evidence taken before said Board does not show, nor does the said Board find, that the width and character of the bridges and passages ordered to be constructed at Essex street, Governor street and Fulton street respectively, are such as are suitable to the locality in which the same are situated.

3. Add to Reason (55) the following:

55 (f). The evidence taken before said Board does not show, nor does the said Board find, that the width and character of the bridges and passages ordered to be constructed at the highways named in Reason (1), or any or either of them,

are such as are suitable to the locality in which the same are situated.

COLLINS & CORBIN,
Attorneys of Prosecutor.

We consent to the foregoing amendment.

FRANK H. SOMMER,
Attorney of Board of Public Utility Commissioners.

EDWARD F. MERREY,
Attorney of City of Paterson and Board of Finance of said city.

Reasons of Public Service Railway Company.

Filed September 11, 1915.

The prosecutor presents the following reasons for setting aside the order made by the Board of Public Utility Commissioners on the twentieth day of April, A. D. nineteen hundred and fifteen, and brought up for review by the writ allowed in the above stated cause:

1. The order brought up for review was and is not within the lawful juirisdiction of the defendant, Board of Public Utility Commissioners.

2. The order brought up for review is unlawful, unjust, unreasonable and oppressive to the prosecutor.

3. There was no evidence before the defendant, Board of Public Utility Commissioners, to support reasonably the said order brought up for review.

4. The order brought up for review makes an unjust and unlawful imposition and burden upon the prosecutor.

5. The order brought up for review, if enforced, would have the effect of taking property of the prosecutor for public use without just compensation, in violation of paragraph 16 of Article I of the Constitution of the State of New Jersey.

6. It is beyond the power of said Board of Public Utility Commissioners, by said order or otherwise, to compel the prosecutor to contribute specially to the expense of the abolishment of the grade crossings mentioned in said order, or any of them, or to contribute otherwise to such expense except its proportion in connection with other taxpayers.

7. The order, if enforced, would have the effect of levying a special tax on the prosecutor and its property for the cost of a general public improvement.

8. The order, if enforced, would have the effect of taxing the property of the prosecutor otherwise than by general laws and uniform rules according to its true value.

9. The order, if enforced, would violate the rights of the prosecutor secured by paragraph 12, Section 7, Article IV of the Constitution of the State of New Jersey.

10. The order brought up for review takes the property of the prosecutor without just compensation in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

11. The order, if enforced, would have the effect of depriving the prosecutor of its property without due process of law, in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

12. The order, if enforced, would deny to the prosecutor the equal protection of the law in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

13. The order, if enforced, would be an unjust and unlawful discrimination against the prosecutor, and would impose upon it part of the cost of a public improvement which ought to be borne, if incurred at all, by the taxpayers or property owners generally of the taxing district.

14. The order brought up for review is in divers other respects contrary to the Constitution of the United States and of the State of New Jersey and in violation of the laws thereof, and is illegal, unjust, unjustly discriminatory and oppressive.

The prosecutor therefore prays that the said order so brought up for review by the writ of *certiorari* in this cause be reversed, set aside and for nothing holden.

FRANK BERGEN,
Attorney for Prosecutor.

Reasons of Passaic Water Company.

(Filed September 11, 1915.)

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based are invalid and unconstitutional under the Constitution of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation, contrary to and in violation of Article I, Section 16 of the Constitution of the State of New Jersey.

(2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and take its private property for public use without just compen-

sation and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property, and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of New Jersey.

(4) Said order and statute are contrary to and in violation of the Constitution of the State of New Jersey, in so far as they deprive the Court of Chancery of said State of its exclusive jurisdiction over the regulation of the use of easements, as provided in Article III, Section 1, and Article VI, Section 1, of said Constitution.

(5) Said order and statute are contrary to and in violation of Article I, Section 10, paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(6) Said order and statute, in so far as they require changes in or the removal of property or constructions of the prosecutor consisting of water pipes, water mains and the appurtenances thereof, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its said property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitutions of the State of New Jersey and of the United States, in the respects hereinbefore set forth.

(7) Said order is invalid and beyond the jurisdiction of said Board, in so far as it purports to command the prosecutor to proceed with due diligence

to the execution thereof and to comply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the laws of New Jersey.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it arbitrarily interferes with the judgment and discretion of the Board of Directors of the prosecutor and deprives it of the right given said directors by law to exercise their judgment and discretion in the management of prosecutor's business.

(9) Said order is invalid and beyond the jurisdiction of said Board for the reason that in carrying out the command thereof it will be necessary for the prosecutor to take, occupy, or use, or interfere with the property of other persons or corporations, in order to comply therewith, whereas said prosecutor is not now required or empowered by law, nor has said Board power to command it to take such property for such purposes.

(10) Said order, in so far as it requires changes in the grade or location of the prosecutor's water pipes, water mains and the appurtenances thereof, and the relocations, reconstruction or relaying thereof, in whole or in part, is invalid and beyond the jurisdiction of said Board for the following reasons:

(a) Said changes, reconstructions, relocations and relayings are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions, relocations and relayings, or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said changes, reconstructions, relocations and relayings are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said changes, reconstructions, relocations and relayings are no part of the duties or obligations imposed by law upon the prosecutor.

(f) It does not appear that said changes, reconstructions, relocations and relayings, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway grade crossings named in said order, or any or either of them.

(g) Said order, and the statute upon which same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company, "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company, and Public Service Railway Company, or one or more of them.

(11) Said statute (being Chapter 57, Laws of 1913), is in violation of and contrary to Article IV, Section VII, paragraph 4, of the Constitution of the State of New Jersey, in that the object of the said statute is not expressed in the title thereof, and the said statute embraces more than one object.

(12) The property and construction of the prosecutor, referred to in said order, consisting of water pipes, water mains, and the appurtenances thereof, having been constructed and maintained by it under and by virtue of the provisions of a special Act of the Legislature of the State of New Jersey (constituting its charter) entitled "An Act to Incorporate the Passaic Water Company," approved February 13, 1849, and the various supplements and amendments thereto, under and by which said charter it was fully au-

thorized and empowered to lay its pipes beneath such public roads, streets, avenues and alleys in the City of Paterson (among other places) as it might deem necessary for supplying the City (then Town) of Paterson (and other places) with water sufficient for extinguishing fires, culinary and other family uses, watering the streets and such other purposes as might conduce to the health and comfort of the citizens of Paterson; and with reference to any of said streets abutting on said crossings, referred to in said order which were laid out and constructed before the tracks and right of way of the President and Board of Directors of the Paterson & Hudson River Railroad Company, and those of the Paterson & Ramapo Railroad Company, now operated by Erie Railroad Company, came into existence, the said railroad company's title being subject to the burden of said streets, with all their incidents such as the public right to lay and maintain sewers, water pipes and gas pipes and electric conduits, etc., and with reference to any of said streets abutting upon said crossings referred to in said order, which were laid out and constructed by the City of Paterson across the then existing tracks and right of way of said railroad company, the said railroad company having received compensation once for all when said streets were opened, and the prosecutor in laying its pipes under all of said crossings having merely exercised the public easement conferred upon it by its charter, to which the said railroad company, whether it owned the land or had only a right of way, was bound to submit, the said order under review and the statute upon which same is based, in so far as they place the burden upon the prosecutor at its own expense, and not upon the said railroad company or companies, of changing and removing said property and construction, taken the private property of the prosecutor for public use without just or any compensation, and are contrary to and in violation of

the Constitutions of the State of New Jersey and of the United States in the respects hereinbefore set forth, and the said order is therefore invalid and beyond the jurisdiction of said Board.

HUMPHREYS & SUMNER,
Attorneys for Prosecutor.

Reasons of Western Union Telegraph Company.

Filed September 20, 1915.

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based are invalid and unconstitutional both under the Constitution of the United States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

(2) Said order and statute deny to the prosecutor the equal protection of the law, and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property, and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed

to it by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Said order and statute are contrary to and in violation of the Constitution of the State of New Jersey, in so far as they deprive the Court of Chancery of said State of its exclusive jurisdiction over the regulation of the use of easements, as provided in Article III, Section 1, and Article VI, Section 1, of said Constitution.

(5) Said order and statute are contrary to and in violation of Article I, Section 10, paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(6) Said order and statute, in so far as they require changes in or the removal of the property or constructions of the prosecutor consisting of telegraph wires, poles and appurtenances to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitutions of the State of New Jersey and of the United States in the respects hereinbefore set forth.

(7) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to proceed with due diligence to the execution thereof and to comply with all of the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the Laws of New Jersey.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it arbitrarily interferes with the judgment and discretion of the Board

of Directors of the prosecutor and deprives it of the right given said directors by law to exercise their judgment and discretion, in the management of the prosecutor's business.

(9) Said order is invalid and beyond the jurisdiction of said Board for the reason that in carrying out the command thereof it will be necessary for the prosecutor to take the property of other persons or corporations in order to comply therewith, whereas said prosecutor is not now required or empowered by law, nor has said Board power to command it, to take such property for such purposes.

(10) Said order, in so far as it requires changes in the grade or location of the prosecutor's telegraph wires, poles and appurtenances, and the reconstruction, relocation or rebuilding thereof, in whole or in part, is invalid and beyond the jurisdiction of said Board for the following reasons:

(a) Said changes, reconstructions, relocations and rebuildings are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or in behalf of municipal or other authorities necessary or required for said changes, reconstructions, relocations or rebuildings, or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said changes, relocations, reconstructions and rebuildings are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said changes, relocations, reconstructions and rebuildings are no part of the duties or obligations imposed by law upon the prosecutor.

(f) It does not appear that said changes, relocations, reconstructions and rebuildings, or

any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway grade crossings named in said order, or any or either of them.

(g) Said order and the statute upon which the same is based require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company and Public Service Railway Company, or one or more of them.

(h) Said changes, relocations, reconstructions impose a burden upon the interstate traffic of the prosecutor and interfere with and impair its ability to perform its duty as a common carrier of such interstate traffic.

(11) Said statute (being Chapter 57, Laws of 1913) is in violation of and contrary to Article IV, Section VII, paragraph 4, of the Constitution of the State of New Jersey in that the object of the said statute is not expressed in the title thereof and the said statute embraces more than one object.

COLLINS & CORBIN,
Attorneys of Prosecutor.

Reasons of D. Fullerton & Co.

Filed September —, 1915.

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case.

(1) The order under review and the statute upon which the same is based, are invalid and unconstitutional, both under the Constitution of the United

States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

(2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(5) Said order and statute, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor, consisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutor, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth.

(6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command

the prosecutor to proceed with due diligence to comply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey.

(7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term "public utility," as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstructing or relocating its buildings, equipment, sidings and other equipment for the following reasons:—

(a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations, or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said reconstructions and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

(g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order, or any or either of them.

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company and Public Service Railway Company, or one or more of them.

(i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preferences or advantages, in violation of the provisions of the Interstate Commerce Act.

HUDSON & JOELSON,
Attorneys for Prosecutor.

Reasons of Meyer & De Vogel.

Filed September —, 1915.

The prosecutors file the following reasons upon which they will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based, are invalid and unconstitu-

tional, both under the Constitution of the United States and of the State of New Jersey, in that said order and statute take the private property of the prosecutors for public use without just or any compensation.

(2) Said order and statute deny to the prosecutors the equal protection of the law and deprive them of their property without due process of law and abridge their privileges and immunities as citizens of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) Said order and statute take the property of the prosecutors without affording them any opportunity to protect their property and thereby deprive them of their right and guaranty of enjoying, defending, possessing and protecting their property given and guaranteed to them by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(5) Said order and statute, in so far as they require changes in or the destruction or the removel of the property or constructions of the prosecutors, consisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutors, to be made at the expense of the prosecutors, and in so far as they require the prosecutors, at their own expense, to move or change the grade or location of their property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth.

(6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to com-

mand the prosecutors to proceed with due diligence to comply with all the requirements thereof and the duties imposed upon them thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey.

(7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term, "public utility," as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstructing or relocating its buildings, equipment, sidings and other equipment for the following reasons:

(a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations, or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said reconstructions and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

(g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order, or any or either of them.

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company and Public Service Railway Company, or one or more of them.

(i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preferences or advantages, in violation of the provisions of the Interstate Commerce Act.

WILLIAM B. GOURLEY,
Attorney of Prosecutors.

Reasons of Fullers Express Company.

Filed September —, 1915.

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based, are invalid and unconstitutional, both under the Constitution of the United

States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

(2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(5) Said order and statute, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor, consisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutor, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth.

(6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to proceed with due diligence to com-

ply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey.

(7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term, "public utility" as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstruction or relocating its buildings, equipment, siding and other equipment for the following reasons:

(a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said reconstruction and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

(g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order or any or either of them.

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company, and Public Service Railway Company, or one or more of them.

(i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preferences or advantages, in violation of the provisions of the Interstate Commerce Act.

(j) Said changes, relocations, reconstructions and rebuildings impose a burden upon the interstate traffic of the prosecutor and interfere with and impair its ability to perform its duty as a common carrier of such interstate traffic.

WILLIAM B. GOURLEY,
Attorney for Prosecutor.

Reasons of Morris & Company.

Filed September —, 1915.

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based, are invalid and unconstitutional, both under the Constitution of the United States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

(2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(5) Said order and statute, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor, con-

sisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutor, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth.

(6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to proceed with due diligence to comply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey.

(7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or construction of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term "public utility" as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstructing or relocating its buildings, equipment, sidings and other equipment for the following reasons:

(a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said reconstructions and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

(g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order or any or either of them.

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company, and Public Service Railway Company, or one or more of them.

(i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preference or advantages, in violation of the provisions of the Interstate Commerce Act.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

Petition for Rehearing.

Filed June 15, 1915.

BEFORE THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY.

IN THE MATTER OF THE APPLICATION OF THE CITY OF PATERSON TO ALTER GRADE CROSSINGS ON LINE OF THE PATERSON AND HUDSON RIVER AND PATERSON AND RAMAPO RAILROADS.

Petition of Erie Railroad Company, respondent, for rehearing on order of said Board dated April 20, 1915.

To the Honorable, the Board of Public Utility Commissioners of the State of New Jersey.

Erie Railroad Company, one of the respondents to the above proceedings, respectfully shows as follows:

1. On the eleventh day of January, 1915, this Board filed its report in which it concluded that the crossings involved in this proceeding are such that the grades thereof should be changed in accordance with the prayer of the petition of the Board of Finance of the City of Paterson, as provided by the statute.

2. Said Board further ordered that said crossings should be eliminated in accordance with the plan described in the proceeding as Plan No. 2 of the City of Paterson, with certain modifications thereof and that the work should be permitted to be done in sections as specified by said report.

3. Thereafter, on February 5th, 1915, a hearing was had before said Board on the question as to the

time within which said work should be commenced and completed; on the said date this respondent submitted a petition for further hearing in which it urged, among other things, that an opportunity be given it to present plans whereby the number of train or engine movements or the manner of the same, or both, over said crossings might be changed so as to remove the danger and impediment to public travel; and in which it prayed that a further hearing be granted it for the purpose of considering, among other matters, the following:

> "(f) If the Board reached the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this despondent will submit."

Thereafter, on April 20th, 1915, this Board filed an order to take effect May 20th, 1915, in which it ordered this respondent to alter said crossings and each of them, according to a certain plan described in said order and annexed thereto; and in which it further ordered that this respondent and the other parties to the proceeding proceed with due diligence to the execution of said order and that they exercise in good faith all of the powers conferred upon them by the laws of this state; and in which it further ordered that this respondent begin the actual work of construction required in the performance and execution of this order, on or before the first day of August, 1916, and complete all of the work required thereunder within eight years from the date of said order and that in the prosecution of said work it take up the divisions thereof in certain sections and complete the same within certain periods of time as specified in said order.

5. On April 20th, 1915, the said Board filed its report and order denying the prayer of the respondent for the further hearing requested in its said petition filed February 5th, 1915; and as to the prayer of the respondent for leave to submit evidence on the point whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossing or some of them it concluded in said report that the respondents offer on this subject was so indefinite that it did not appear reasonable to delay the proceeding for that purpose.

6. Since the making of said order of April 20th, 1915, and the denial of respondent's petition for further hearing, this respondent has conducted a further investigation to show the feasibility of removing the danger and impediment to public safety and travel by reducing the number of train movements over said crossings.

7. Respondents submit the following plan:

A connection to be constructed between the Erie Railroad Company and the New York, Susquehanna and Western Railroad at Market street and Straight street, Paterson, the construction of which will involve the elimination of the Market street grade crossing of the Erie Railroad and the Straight street grade crossing of the New York, Susquehanna and Western Railroad by an elevation of the tracks of the railroads and a slight depression of the grade of the streets, such depression at Market street being the same as that provided for in the plan approved by the Board in its order of April 20th, 1915, also the closing of Ellison street across the tracks of the Erie Railroad. The existing station of the New York, Susquehanna & Western Railroad at Straight street, Paterson, will be abandoned as a passenger station, and the existing station of the Erie Railroad Company at Market

street, Paterson, raised and reconstructed to conform to the new elevation of the railroad tracks. A track connecting the Paterson City Branch and the main line of the New York, Susquehanna and Western Railroad will be constructed immediately north of the Broadway (Paterson) station of the New York, Susquehanna and Western Railroad. A connection will also be constructed between the New York, Susquehanna and Western Railroad and the Erie Railroad at Hawthorne.

8. These connections will make it possible for a westbound train to pass from the main line of the Erie Railroad at Market street over the present Paterson City spur of the New York, Susquehanna and Western Railroad and the main line of the New York, Susquehanna and Western Railroad, returning to the tracks of the Erie Railroad at Hawthorne, and for an eastbound train to pass from the tracks of the Erie Railroad at Hawthorne to the tracks of the New York, Susquehanna and Western Railroad and thence over the Paterson City spur to the main line of the Erie Railroad at Market street, Paterson. Likewise it will be possible to run trains from Jersey City to Market street, Paterson, via the Erie Railroad, returning to Jersey City via the New York, Susquehanna and Western Railroad or *vice versa,* none of these movements involving any backing or switching, but all being under the proposed plan direct forward movements.

9. As soon as these connections are ready for use it is proposed to reduce the passenger train movement over the tracks of the Erie Railroad north of Market street from the present number of one hundred eighteen per day to seven per day. The seven trains referred to can, if desired, also be removed from the Erie Railroad north of Market street and run over the New York, Susquehanna & Western Railroad through Paterson.

The proposed changes will be made without impairing the passenger train service to and from the City of Paterson via either railroad, and it is believed that by the rearrangement of schedules and the utilization of the proposed connections an improvement of service can be effected.

10. The proposed plan will afford direct railroad connection between points on the Erie Railroad south of Market street, Paterson, and north of Hawthorne, and points on the New York, Susquehanna & Western Railroad between Hawthorne and Jersey City. Tickets between Paterson and New York and Jersey City will remain interchangeable as to use on the two railroads, as at present. The removal of passenger trains from the Erie Railroad between Market street and Hawthorne will avoid the present interference with freight switching work in that territory and enable the company to very greatly decrease, certainly over 50 per cent., the present switch engine movements over the street crossings in that territory. The plan will largely increase the passenger train facilities available to the eastern section of the City of Paterson without impairing those available at Market street. The proposed plan will practically avoid interference with private side track facilities, the only side tracks affected at all being those between Van Houten street and Market street.

11. The proposed construction and routes are shown on maps attached hereto and marked Exhibits 1 and 2.

12. This respondent proffers itself as willing to undertake the necessary construction and to make the necessary arrangements for the purpose of carrying out the foregoing plan under the terms and provisions of the statute, if ordered so to do by this Board; and as willing to begin work thereunder not later than August 1st, 1916, and to complete the same

within the length of time allowed by said order of April 20th, 1915, for the completion of the work designated therein as Section A.

Wherefore, this respondent respectfully prays that a rehearing of the order of April 20th, 1915, be granted for the purpose of considering the foregoing plan in lieu of the plan described in said order and for the taking of testimony thereon so far as may be necessary; and that pending consideration of this petition and the granting of rehearing on said order (petitioner's time to apply for writ of *certiorari* to review said order of April 20th, 1915, being about to expire) the effective date of said order be extended for such reasonable time as will permit a full consideration of this petition.

ERIE RAILROAD COMPANY,
By A. J. STONE,
Vice-President.

H. A. TAYLOR,
G. S. HOBART,
DUANE E. MINARD,
Attorneys for Erie Railroad Company.

Dated June 15th, 1915.

(Attached were copies of maps referred to in paragraph 11.)

Testimony on Petition for Rehearing.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

Newark, N. J., Monday, June 28th, 1915.

PETITION, ERIE RAILROAD, FOR REHEARING IN MATTER OF APPLICATION OF CITY OF PATERSON FOR ALTERATION OF GRADE CROSSINGS OF LINE OF ERIE RAILROAD.

Before the following commissioners: R. W. E. Donges, Esq., J. J. Treacy, Esq., J. W. Slocum, Esq.

For the Erie Railroad Company appear G. S. Hobart, Esq., H. A. Taylor, Esq., D. E. Minard, Esq.

For the City of Paterson appears E. F. Merrey, Esq.

For the Paterson & Hudson River Railroad and Paterson & Ramapo Railroad appears W. I. Lewis, Esq.

F. B. LINCOLN, sworn on behalf of Erie Railroad.

Direct examination by Mr. Hobart.

Q Mr. Lincoln, you are general superintendent of the Erie Railroad Company, general manager of the Erie Railroad Company?

A Yes.

Q You have examined this plan for the rearrangement of tracks and for the elimination of the grade crossing at Market street, as shown more in detail in the petition of the Erie Railroad Company, for a rehearing of the order of this Board, dated April 20th, 1915, have you not?

A I have.

Q Will you kindly state in a general way, and by reference to such plans as you may have, what the proposed plan of the company is?

A The plan is to construct a connection between the existing main line of the Erie at Market street and the Paterson city spur of the New York, Susquehanna & Western, and the construction of a connection, a Y connection between the Paterson city spur and the main line of the New York, Susquehanna & Western near Broadway, Paterson, and a connection between the main line of the New York, Susquehanna & Western and the main line of the Erie west of the Passaic River near what we call Hawthorne station to permit the running of passenger service in looped lines. The construction of the connection between the main line and the Paterson city spur at or near Market street will eliminate the Market street grade crossing.

Q Eliminate it in what way, by raising the tracks?

A Raising the Erie tracks overhead and very slightly depressing Market street.

Q To the extent of about what, have you figured it out in detail?

A I cannot say.

Q A very slight depression?

A Very slight, as figured now. That is a matter that would have to be worked out by the detailed plans.

Q Would that involve the closing of the street known as Ellison street?

A Yes, in order to come down from this proposed elevation along the main line of the Erie we necessarily close Ellison street.

Q How would you go from the present main line of the Erie Railroad at or near the present Market street station to the spur of the Susquehanna Railroad?

A By constructing a connection around the corner overhead of Market street, swing in to the exist-

ing tracks of the Susquehanna easterly from the station.

Q What effect would that have on the present grade crossing of Straight street on the Susquehanna tracks?

A It would eliminate that.

Q The plans for this appears as shown on the blue print, copy of which is attached to the petition.

A Does that coincide with this?

Q Yes, substantially?

A Yes.

Q Have you other maps before you which show, on a somewhat larger scale and somewhat different illustration?

A That map shows the connection near Broadway between the Paterson city spur and the main line of the New York, Susquehanna & Western.

Q The map to which you refer is entitled Erie Railroad Co., proposed joint operation on main line and N. Y. S. & W. Railroad, Y connection at Paterson, Broadway, dated June 11th, 1915?

A Yes.

Q The proposed connection, as I understand it, is shown in red?

A Shown in red.

Mr. Hobart. I would like to offer this print.

Commissioner Donges. No objection. It will be admitted and marked.

(Map entitled, "Erie Railroad Co. proposed joint operation on main line and N. Y. S. & W. Railroad, Y connection, at Paterson, Broadway, dated June 11th, 1915," received and marked Ex. E-1.)

Q This map E-1 shows only the connection at Broadway with the Susquehanna Railroad?

A Yes.

Q Have you another map which shows the connection at Hawthorne?

A I have.

Q This plan is marked in red, proposed joint operation, main line and N. Y. S. & W. R. R. connection at Hawthorne, June 8th, 1915?

A Yes.

Q Hawthorne is west of the Passaic River is it not?

A It is.

Q According to the compass north, but according to the railroad west, of the Passaic River?

A West.

Q These two plans, as I understand it, Mr. Lincoln, simply show on a somewhat larger scale and little different manner the same plans, the same connections, as appear on the maps attached to the petition?

A Exactly the same thing, drawn to larger scale and more in detail.

Mr. Hobart. I would like to ask this second map of the Hawthorne connection be marked.

(Map entitled, "Proposed joint operation, main line and N. Y. S. & W. R. R. connection at Hawthorne, June 8th, 1915," received and marked Ex. E-2.)

Q What does this proposed plan contemplate, as to the Market street station and the Straight street station of the Susquehanna Railroad?

A It would necessarily involve remodeling and raising the Market street station, and it is proposed to abandon the Straight street station, consolidating the business in the one station.

Q That is, consolidating both stations at or near the present Market street station?

A Exactly.

Q Will you kindly state the method of operation that can be adopted, or that it is proposed to adopt if this plan is carried out?

Commissioner Donges. What was the question?

Mr. Hobart. The method of operation of the trains I meant particularly.

A The main line passenger trains, instead of going west from the Market street station on the main line, will be diverted to the city spur of the N. Y. S. & W. and a very considerable number of these trains would return to Jersey City over the line of the N. Y. S. & W. On the other hand, the N. Y. S. & W. trains from Jersey City to Paterson—

Commissioner Donges. I didn't get that.

Witness. The N. Y. S. & W. trains from Jersey City to Paterson would return via the main line of the Erie, going around the loop. In order to provide the necessary service west of Paterson some of the local trains would be turned through the Y connection at Broadway and go west over the main line of the N. Y. S. & W. through what is now Riverside station and back to the main line of the Erie at Hawthorne over the proposed connection, giving the service to Glen Rock and Ridgewood and points west of there that now obtains.

Eastbound trains from the main line of the Erie originating west of Ridgewood would come in at Hawthorne on the main line of the N. Y. S. & W. and pass through the Y connection at Broadway to Market street as they now do, and then east on the main line of the Erie. N. Y. S. & W. main line eastbound trains would follow the present route without interference, unless some operating requirement, or the passenger service requirements, necessitated their being diverted to the main line of the Erie. It makes a very much more flexible operating arrangement than exists now. For example, passengers from North Paterson or points west of there on the N. Y. S. & W.

would be taken into the Market street station in some event—

Q (*By Commissioner Donges.*) Down the main line?

A And go down the main line of the Erie. Such passengers for Passaic, for instance, would not have to change cars and be diverted from their route. They would land at Passaic. Some of the through trains of the Susquehanna would probably, in the process of working this thing out, be run through Market street station. In diverting this traffic it would practically eliminate all of the passenger train movement on the main line of the Erie west of Market street.

Q West?

A West of Market street.

Q All west of Market street?

A All trains could be eliminated west of Market street. That, of course, would depend on—

Q You mean in the city?

A In the city, in the working out of the details of the distribution of the trains. It would seem entirely practicable to consolidate River street and Riverside stations.

Q (*By Mr. Hobart.*) River street is on the main line?

A River street is on the main line of the Erie and Riverside on the main line of the N. Y. S. & W.

Q (*By Commissioner Donges.*) How far apart are they?

A I don't recall.

Mr. Hobart. The Riverside station on the Susquehanna is between Fourth and Fifth avenue on the map and River street on the main line of the Erie.

Commissioner Donges. About seven or eight blocks apart.

Witness. About seven or eight blocks apart.

Mr. Taylor. The two railroads opposite the River street station are shown by the map to be only four blocks apart.

Witness. The relocation of the Riverside station would probably put it in a situation where it could acceptably serve that territory as one station instead of two.

Q (*By Mr. Hobart.*) So that the River street station on the main line of the Erie could be abandoned entirely and the passenger service to that station—

A Be taken care of by the relocation of the Riverside station of the N. Y. S. & W. If that were done it would be possible to entirely eliminate all passenger service west of Market street in Paterson on the main line.

Q The result of that would be, it would be used for industrial siding for switching movements?

A That is all.

Q Would it be possible to regulate those switching movements so as to eliminate to a large extent the danger of the grade crossings as they now are?

A Yes, that could be regulated so that there would be no danger in the operation.

Q Will you state generally what effect upon the passenger service this proposed plan would have, so far as it affects the City of Paterson, would it improve it or otherwise?

A In my judgment it would be made to materially improve the service. There is such a flexibility of movement there that even with the existing number of trains in operation I believe a very much better service could be rendered, and of course it makes so many ways of train movement that almost any number of additional trains could be supplied as the growth of the passenger requirements necessitates. In a preliminary way, as we have made a study of it, there is no decrease in the number of trains in either direction serving the city. On the other hand, there

are more trains at Broadway and Market street, because the crossing over of the trains gives more service at those two points.

Q Have you also examined into this plan with a view to seeing what effect it would have upon the existing side track facilities?

A Well, it would have no particular effect except one or two of those right close to Market street would have to be revised in some way. We could not get into the present Fullers express station, and I think Morris & Company would be affected. Except for that there would practically be no change.

Q (*By Commissioner Donges.*) The present grade is maintained at all points?

A How is that?

Q The present grades are maintained?

A The present grade would be maintained west of—

Q West of Broadway?

A Yes, on the Susquehanna, yes.

Q And on the Erie?

A On the Erie west of—well, Ellison street, about half a block west of Ellison street it would come down to grade.

Mr. Hobart. Near Van Houten street.

Witness. That is a matter of detail that has not been fully worked out. We have not had time to make definite surveys on this, but in a general way that would be the result.

Q Market street would be crossed on an elevation?

A Yes.

Q And the connection across the city spur would be elevated between the main line and the Susquehanna tracks?

A Yes. As the line has been plotted, it would swing across about where the existing N. Y., S. & W. station is, and cross overhead of Straight street, and

come down to the existing grade about—well, in the cut, about a block west of Straight street.

Q A block west?

A A block north, really, it is on the map.

Q Of Straight street?

A Yes.

Q So it would cross—

A There would be no disturbance of the overhead crossings of the streets on the N. Y., S. & W. cut through there.

Mr. Merrey. At present there is a cut on the Susquehanna. It is only at grade at Eighteenth street.

Q (*By Mr. Hobart.*) All other streets at that point cross the tracks above grade?

A Yes.

Commissioner Donges. Graham avenue.

Mr. Merrey. All cross on bridges; I think all except Eighteenth street and Straight streets, the two ends.

Cross examination by Mr. Merrey.

Q Mr. Lincoln, what is your position?

A General manager, Erie Railroad.

Q Have you charge of operation or construction?

A I have operation.

Q Have you any control over construction?

A None.

Q You say that you have not had time to make definite surveys or work out detailed plans. Do you know whether this plan is feasible or not, can be operated?

A Yes.

Q I notice you have a fifteen per cent. curve marked in near the Market street station?

A You mean a fifteen degree curve.

Q A fifteen degree curve?

A Yes.

Q That is a rather stiff curve, isn't it?

A Yes.

Q Have you any others on your road?

A Yes.

Q At that point also there is a one and one-half per cent. grade?

A Yes.

Q Would it be possible to operate trains from the cut into the station, heavy trains?

A Yes.

Q Did you read the testimony of Mr. Paterson, given in the original case?

A Yes.

Q That is a one and a half per cent. grade, is very heavy, isn't it, for your road?

A Not particularly. It is not a very satisfactory grade to operate over, the less grade you have the better operation, but a one and half per cent. grade is not a prohibitive grade at all.

Q But your engineer, when the city offered a plan said you did not want to go over one per cent.

A We would prefer not to, naturally.

Q He said it was almost impossible to operate.

A That was largely based on the freight.

Mr. Minard. Suppose you refer to his testimony.

Witness. The freight movement, I think, Mr. Merrey.

Q I understood you don't move your heavy freight over this main line.

A We don't.

Q You send it over the Bergen County Railroad?

A That is the reason I say that is a practical operation for passenger train movement only.

Q You have in mind then only the same passenger train movement at the time this former plan was offered?

A I was not here at that time.

Q You don't know whether you can get it in with as light a grade as one and a half per cent., do you?

A Yes, I think that has been practically determined.

Q Have profiles been made and plans worked out?

A Preliminary profiles, yes. The detailed plans have not been worked out, Mr. Merrey, but I should say offhand it is practicable to get such construction in there.

Q You are not sure?

A Why, not absolutely sure from having made the survey myself, but based on the best judgment of the men, the engineers whom we have had go into the matter again, I believe it is practical.

Q You don't know yourself?

A I have not made the survey myself, no.

Q Do you know whether the Vine street bridge can remain, the Summer street bridge, marked Vine street on this plan?

A Yes, as the plan is worked out now there would be no disturbance of that bridge.

Q Has the plan been worked out?

A The preliminary plan has been canvassed, yes.

Q We haven't it before us?

A No, it has not been gone into with sufficient detail that it would be practicable to submit it as a working drawing.

Q How many trains will be changed, so that instead of going north of Paterson, will sort of make a loop and turn into Jersey City?

A I believe we set forth in the petition one hundred and eighteen trains would be discontinued north of Market street, west of Market street.

Q Those same trains will be run over the Broadway crossing of the Susquehanna, will they not?

A No.

Q Not all?

A No.

Q How many will not, that is the point I am getting at?

Q How many will not run over Broadway?

Q Yes, Broadway on the Susquehanna.

A That is figured out sixty-one trains, I think.

Q That is the answer, sixty-one trains?

A Sixty-one.

Q (*By Commissioner Donges.*) Sixty-one trains will stop at Market street?

A Will not go over Broadway.

Q Will not be operated west of Market street station?

A Yes, not be operated west of Market street on the main line.

Q On either?

A No. We discontinue a hundred and eighteen trains west of Market street on the main line. They are all diverted to the Paterson City loop, sixty-one of those will go back over the N. Y., S. & W. main line and not pass over Broadway going west.

Q Will not be operated west of the junction point?

A Yes.

Q (*By Mr. Merrey.*) How many will be operated over Broadway on the Susquehanna line in addition to what are now operated there?

Commissioner Donges. The difference between sixty-one and one hundred and eighteen, I suppose.

Q There may be some other changes.

A It will be impossible for me to answer that question, because that is a matter of working out very considerable detail of the time-table and distribution of trains. I don't think we could say now how many trains we would cut off west of Broadway or crossing Broadway. We have made up this tentative plan

showing a practical distribution of this service, but it is a matter that will have to be worked out, depending on the requirements of the people. As a general proposition, all of the—practically all of the local trains which now terminate at Waldwick or North Paterson on the two lines will not go over Broadway. In other words, they will turn through this loop and go back via the alternate line, the Susquehanna trains going out will come back over the Erie and the Erie trains going out will come back over the Susquehanna, and that will be practically all of the local trains which terminate at North Paterson or Waldwick. We will have to get some service for the Riverside station, Glen Rock, Ridgewood, Hawthorne and North Paterson. That would be adjusted, some of these trains will go on through some of the Susquehanna trains will go on through as they do now, to North Paterson, those that terminate there. Some of the trains turning at Waldwick would have to go on through to Waldwick on the main line of the Erie, and they would cross Broadway. That wouldn't be additional movement over Broadway, above what now crosses Broadway, because as a whole the number of trains crossing Broadway on the Susquehanna would probably be quite materially decreased.

Q (*By Commissioner Donges.*) But not to the number of sixty-one?

A No, I don't think that.

Q As a matter of fact, the train movement, passenger train movements over the Broadway crossing of the Susquehanna would be very materially increased by this plan?

A No, I should not say that. I don't think it will make very much difference.

Q From the present conditions?

A Of course, there the main line trains come in there.

Q From the present conditions?

A From the present conditions, yes.

Q I don't mean Susquehanna trains; I mean all trains.

A I know. There are a great many Susquehanna trains now crossing Broadway going to North Paterson and tying up there, which would be diverted to this new route and not cross Broadway. On the other hand there would be the addition of a number of main line trains which would go in that way by the Hawthorne connection.

Q How many train movements over Broadway are there now on the Susquehanna?

A I don't know.

Q Would you say in the neighborhood of forty?

A I don't know.

Q How many are there over Market street, passenger train movements every day?

A One hundred and eighteen I think we set up in our petition. This has all been figured out. I didn't do the figuring. The details are shown in our report.

Q Unless you loop these trains and send some of them back to Jersey City, there will be one hundred and eighteen more train movements over the Broadway crossing than there are at present?

A Yes, if you did not loop them, but it is proposed to do that; that is what this is for.

Q There is a possibility of saving about sixty of those movements; you can arrange it that about sixty of those movements will not take place over the Broadway crossing of the Susquehanna?

A I might say it is pretty hard to determine offhand.

Q (*By Commissioner Treacy.*) You said sixty-one.

A Sixty-one, in a preliminary way that was the thought in getting up the tentative schedule. Just how that will work out I am not prepared to say.

Q (*By Mr. Merrey.*) Then there is a possibility of from fifty-seven to one hundred and eighteen additional train movements over this Broadway crossing of the Susquehanna road than now made?

A I should not care to make that statement. I would rather see how that worked out in detail. I do not think we can give those figures with any degree of accuracy until we have made a further study of this proposition.

Q You will increase the number of train movements over the Park avenue crossing in Paterson?

A No, not at all, or a very little. The New York, Susquehanna trains, which now return via the Susquehanna, which follow that line only, would be going back via the Erie, and in turn their movement would be supplanted by trains going around from the Erie, so as to Park avenue, the train movement should be practically identical. We don't propose to decrease the service on the Susquehanna east of the Broadway station. There will be just as many trains to serve the people and fill the requirements of the time-table. Say half of those over the Susquehanna and the other half Erie, as it may work out, but it is not proposed to—

Q How many trains do you run over the Susquehanna into New York every day?

A How many do we?

Q Yes.

A I would have to look that up. Don't know, Mr. Merrey, without reference to the time-table, which I don't happen to have a copy of. You want what, from Paterson to Jersey City?

Q From Paterson to Jersey City, we will take that first.

A Twenty-six regular trains, except on holidays.

Q How many run from Jersey City through Paterson?

A The same number, they all have to go back.

Q They may go back over the Erie?

A No, not now.

Q So there are twenty-six trains each way now on the Susquehanna from Jersey City to Paterson?

A Yes, to or through Paterson, as the case may be. They all serve Paterson.

Q What is the maximum that you can run through the loop, that is, running jointly over the new line without going north of Paterson?

A How is that?

Q That is the maximum movement that you could save over the Broadway crossing?

A Yes.

Q And to do that you would have to discontinue all service north of Paterson on the Susquehanna?

A Yes, to take them off the Broadway crossing.

Q Taking that into consideration, can you really save more than about thirty train movements over the Broadway crossing of the Susquehanna by this branch, that is thirty less than the combined movement at present over the Erie, over the Susquehanna?

A Well, I don't know. I am not prepared to answer any detail question, on the adjustment of that timetable, because, as I say, it is a matter that will have to be very carefully studied. It has been gone over in a preliminary way, but I don't consider we have exhausted the subject at all, or made any reasonable, any practical determination of what we could do there.

Mr. Merrey. I was inclined to think you have only scratched it. You haven't at all got the information we need.

Mr. Minard. I think we understand now we are simply holding a hearing as to whether we should go into this matter, at which time we would be prepared to show all the details, or are we now in our rehearing?

Commissioner Donges. No. You are now asked to support your plan sufficiently to appeal

to the discretion of this Board to give you a rehearing.

Mr. Minard. Let me say on that, if that is the situation; I went away to Buffalo as soon as we were through that hearing on Wednesday, and I then had a case to try in Scranton, got there Friday afternoon and got home Saturday. Mr. Hobart was in the Adirondacks not intending to come back and came back last night purposely for this hearing, and Mr. Taylor was away and got back this morning, so the Board will have to excuse us a little bit if we haven't our case prepared to go on to-day.

Commissioner Donges. How long will it take you to prepare your case?

Mr. Minard. I don't know; we can get at it right away.

Commissioner Donges. The Board assumed when you filed your petition that you were prepared to support it.

Mr. Minard. Which we are prepared to support it, and we could have gotten along better to-day if we could have gotten the notice a little earlier or if we had been home at the time the notice came.

Commissioner Donges. You had at least six days' notice.

Mr. Minard. I received notice Saturday morning.

Commissioner Donges. It was sent to your company, however.

Mr. Taylor. The company received the notice on Friday from Collins & Corbin.

Commissioner Donges. It was sent to your attorneys certainly not later than Tuesday of last week.

Mr. Merrey. June 22nd is the date that notice must have gone out.

Commissioner Donges. I think it was last Tuesday the notices went out. However, there is no disposition to limit you in presenting your proof.

Mr. Minard. And there is no disposition on our part to postpone the matter in any way. Mr. Lincoln will have to admit he got a hurried call Saturday afternoon to come over here. That is about the situation. This data that was prepared was all prepared before the petition was filed, in order to give us a general picture of what could be done.

Commissioner Donges. If you are not prepared to-day, will you be prepared, what day this week?

Mr. Merrey. It seems to me if they are going to prepare, they should prepare plans, and evidently there are no detail plans prepared. That will take them a month or two months.

Commissioner Donges. The Board has not suggested what they should do to prepare their case. The Board fixed to-day to take testimony in support of the petition to determine whether the rehearing should be granted.

Mr. Minard. Then the question arises, what further have we to prepare? The Board's order never would include the number of trains we should run one way or another, of course, we have presented a *prima facie* of what we propose to do, and the only reason I mentioned what I did was because Mr. Merrey has crowded us now for what trains we should run one way or another.

Commissioner Donges. No, it was because of your suggestion, Mr. Minard, that you were not prepared to-day.

Mr. Minard. We are not prepared to go into that problem.

Commissioner Donges. The Board is not outlining or pretending to say to you what you should submit. You submit whatever you think you ought to submit in support of your petition. That is all. You may proceed, Mr. Merrey.

Q Mr. Lincoln, that will increase materially the number of train movements over East Eighteenth street, will it not, that is the one just before the Y?

A Yes.

Q The number of passenger train movements will be increased by at least 118 per day, will it not?

A It will be increased by whatever number are diverted from the main line of the Erie at Market street or Hawthorne.

Q You propose to divert all of your trains, do you not, from the main line of the Erie?

A Yes.

Q There will be a new grade crossing at Ellison Place, will there not?

A Yes.

Commissioner Donges. Just a moment. What do you mean by a new grade crossing? You mean at the junction with the Susquehanna?

Mr. Merrey. Yes, on that curve.

Witness. Where the Y crosses.

Q That will be a new grade crossing over Ellison Place?

A Yes.

Q And the same number of trains will cross there that cross just beyond at Broadway?

A No, not as many as cross Broadway, because some of the trains that go up the Susquehanna main line will follow the present route and not go through the Y.

Q Yes, another grade crossing on the Susquehanna at Hamilton avenue?

A Yes.

Q One at Godwin street?

A Yes.

Q And Governor street? There is a trolley crossing there?

A Yes.

Q At grade. There is a crossing at Harrison street at grade?

A Yes.

Q And Fulton?

A Wait a minute. I don't know whether all those streets cross in there or not. I am not familiar with all of them. Not all of those streets cross the railroad.

Q Not all of them are actually used and opened?

A No. My recollection is that all told I counted thirteen crossings the last time I went over there, between Broadway station and the river.

Q Grade crossings?

A I think there are thirteen streets cross the railroad in that distance.

Q At grade?

A At grade. I think that is all there are. The map shows some twenty odd streets here, so it would not be correct for me to answer yes at every one of these crossings as you named them.

Q There are about thirteen streets cross the Susquehanna grade north of the Broadway station?

A Yes.

Q And this plan would put a very materially increased train movement over every one of those grade crossings?

A Yes—no. Not a very materially increased train movement. There would be some increase.

Q Something between sixty and a hundred and eighteen.

A A very considerable number of these short haul trains are diverted to the other route.

Q Not more than fifteen each way probably?

A Possibly not.

Q It is limited by the number of trains over the Susquehanna, the number you can divert, and you cannot divert all of them?

A No.

Q So that about half of them—you cannot divert more than half of them—that would be thirteen train movements each way. This plan then practically transfers the grade crossing trouble from the main line of the Erie and puts it on the Susquehanna, does it not?

A Well, no; I don't think you can exactly express it that way. It increases some of the train interruptions on the crossings west of Broadway on the Susquehanna, and it does or can eliminate all of the train movement, passenger train movement west of Market street on the main line.

Q (*By Commissioner Donges.*) All of it?

A I say it can do that. We have figured in this tentative plan to leave, I think, seven trains, local trains to serve River street, but it is entirely practicable in my mind to eliminate that entirely and serve that section up there from the Susquehanna, as I said before, by the rearrangement of the Riverside station on the Susquehanna, so that would leave nothing but switch engine movements in that territory.

Q The Straight street crossing on the Susquehanna is eliminated by this plan?

A Yes.

Q That isn't a very dangerous crossing, is it?

A I don't know whether it is any different from any other.

Q I will call your attention to the—

A Why is it any different from any other?

Q Because the train movements must necessarily be slow, it is so near the end of the Susquehanna route.

A No slower than the train movements on the main line.

Q Every train crossing Straight street is about coming to a stop, is it not?

A Yes, sir.

Q For the Straight street station?

A Yes.

Q And as a matter of fact, a great many of them stop right on the street?

A Yes.

Q So the movement must necessarily be slow?

A All trains on the main line stop at Market street.

Q Yes, but they cross Market street at a faster rate of speed?

A Not any faster than they pass Straight street. I don't believe they are in approaching—the eastbound trains crossing Market street are all coming in prepared to stop at the station right across the street. Practically the same condition obtains as approaching Straight street.

Q How many trains per day have you into the Straight street station?

A That I would have to check up.

Q Something less than twenty-six?

A Yes, a number of the trains do not come in there.

Q Will not the situation at the Broadway station be an extremely dangerous one under this plan, because of the tracks being on three sides of the station, practically surrounding it?

A I should not consider it was. I don't see any particular increased element of danger. It is not an uncommon condition.

Q Vehicles passing up Ellison place will be in the center of a triangle on which trains are being run?

A Yes.

Q Isn't that a rather dangerous situation, confusing?

A I don't know why it should be, sir.

Q Don't you think it is rather confusing to a driver to have bells ringing behind him and in front of him, not knowing just where the train is coming from?

A I don't see why there should be any confusing or element of risk if he pays attention to his business and watches the gate crossings and the crossing watchman and the gates. It is reasonable to assume we would have proper protection at that point.

Q Do you know whether it is possible under this plan to make an undergrade crossing at Broadway and Ellison Place instead of a grade crossing?

Commissioner Donges. On the Susquehanna you mean?

Mr. Merrey. Yes.

A Why, it is possible to put the railroad over the streets.

Q Over or under at Broadway and at Ellison place?

A Why all things are possible, Mr. Merrey, but I should consider it a very impracticable piece of operation and a very difficult piece of engineering to get the railroad under Broadway as it exists on its present grade. I am not thoroughly familiar with the ground around Broadway, except as I have seen it from the train. It would probably be possible from an engineering standpoint to get Broadway over the railroad leaving the railroad on its existing grade but it would be pretty difficult to work in that Y connection and change the grade of the railroad, within a reasonable expense. All things are possible in that line.

Q (*By Commissioner Donges.*) I understand, Mr. Lincoln, that there will be some changes in the grade of tracks in the main line east of Market street under this proposed plan?

A Yes.

Q What changes?

A We would have to go back two or three blocks, three or four blocks, and commence to rise in order to get up over Market street.

Q Will it eliminate any—or separate the grades of any streets and the railroad, east of Market street?

A No, that is not contemplated in this plan.

Q (*By Mr. Merrey.*) As I understand, you start to elevate as shown on the plan on Section A of the order of the Commission?

A Yes, substantially so.

Q (*By Commissioner Donges.*) And you carry that elevation to a point west of Market street?

A Yes.

Q No other changes in grade on either the Susquehanna line or the main line of the Erie?

A No, except coming off of this rise down to the west, coming down past Ellison street, we have to come off of that elevation down to the existing railroad west of Market street by a descending grade, and that would necessarily under this scheme, close up Ellison street as we came down. We would strike the existing grade about Van Houten street.

Q You mean on the Susquehanna?

Mr. Merrey. On the Erie.

Q On the Erie, you mean?

A Yes, on the Erie.

Q Close Ellison and leave Van Houten as it is?

A Yes. In other words, we would be able to come down off of this elevation in that distance.

Q (*By Mr. Hobart.*) The rise, Mr. Lincoln, as you approach Market street from the east, would be, according to this plan, a one per cent. grade?

A Would be what?

Q A one per cent. grade?

A Yes, that is the working out of it so far.

Q And that would not involve, as I understand, any change in the location of the streets or crossings to the east of Market street?

A No.

Q There is already an undergrade crossing at Essex street, the first street east of Market?

A Yes.

Q This two per cent. grade, to which reference was made, would be a grade west of Market street?

A To come down off the elevation.

Q And on that there would be only these switching movements or perhaps the train movements that have been suggested?

A There might be some passenger train movement there probably.

Mr. Lewis. My appearance has been entered for the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad, and I would like to ask one question.

Q (*By Mr. Lewis.*) Mr. Lincoln, as I understand it, the contemplated plan does not involve in any way the abandonment of any part of the existing right of way of the Erie Railroad?

A None whatever.

Q (*By Mr. Hobart.*) Reference has been made to that fifteen degree curve; is that curve itself on the grade, or does the grade cease before the curve begins?

A Both. The curve would be partly on the grade in all probability. Working that out, I doubt if we could begin—I think we would have to begin to turn off from the main line before we got to the top of the rise, as the thing looks now. A small portion of the curve might be on the grade.

Q But it would be only a small portion?

A Just a small portion.

Q With regard to these trains on the Susquehanna that now run to North Paterson; is North Paterson a terminal point where you have a round house and some side tracks, and so on, for trains to lay up?

A Yes.

Q In itself it is a comparatively small place, is it not, a small station?

A Yes.

Q So that trains running to that point run only because that is the terminal point?

A That is all.

Q Not to accommodate people necessarily?

A That is all, to our roundhouse.

Q Is the same thing also true of this place called Waldwick on the main line of the Erie?

A Yes.

Q That is a terminal point, a comparatively small station, isn't it?

A Yes.

Q (*By Commissioner Treacy.*) How about Ridgewood, Ridgewood is a pretty fair-sized place?

A Yes. Ridgewood would be served by practically the same number of trains as now.

Q I understood you to say that sixty-one of the regular trains that now go west of Market street will be cut off, even on the Susquehanna line; am I correct?

A They will go around the loop and go back the other way.

Q (*By Mr. Hobart.*) Sixty-one includes both?

A Yes.

Q (*By Commissioner Treacy.*) West of Market street, those are movements that would supply North Paterson, Hawthorne, Riverside, Ferndale, Ridgewood and Waldwick, aren't they, Hohokus?

A Not to any extent. Quite a considerable number of our trains are run as equipment trains from Paterson to Waldwick.

Q How many trains do you propose to take off that are now running to Ridgewood?

A You mean how much would we decrease the Ridgewood service?

Q Yes, the Ridgewood service?

A Very little. I cannot say just how many. I don't know as we would make much difference in that Ridgewood service. A number of these trains that go up through there now are empty trains, simply equipment trains run out of schedule at Paterson on Ferndale or River street, as the case may be, and run up over the third track to Waldwick, don't carry any passengers west of River street. Some of them don't carry any passengers west of Glen Rock, run up the other track. Those are the character of trains that would be turned and sent back over the Susquehanna. They go up to Waldwick, turn and go back. Instead of doing that we would run them around the loop and run them back to Jersey City.

Q Trains that don't furnish service west of Market street?

A Yes. We could not decrease the service up in that Ridgewood territory. We could not take off any trains to amount to anything that now serve them, so we would have to utilize these trains that are simply dead-heading up there for this service.

Q You say there are sixty-one such trains?

A No, I didn't say how many there were. I don't recall how many equipment trains we do run in there.

Q (*By Mr. Merrey.*) You cannot take off any more of those trains than there are now trains over the Susquehanna; that is the way you are limited, by the movement over the Susquehanna which is twenty-six trains each way?

A Yes.

Q And you cannot do that without taking off all the service up the Susquehanna, so if you interfer with half the Susquehanna service, then you just gain about thirteen trains each way?

A Yes.

Q That is what limits you?

Mr. Minard. Why can't we run more trains over the Susquehanna than we do?

Mr. Merrey. Because you don't need them.

Mr. Minard. But if we use them for the Erie then we will need to run more. I don't see the point in your suggestion.

Mr. Merrey. The point is, you won't increase the Susquehanna business over what you need. To Paterson it is five miles longer to Jersey City over the Susquehanna.

Mr. Minard. I don't know.

Mr. Merrey. Nearly five miles by your map.

Commissioner Donges. Five miles what?

Mr. Merrey. Five miles more by the Susquehanna from Paterson to Jersey City than by the Erie, nearly that, not quite. It shows on the little map annexed, 20.15, and the other is 15.7

Q (*By Mr. Hobart.*) One other question about Ridgewood. Doesn't Ridgewood have the advantage of being on what is called the Bergen County shortcut?

A On the main line, but all the Bergen County trains go through there.

Q And there is service now from Ridgewood to New York over the shortcut?

A Yes.

Q Trains which don't pass Paterson at all, but which run direct to New York to accommodate the commuter service?

A In rush hours considerable of the traffic is handled that way.

Q (*By Mr. Merrey.*) Four trains a day?

A In the rush hours, I say, most of the travel from Ridgewood is taken care of in that way.

Q There are five trains a day?

A Each way, four one way and five the other.

Q Five and three, isn't it, five one way and three the other way, over the Bergen County cut?

A That is strictly Bergen County service. They have got the main line?

Q (*By Mr. Hobart.*) Of course, that could be increased, if necessary, to accommodate Ridgewood?

A Yes.

Q Your attention was called by Mr. Merrey to the fact that there are, as you counted then, thirteen grade crossings now existing between the Broadway station on the Susquehanna and Hawthorne?

A Yes.

Q You are familiar generally with that section of the city, from observation?

A From riding through there on the trains, that is all. I never lived there or never walked there.

Q Is it built up or used to the same extent as some of these crossings on the Erie main line, like Market street?

A No.

Q A comparatively small amount of traffic, street traffic?

A As compared with Market street, yes.

Q (*By Commissioner Donges.*) Where is this?

A The intermediate crossings west of Broadway, between there and the river, on the N. Y., S. & W.

Q When did you make your observations?

A I am up and down frequently, sir. I was over that line on an inspection trip within a week.

Q How long did you remain at these crossings?

A We didn't stop at the crossings on this last trip. Two weeks ago I was up in a motor car, inspection trip, and was around there for an hour at the different crossings, looking at the gates, looking over the situation generally.

Mr. Hobart. That is all.

Commissioner Donges. If there is nothing further we will take the matter into conference.

Mr. Lewis. As I understand it, the present application is merely one affecting the plan. It does not effect, it is not an application for a rehearing upon any of the matters adjudicated by the Commission,

except as to the plan fixed by such adjudication, as I read the prayer.

Commissioner Donges. Of course, the application speaks for itself, but the prayer is, wherefore, this respondent respectfully prays that a rehearing of the order of April 20th, 1915, be granted for the purpose of considering the foregoing plan in lieu of the plan described in said order, and for the taking of testimony thereon so far as may be necessary, and that pending consideration of this petition and the granting of rehearing on said order—this relates to the *certiorari,* but it is simply that this plan be considered in lieu of the one heretofore.

Mr. Lewis. Yes, so I need not put my clients to the expense of further attendance.

Mr. Taylor. From the course of the cross examination and some questions asked by the members of the Commission, I anticipate that perhaps they would feel they should have in considering even this preliminary application of ours, which is preliminary in a sense because we merely ask for a rehearing, more detailed information about these train movements just how it is proposed to change them around. Mr. Minard stated a few moments ago some of the reasons why we are not prepared at this time to go into great detail on that point, and I would like to suggest, if it is agreeable to the Board and to Mr. Merrey, that this record be held open for the balance of this week, say, or for such time as the Board may direct, so if we find it practicable in the next few days to work up some more definite statement on that subject we may be permitted to file it and send a copy to Mr. Merrey, and if he wants to send anybody to cross examine on the subject, if we file such a statement we will be glad to produce a man at the proper time.

Mr. Merrey. I think the situation is made very clear by Mr. Lincoln. He must realize the question of these train movements. It cannot be claimed you

can divert more trains over this proposed loop than now run over the Susquehanna, and you cannot divert all of them, so that brings it down to a matter of less than thirty trains.

Mr. Taylor. I don't quite understand your statements. As I understand it, we have say 118 trains to take off the Erie line north of Market street. We propose to make no substantial decrease in the traffic. That means that those trains must be run over the Susquehanna north of Broadway except in so far as they are taken around the loop, but there are also some Susquehanna trains which can be taken off the line north of Broadway, and run around the loop so that makes a difference in the net increase of traffic north of Broadway. We all agree to that. It is only a question as to just how much the precise number of trains is to be affected.

Commissioner Donges. Mr. Merrey, it is scarcely worth while to discuss now the effect of any such testimony. The point is whether the company ought to be afforded an opportunity to put in any supplemental information that it desires and whether you require the production of a witness, or whether you will agree that it shall be put in in the form of a statement subject to your right to cross examine if you desire.

Mr. Merrey. I am arguing now it is not necessary, because it sufficiently appears to the Commission, that situation is sufficient for the purpose. Here is the situation: There are 118 trains run out of Jersey City into Paterson. Those trains would be diverted into the present Susquehanna cut, and then run north on the Susquehanna, except so many of those as can be turned and run down on the Susquehanna to Jersey City.

Mr. Taylor. Then there would be a further decrease of those trains, which can be taken off the Susquehanna.

Mr. Merrey. Pardon me. Let me get through. Then there are a certain number of other trains which will go up the Susquehanna and be diverted on the Erie. The amount of that service will not exceed the present service over the Susquehanna without taking trains from Ridgewood and taking trains from the main Paterson station. That will not increase the Present service over the Susquehanna, which is twenty-six trains each way, and every train that is operated under this plan, instead of running it out to the Susquehanna and running it down to Paterson and that way over the main line, is a train which is taken away from the service above. I say they cannot take more than half of them, which is thirteen trains each way, or twenty-six so the number of movements which they can save is twenty-six out of the 118 at the maximum, probably in that way. The point I am making, it is sufficiently clear to the Commission now that there will be at least ninety additional train movements over everyone of these thirteen crossings, and so far as the Eighteenth street crossing is concerned there will be at least 118 more over that, and the new crossing at Ellison Place, over which there will be about ninety passenger train movements every day. I think that is sufficiently clear, and I don't think there is any need of taking any more testimony. They may prove there will be five or six or ten movements, more or less from that, but that is the limit.

Mr. Taylor. I made the suggestion about furnishing more detailed information of this sort because it seemed to me that Mr. Merrey was looking for it, by the questions he asked. It seems to us, from the character of the application which we have made, that we have gone as far as necessary. While we are perfectly willing to furnish this information, if Mr. Merrey don't want it, we don't care about—

Commissioner Donges. Then you don't care to supplement your proofs?

Mr. Taylor. Not unless the Board wants it.

Commissioner Donges. It is a matter for your judgment, Mr. Taylor. If there is nothing further then—

Mr. Merrey. The position of the city is distinctly against this plan as it stands now. Our position is—

Commissioner Treacy. The proposed plan, the new plan?

Mr. Merrey. Against the proposed plan. We realize it will give a better train service, but it is transferring the danger from grade crossings from one part of the city to another, and it is creating a situation which we think materially increases the danger.

Commissioner Donges. Why?

Mr. Merrey. Because of the peculiar triangle arrangement which they have in the vicinity of the Broadway station, where there is a great deal of traffic. It will put a man in the position where there may be trains in front of him, in back of him, and off to the side.

Commissioner Donges. At Ellison place?

Mr. Merrey. At Ellison place it will make a particularly bad situation. The Broadway crossing will be just as bad on the Susquehanna as it is at the Erie, with very little difference—not quite as bad, but nearly as bad. This whole section the Susquehanna traverses is a rapidly growing section, a great deal of traffic over it, and with this plan, it is probable we won't get much relief in the future when it will be badly needed. We would have been willing to consider a plan which would have eliminated Broadway, with some others, Ellison place and Eighteenth street. If this plan could be so modified that it would eliminate these crossings, I think we would be glad to have it, with the prospect of some time in the future having the other crossings eliminated, but for the present it would do that. But our position now is that the situation would be probably worse; it would probably be worse than it is today.

Commissioner Donges. You say that the section of the city through which the Susquehanna runs is as thickly populated—

Mr. Merrey. No.

Commissioner Donges. And that the crossings over the Susquehanna have as much traffic, pedestrian and vehicular traffic over them as the main line?

Mr. Merrey. No, they have not, but there are more crossings, on the Susquehanna north of Broadway than there are on the Erie north of Market street, and although the section is not as thickly populated, yet it is growing very rapidly; it is the growing section of the city. So far as the Broadway crossing is concerned, the use of that is very nearly the use of the present Broadway crossing on the Erie, a great deal of automobile traffic coming in from Hackensack and New York uses Broadway, and the same trolley line as crosses down at the Erie station, and there are more cars run over the lower crossing than there are this. There is the Governor street line which crosses at the Erie, crossing at Broadway, and does not cross the Susquehanna, but does cross over on Governor street at another point.

Commissioner Donges. It turns up Eighteenth street?

Mr. Merrey. No, it crosses at Governor and then goes up Eighteenth street, so there are just as many trolley cars crossing Broadway across the Susquehanna at grade as do now. That is at Broadway, not counting the Market street ones, and there isn't much difference in the vehicular traffic at the Susquehanna Broadway crossing and the Erie Broadway crossing.

Mr. Hobart. Do I understand the city's position to be that they will be satisfied with this plan except for the difficulties you suggest at Broadway and Ellison place?

Mr. Merrey. We would be willing to agree with the Company, I think, about this, if we could at the pres-

ent time have eliminated the proposed crossings at Ellison place, Eighteenth street and Broadway.

Mr. Hobart. Eighteenth street, too?

Mr. Merrey. Yes, and then with the expectation that in the future some time these other crossings, of course, would be eliminated.

Commissioner Donges. We will take the matter into conference.

(Matter taken into conference.)

Report on Rehearing.

(Filed July 9, 1915.)

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN THE MATTER OF THE APPLICATION OF ERIE RAILROAD COMPANY FOR REHEARING OF THE APPLICATION OF THE CITY OF PATERSON TO ALTER GRADE CROSSINGS ON THE LINE OF ERIE RAILROAD COMPANY.	*Report.*

George S. Hobart, Herbert A. Taylor, and Duane E. Minard, for Erie Railroad Company.

E. F. Merrey, for the City of Paterson.

W. I. Lewis, for Paterson & Hudson River Railroad Company and Paterson & Ramapo Railroad Company.

L. D. H. Gilmour, for Public Service Railway Company, Public Service Gas Company and Public Service Electric Company.

Application is made by Erie Railroad Company for a rehearing of the proceeding, which resulted in an

order of the Board, dated April 20th, 1915, approving plans for the separation of the grade of certain public highways, in the City of Paterson, and the tracks of the Erie Railroad, for the purpose of considering a plan suggested in said application for rehearing, in lieu of the plans approved by the Board.

The Board has carefully considered the petition, the exhibits attached thereto, and the testimony, exhibits and reasons submitted in connection therewith, and concludes that the application should be denied.

Dated July 9th, 1915.

BOARD OF PUBLIC UTILITY COMMISSIONERS,

By

(Signed) RALPH W. E. DONGES,

(SEAL.) *President.*

Attest:

(Signed) ALFRED N. BARBOUR,

Secretary.

I hereby certify the foregoing to be a true copy of report, made and filed by the Board of Public Utility Commissioners, at a meeting held Friday, July 9th, 1915.

ALFRED N. BARBOUR,

Secretary.

Writ of Certiorari.

(On Rehearing.)

NEW JERSEY, *ss.*

(L. S.) The State of New Jersey to the Board of Public Utility Commissioners, GREETING:

We being willing for certain reasons to be certified of a certain report, determination or order of said Board dated July 9, 1915, denying an application by Erie Railroad Company for a rehearing of the proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," which resulted in an order of said Board dated April 20, 1915, whereby said Erie Railroad Company was ordered to alter certain crossings and each of them named in said order according to the plan therefor thereto annexed and made part thereof by substituting therefor crossings not at the grade of said streets, which application for rehearing was for the purpose of considering a plan suggested in said application in lieu of the plans approved by said Board, do command you that the said report, determination or order, together with the said application for rehearing, the testimony and exhibits offered before said Board, and all other proceedings by or before said Board concerning the same, as fully and entirely as before you they remain or are in your custody or control, you do certify and send, together with this writ, to our Supreme Court at Trenton on the eleventh day of August, nineteen hundred and fifteen, that we may cause to be done thereupon what of right and according to the law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this twenty-sec-

ond day of July, A. D., nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

COLLINS & CORBIN,
Attorneys of Prosecutors.

Endorsed:

NEW JERSEY SUPREME COURT.

Erie Railroad Company,
Prosecutor,

vs.

The Board of Public Utility Commissioners, City of Paterson and Board of Finance of said city,
Defendants.

WRIT OF CERTIORARI.

COLLINS & CORBIN,
Attorneys for Prosecutors,
243 Washington Street,
Jersey City, N. J.

I allow this writ. Let it be sealed. July 22, 1915.

JAMES F. MINTURN,
J. S. C.

Return.

To the Honorable the Judges of the Supreme Court of Judicature of the State of New Jersey:

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain report made by said Board on the ninth day of July, one thousand nine hundred and fifteen, together with the record and proceedings of said Board, and all things touching and concerning the same, as fully and entirely as before said Board they remain, as it is within commanded.

In witness whereof the seal of said Board is hereto affixed and certified by the subscriber.

ALFRED N. BARBER,
Secretary of the Board of Public Utility Commissioners of New Jersey.

(Return includes petition for rehearing, testimony thereon, and report of Board, denying same, as printed in Vol. IV.)

Reasons on Rehearing.

(Filed September 15, 1915.)

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari. (Re Application for rehearing of order of April 20, 1915.)* *Reasons.*

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

1. The action of the Board of Public Utility Commissioners in denying the application of the prosecutor for a rehearing of the order of said Board, dated April 20, 1915, was arbitrary and unjustified, and was not supported by the evidence taken before said Board.

2. Said application for a rehearing of said order of April 20, 1915, should have been granted for the purpose of considering the plan proposed by the prosecutor in said application for a rehearing, in lieu of the plan described in said order, and for the purpose of taking testimony thereon so far as might be necessary.

3. The application of the prosecutor that the effective date of said order of April 20, 1915, be extended for such reasonable time as would permit a full con-

sideration of said petition for a rehearing, should have been granted.

4. The evidence shows that the action of said Board in denying said application for a rehearing, was:

(a) Purely arbitrary.

(b) Without any reasonable basis upon which to rest.

(c) Unsupported by the facts laid before said Board.

5. The action of said Board in denying said application for a rehearing was contrary to the undisputed testimony taken before said Board upon said application.

6. Said application of the prosecutor for a rehearing should have been granted for the reason that the undisputed testimony before said Board taken on such application showed that it was feasible and practicable to remove the danger to public safety and the impediment to public travel at the highway crossings, and each of them, involved in this proceeding, by adopting the plan proposed by the prosecutor in said application, in lieu of the plan described in said order, dated April 20, 1915.

COLLINS & CORBIN,
Attorneys of Prosecutor.

Order for Affidavits.

Filed September 27, 1915.

On application of the prosecutor and on due notice to attorneys of defendants and against their objection,

Ordered that either party in the above entitled cause have leave to take affidavits on two days' notice to the other.

This order is made without prejudice to the right of said defendants to object to the reading of the affidavits taken hereunder.

Let the above rule be entered.

JAMES F. MINTURN,
J. S. C.

Rule entered this 27th day of September, A. D. 1915, on motion of

COLLINS & CORBIN,
Attorneys of Prosecutor.

Affidavits for Prosecutor.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY, *Prosecutor,* *vs.* THE BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Depositions.*

Depositions taken before me, David A. Newton, a Supreme Court Examiner, of the State of New Jersey, on Thursday, September 30, 1915, at 11.30 a. m., at No. 243 Washington street, Jersey City, New Jersey.

Appearances:

George S. Hobart, Esq., of Messrs. Collins & Corbin, for the prosecutor.

Frank H. Sommer, Esq., for the Board of Public Utility Commissioners.

Edward F. Merrey, Esq., for the City of Paterson and the Board of Finance of said city.

It was stipulated and agreed by the respective counsel that the depositions be taken stenographically by the examiner, by him transcribed, and the signatures of the witnesses thereto were waived.

Mr. Sommer. Enter the objection by myself, in behalf of the Board of Public Utility Commissioners, to the giving of notice by the prosecutor, and that at the hearing we will object to the reading of the depositions upon the ground that there is no authority for the making of the order under which these depositions are taken; and state that Mr. Merrey joins in the objection.

Mr. Merrey. Yes, state that I join on behalf of the city.

GEORGE H. PALMER, a witness produced in behalf of the prosecutor, upon being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

Q You are the assistant land and tax agent of the New York, Susquehanna & Western R. R.?

A Assistant general land and tax agent.

Q Have you examined the records of the company with a view to determining what the records show as to the title of certain land commonly called Crosby Place in the City of Paterson?

A I have.

Q Have you the deeds and other instruments affecting that title so far as they relate to the New York, Susquehanna and Western Railroad Co. and its predecessors?

A Yes, sir.

Q Have you prepared a blue print on which appears the property in question?

A Yes.

Q Please produce the deeds and agreements?

A You just merely want the name of the deeds or do you want to explain what they cover?

Mr. Hobart. First I will offer the blue print which the witness produces.

The Witness. I beg pardon, I think I have got a better blue print here; it is a better one than that.

(Blue print marked Exhibit Erie 1.)

Q Does this blue print show by various colored markings as indicated in the legend thereon the title to the land commonly called Crosby Place?

A It does.

Q And have you the deeds and instruments which are referred to on the blue print?

A Yes. The deeds or copies of deeds I have.

Q Please identify them in some way and read them into the record sufficiently to identify them?

A The tracts of land designated by blue shaded boundary lines and marked "First," "Third" and "Fourth" were conveyed by Garret A. Hobart and wife to the Paterson Extension Railroad Company by deed dated March 10, 1882, recorded in Passaic County Clerk's office July 29, 1882, in Book E-7 of Deeds, pages 397, etc.

Mr. Hobart. May we use copies?

Mr. Sommer. You may use copies.

(Said deed marked Exhibit Erie 2.)

Mr. Sommer. These are all compared—these copies?

The Witness. Yes, sir.

A (Continuing.) The tract of land designated by yellow shaded boundary lines was conveyed by The Mutual Life Insurance Company of New York to the Paterson Extension Railroad Co. by deed dated May 28, 1881, recorded in Passaic County Clerk's Office May 28, 1881, in Book T-6 of Deeds, page 447.

Mr. Hobart. I offer the deed.

(Said deed marked Exhibit Erie 3.)

The Witness. Do you want a statement as to the consolidation?

Q Well, are there any other deeds that should be offered to show the property?

A No other deeds to the company.

Q Any deeds or agreements from the company?

A Yes.

Mr. Merrey. Did you put in the tract marked 1?

The Witness. That is all here in blue.

Mr. Merrey. You put in first, third and fourth?

The Witness. Left out second.

Q Please put in any deeds or agreements you have from the company?

A The portion of the yellow tract designated C was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated August 30, 1883, recorded in Passaic County records—in Passaic County Clerk's office, I should say—September 1, 1883, in Book 202 of deeds—I mean in Book M-7 of deeds, page 202.

Mr. Hobart. Offered.

(Said deed marked Exhibit Erie 4.)

Mr. Merrey. That is one cut off by the red line?

The Witness. Yes.

A (Continuing.) The triangular parcel of land enclosed in red lines, being a portion of the first tract of land, was conveyed—

Mr. Merrey. Conveyed by the Mutual Life.

The Witness. No, I mean this little triangle in here.

A (Continuing)—being a portion of the first tract of land conveyed by Hobart and wife to the Paterson Extension Railroad Co. was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated September 7, 1883, recorded in Passaic County Clerk's office in Book M-7 of Deeds, at page 311.

(Said deed marked Exhibit Erie 5.)

The tract of land designated by red shaded lines and marked E, being a portion of the two tracts of land, one conveyed by Mutual Life Insurance Co. of New York and the other of the first parcel of land conveyed by Hobart before referred to was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated October 30, 1884, recorded in Passaic County Clerk's office in Book U-7 of Deeds, page 618.

(Said deed marked Exhibit Erie 6.)

The tract of land bounded by red lines and marked F, which is a portion of the two tracts of land conveyed by the deeds from the Mutual Life Insurance Co. of New York and Hobart and wife, above referred to, was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated August 7, 1886, recorded in Pasaic County Clerk's office in Book U-8 of Deeds, page 392.

(Said deed marked Exhibit Erie 7.)

By agreement between the New York, Susquehanna and Western Railroad Co. and Henry B. Crosby dated November 1, 1884, recorded in Passaic County Clerk's office May 6, 1903, in Book X-15 of Deeds, pages 470, etc., the New York, Susquehanna and Western Railroad Co. granted to Crosby the right to lay and maintain for a period of ninety-nine years from the date of the agreement a flag sidewalk upon these lands.

(Said agreement marked Exhibit Erie 8.)

The Witness. Better say upon the driveway.

Mr. Hobart. Well, the whole thing will be printed anyway.

Q These deeds and agreements to which you have referred, are they all the papers on record that affect the title to the lands in question?

A Yes.

Q Some of these papers referred to the Paterson Extension Railroad Co., do you know whether that company is a predecessor of the New York, Susquehanna and Western Railroad Co.?

A It is, or was.

Q Have you before you a summary showing the chain of title leading into the present New York, Susquehanna and Western Railroad Company?

A Yes.

Mr. Hobart. Of course, Mr. Merrey, I can put in evidence, if you want, all of these—about a dozen different consolidation agreements; but I

do not see any objection, unless you want them, and I thought I would have Palmer state it just as he did in the main case.

Mr. Merrey. Probably that is all right.

Q Proceed, Mr. Palmer.

A The Paterson Extension Railroad Co. was consolidated with the Midland Railroad Co. of New Jersey and other companies to form The New York, Susquehanna and Western Railroad Co. by articles of consolidation dated May 26, 1881, acknowledged June 16, 1881, filed in the office of the Secretary of State of New Jersey June 17, 1881.

The New York, Susquehanna and Western Railroad Co. was consolidated with the Blairstown Railway Co. by agreement dated December 22, 1882, the name of the new company being New York, Susquehanna and Western Railroad Co. New York, Susquehanna and Western Railroad Co. was consolidated with the Hudson River Railroad and Terminal Company by agreement dated April 5, 1893, the name of the new company being the New York, Susquehanna and Western Railroad Co., which is the present company.

Cross examination by Mr. Merrey.

Q Are you familiar with this roadway known as Crosby Place?

A Yes, that is I have not been up there recently. I have been there a good many times in the past.

Q You know that it is lighted by the City of Paterson?

A I do not know.

Q You know there is an electric light there—city light?

A I do not recollect.

Q It is an open, traveled, public thoroughfare?

A It is an open way apparently traveled by the public.

Q Generally?

A Generally.

Q And has been for more than twenty years?

A Yes. It is also used by patrons of the Railroad Company.

Q The Paterson City station of the railroad company is located upon this thoroughfare and also on Straight street?

A Yes.

Q The general public coming from Straight street to Park avenue frequently cross along this roadway?

A Yes.

Q And on the east and south sides it is entirely built up?

A Yes.

Q With stores located right along the entire front?

A Yes.

Q And patrons of those stores go in and out over it as a public street to Park avenue and to Straight street?

A They use it in going to and from the stores.

Q As a matter of fact there is no other means for the patrons of those stores to reach Park avenue or Straight street without going over this road?

A The fronts of the stores; I cannot say as to the rear.

Re-direct examination by Mr. Hobart.

Q Have you personal knowledge of the use of that so-called street for twenty years, Mr. Palmer?

A Yes.

Q Do you know whether there is any other way for passengers and other patrons of the Susquehanna Railroad to get to the Paterson City station except by way of Crosby Place?

A They can go around through Park avenue and Straight street.

New Jersey State Library

Q They could get in through Straight street and Crosby Place, but they cannot get in from the north?

A No, or the west.

Mr. Merrey. You mean they cannot get in now?

The Witness. Yes.

Re-cross examination by Mr. Merrey.

Q How long have these deeds been in your possession?

A Ever since 1896 or 1897.

Q Where did you find them?

A To-day?

Q Yes.

A They are in our records.

Q When they originally came into your possession in 1896 or 1897, how did they come into your possession?

A They were sent to us by the secretary.

Q Secretary of what?

A Either the secretary or the chief engineer they called him at that time.

Q You have had them since 1896 or 1897 in your own possession?

A Yes, that is, they have been in the office.

Q They are all recorded, too?

A Yes; some of them are copies I brought here.

ALBIN M. SMITH, a witness produced in behalf of the prosecutor, upon being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

Q Are you the agent of the New York, Susquehanna & Western Railroad Co. at its Paterson City station?

A Yes.

Q That is the station located near Straight street in that city, is it not?

A Yes, sir.

Q How long have you been such agent?

A Twenty-three years.

Q Calling your attention to this blue-print, Exhibit Erie 1, are you familiar with the location of the passenger station of the Susquehanna Railroad as indicated on this plan?

A Yes, sir.

Q And you know the street, so-called, described as Crosby Place?

A Yes, sir.

Q Have you observed for what purpose that street has been used?

A Yes, it is used to get—it is used to get to our passenger depot from people down in the lower part of—below the Erie tracks.

Q And in order to get to your passenger depot how do persons approaching the station from that direction come; that is, what part of Crosby Place do they cross over?

A Well, they cross over at Market street first, as a rule, and come right up Crosby Place to the depot.

Q Do you recall that there is a sidewalk on each side of the street leading up from Market street?

A Yes, sir.

Q And do passengers going to the station use those sidewalks?

A Yes, sir.

Q Where is the freight station of the Susquehanna Railroad?

A On the opposite side of Straight street from the passenger depot.

Mr. Merrey. Towards the east?

Mr. Hobart. Towards Jersey City?

The Witness. Towards the east.

Q Is Crosby Place used by persons going to and from the freight station with vehicles?

A Yes, sir.

Q Is it also used by persons or vehicles going to the passenger station?

A Yes, sir; you cannot get to the passenger station without—with a vehicle unless you do come through Crosby Place.

Q Can you with a vehicle approach the passenger station from any direction except from Market street?

A Yes, off of Straight street.

Q But do people in fact approach on the roadway leading up from Market street?

A Oh, yes.

Q And has that been your observation for a number of years past?

A Yes.

Q Is there an express office located in the passenger station?

A Not in the passenger station, but on the opposite corner from the passenger station on Crosby Place.

Q How long has that been there?

A Well, it was there when I first came twenty-three years ago; but it has been transferred down to the Erie depot now.

Q When was that transfer made?

A Within a couple of years.

Q Before it was transferred to the Erie depot did persons coming to and from the express office for express business, did they use Crosby Place?

A Yes, sir.

Q In the same way as passengers used it in order to reach the station?

A Yes, express wagons and vehicles could not get to that place unless they did use Crosby Place there—through Straight street or Market street, could not get there at all.

Q The statement you have made as to the use of Crosby Place by passengers going to the passenger station and by vehicles going to the passenger station

or to the freight station or to the express office, is that true generally during the time you have been there?

A Yes.

Q Is there any sign at any point on Crosby Place erected by the railroad company?

A Yes.

Q What sign and where located?

A There is one sign located at the end of the path leading down to Park avenue on the corner in that position (indicating on blue-print).

Q Indicating the southerly extremity of Crosby Place?

A Southerly extremity where it connects with Park avenue, where it runs into Park avenue.

Q And is there another sign besides that?

A Yes, there is another sign up here (indicating) on the Straight street corner.

Q Near Straight street?

A Right at the corner of Straight street, right alongside the freight siding.

Q And what do those signs say?

A No thoroughfare.

Q And how long have they been there?

A As I remember, it is at least three years and it may have been—may be four.

Q Do the tracks of the Susquehanna Railroad as they run into the Straight street station to which you have referred, do they terminate shortly beyond the end of the station?

A Yes, sir; they terminate at the turn of the path or sidewalk leading from Park avenue through to Straight street.

Q Are there two sidewalks, that is one on each side of Crosby Place leading from Park avenue and Market street towards the passenger station?

A No, there is only one sidewalk leading from Park avenue up to the station but there is another on

the other side of Crosby Place which comes up and does not go direct to the station but follows around on to Straight street.

Q Persons using that sidewalk in order to get to the station would have to cross the street?

A Yes.

Q Persons using the first mentioned sidewalk can they follow and do they follow that sidewalk all the way along until they reach the Susquehanna tracks and the station platform?

A Yes, sir.

Q And does the sidewalk I have just mentioned, does that run alongside of and parallel with the tracks of the Erie Railroad Company?

A Yes.

Q What is there between that sidewalk and the tracks of the Erie Railroad Co.?

A Bar fence.

Q Is there any wall?

A There is a wall; yes, there is a wall, because this pavement or sidewalk is up on top of the wall. There is a bar fence to protect passengers from falling over this wall into the Erie tracks.

Q How high is the wall?

A It starts about three feet, maybe 2½ feet at Park avenue and runs up here opposite this passenger station. It elevates to 5 feet, 5½ probably.

Q When the sidewalk reaches that elevation does it then turn or does it strike the Susquehanna platform or how do passengers get the rest of the distance?

A It turns to the station.

Q And then does it connect with the Susquehanna platform?

A Yes, sir.

Q Is there any other way of getting to the Susquehanna passenger station except by way of Crosby Place?

A Not with a vehicle.

Q Well, as to passengers, how else could they get to the Susquehanna station?

A They would be coming in from Straight street to get to the station.

Q As a matter of fact which way do most of them come—from Straight street or from Park avenue?

A That depends upon what part of the city they come from. If they comè from anywheres off to Broadway or anywheres from Broadway over to Park avenue—

Q Which way do they come then?

A Then they come down; for instance, if they come down Ellison street they go down to Straight and through Straight to this Ellison Place.

Q Crosby Place?

A Yes, and so on down, making a short cut of it.

Q But passengers approaching the station from Market street and that section of the city, can they get to the passenger station any way except by Crosby Place?

A No, sir. They could not go across the Erie tracks and they could not come along the Erie track and go up to it in any way. The only way from Market street is right through Crosby Place.

Q Are these sidewalks all in the roadway that you described?

A Yes.

Q The railroad tracks of the Susquehanna are located on the northerly side of the station?

A Yes.

Q To the north of the tracks is there any means of access to the station?

A No, sir.

Q What prevents the access?

A Our switches, turning cars; that is the loading and unloading—

Q It is a freight yard?

A Freight yard.

Q And from the westerly side the access is cut off by this fence and wall that you have described?

A Yes.

Cross examination by Mr. Merrey.

Q You are the station agent at Paterson station?

A Yes, sir, and freight agent.

Q This passenger station is sometimes referred to as the Straight street station?

A Yes.

Q If Crosby Place was closed up entirely could not passengers get to and from the passenger station over Straight street?

A Yes, sir.

Q Could not vehicles stop on Straight street in front of the station and deliver their passengers there?

A Yes, but they've got to walk from the street over to the platform of the station.

Q There is a sidewalk at that point?

A Sidewalk on Straight street.

Q And right adjoining that sidewalk is the platform of the station, is it not?

A Yes.

Q So that it would mean a walk of about 15 feet from the curb at Straight street, would it not, to the passenger station?

A Over that. I think there is 28 or 30 feet of space between the station.

Q So that there is no hindrance from people going over Straight street to the station if Crosby Place was closed?

A Well, unless different arrangements was made there for access to the station.

Q What different arrangements would have to be made?

A Well, there would need to be this vacant space between Straight street and the depot to drive a wagon to it.

Q The wagon could stop right at the curb, could it not, discharge its passengers on this sidewalk, and then they could cross a little open space owned by the railroad and which is part of the station to the station proper?

A Yes, sir.

Q That is a paved space now, is it not?

A Well, not exactly, no.

Q Well, it is paved with broken stone?

A Broken stone.

Q People do walk to and fro every day?

A Yes.

Q Crosby place makes it a little more convenient for passengers?

A It does, because the baggage department is on the opposite side and to bring baggage to the baggage department you have got to enter in this Crosby place.

Q That could be done from Straight street?

A What?

Q They could enter on from Straight street on to Crosby place?

A Yes, sir.

Q Suppose the part adjoining the Erie Railroad was entirely closed up, could not passengers and vehicles reach the baggage department and all parts of the station?

A If it was only partly closed.

Q That is, I mean all the part adjoining the Erie Railroad were closed?

A Yes, then there would be room for to come through this open part of Crosby place to get to the baggage room and discharge baggage.

Q Crosby place has been used for a great many years by the general public in addition to the passengers to the station?

A Oh, yes; there was never any hindrance.

Q As a matter of fact a great many more people use Crosby place who are not going to the station than those who are going to the station?

A Well, I should say yes.

Q And many more vehicles that are not to stop at the station or the baggage department and express company cross over Crosby place than those who do stop at those places?

A Yes, sir.

Q It makes a little short cut?

A Yes.

Q It makes it very convenient for the general public?

A For the general public that are going through that part of the city.

Q And no hindrance has been made for over twenty years to the passage of the general public over this Crosby place?

A Nothing, but this sign of no thoroughfare.

Q And that sign was put up about three years ago?

A Between three and four years ago.

Q And after the sign was put up no attempt was made to stop anybody from using it?

A No, sir.

Q In appearance it is the same as any public street?

A Yes, because it is macadam.

Q Do you know who macadamized it?

A No, I do not.

Q There is an electric light in the center of it?

A Along the sidewalk just off from the Erie tracks.

Q Do you know who maintains that light?

A I do not.

Q Is it not maintained by the City of Paterson?

A I do not know.

Q It is the ordinary street electric light?

A Yes.

Q And one side of this thoroughfare is built up with private houses?

A Yes; stores, buildings.

Q And the express company occupy a building not owned by the company?

A Not owned by what company.

Q By the express company or the railroad company?

A Yes.

Q It was on property referred to as being owned by Crosby?

A Yes.

Q What is located in that store now?

A Nothing.

Q Vacant?

A Yes.

Q And adjoining that is a saloon, is there not?

A Yes, sir.

Q And a number of other retail businesses in the other stores?

A Only one there.

Q What is that?

A Electric light appliances and fixtures and such as that.

Q And is there a store of any kind on Crosby Place in the vicinity of Straight street?

A Yes, there is a garage there, that is the only one.

Q A large public garage?

A It is rather large, I suppose thirty or forty feet front.

Q And they sell automobiles there?

A I don't know whether they sell them.

Q They did at one time?

A I don't know that they ever sold them.

Q But they store them there?

A Yes, they store them.

Q And the patrons of that garage go over Crosby Place into straight street and Park avenue?

A Yes, sir.

Q Ever been any objection on the part of the company to the passage of those automobiles?

A Not through me. I don't know what other officers of the company have had instructions to do anything with regard to that matter; but not through me.

DAVID BOSMAN, a witness produced in behalf of the prosecutor, on being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

Q You are the vice-president and secretary of the Erie Railroad Company, Mr. Bosman?

A Yes.

Q And as such have charge of its records and papers of various kinds?

A I do.

Q Have you a copy of the certificate of incorporation?

A Yes, sir.

(Said certificate offered in evidence and marked Exhibit Erie 9.)

Q Have you produced at my request copies of the agreements between the Erie Railroad and the Fullers Express Company and the Erie Railroad and Morris & Co.?

A You have got the Morris Co. and the other there.

Q These are the originals?

A Yes.

Q They are still in effect, are they, and have been from the date of the respective agreements?

A Yes, sir.

Mr. Hobart. I offer in evidence agreement dated January 24, 1908, between Erie Railroad Company and Fullers Express Company.

(Marked Exhibit Erie 10.)

Mr. Hobart. I offer in evidence lease dated May 14, 1910, between Erie Railroad and Morris & Co.

(Marked Exhibit Erie 11.)

It is stipulated that Exhibit Erie 10, agreement between Erie Railroad and Fullers Express Co., may also be considered in evidence in the *certiorari* proceeding instituted by Fullers Express Co., subject to the same objection heretofore made.

It is further stipulated that lease dated May 14, 1910, between Erie Railroad Co. and Morris & Co., Exhibit Erie 11, may also be considered as in evidence in the *certiorari* proceedings instituted by Morris & Co.

Q Mr. Bosman, have you made a search for the original of agreement between Erie Railroad Co. and Jacob Meyer & Kommer De Vogel, partners, etc.?

A I have.

Q Have you been able to find the original of any such agreement?

A No, sir.

Q I show you a printed form of agreement entitled on the back "Agreement for construction of siding," is that the standard form of agreement of Erie Railroad?

A Yes, sir.

Q Was there any standard form of such an agreement in use in 1897 and 1898?

A Not to my knowledge.

Q I show you another paper, being in the form of a letter dated February 25, 1898, with two collection vouchers attached. This purports to refer to a bill against Meyer & DeVogel for construction of siding. So far as you know, do those papers represent the agreement with Meyer & DeVogel or the understanding with them as to the construction of this siding?

A So far as I know they do.

Q You have not been able to find any original agreement and you have no record of it in your office?

A I have not been able to find it, and have no record.

Mr. Hobart. By consent I offer in evidence said letter of February 25, 1898, and the collection vouchers attached.

(Marked Exhibit Erie 12.)

It is stipulated that these papers may also be considered in evidence in the *certiorari* proceeding instituted by Meyer & DeVogel, subject to the same objection.

Q Have you the certain agreements between the Erie Railroad or its predecessors and Public Service Railway Co. or its predecessors?

A I have got one agreement here of February 6, 1912, betweeen the Public Service Railway Co. and the Erie Railroad Co.

Q That recites the execution of an earlier agreement of February 26, 1892?

A Yes, between the Paterson Railway Co., and the New York—

Q And have you the latter agreement?

A Both of them, yes, sir.

Mr. Hobart. I offer in evidence the agreement dated February 26, 1892, between Paterson Railway Co. and New York, Lake Erie & Western Railroad Co. Any objection? These—this is for the crossings at Market street, Park avenue and River street and Broadway.

Mr. Sommers. You've got a right to put it in, Mr. Hobart, if you want to.

(Marked Exhibit Erie 13.)

(Copy marked by consent.)

Mr. Hobart. I offer in evidence the agreement of February 6, 1912, between Erie Railroad Co. and Public Service Railway Co.

(Marked Exhibit Erie 14.)

(Copy marked by consent.)

Mr. Hobart. May I ask you gentlemen to stipulate that the Paterson Railway Co. is the predecessor of the present Public Service Railroad Co., and that the New York, Lake Erie & Western Railroad Co. is the predecessor of the present Erie Railroad Co.; is that agreed?

Stipulation made as proposed.

Q Have you with you the forms of the notes or other obligations issued from time to time by the Erie Railroad and referred to in the testimony heretofore taken before the Board of Public Utility Commissioners?

A All of them except the real estate mortgage called for on page 1342.

Q That was a small mortgage of thirty or forty thousand dollars?

A $37,000.

Q As I understand it, that only covers certain property in the freight yard, doesn't touch the main line tracks at all?

A At 28th street. There is just one other annual payment there of $52,000 in 1917, and one or two other $52,000 in 1916 I think. Those payments are called for under the agreement with the Grade Crossing Commission of the City of Buffalo. There are no obligations issued, but merely as work is done we bear our proportion of the cost.

Mr. Hobart. I offer in evidence the various forms of notes, car trust certificates and other obligations referred to by the witness.

(Marked Exhibit Erie 15.)

Cross examination by Mr. Merrey.

Q These papers which you have offered are all in your possession?

A Yes, sir.

Q And they have been for the last three or four years?

A Yes, sir.

Q They were in your possession at the time the testimony was taken before the Public Utility Commission?

A Yes, sir.

WILLIAM H. BRAMELD, a witness produced in behalf of the prosecutor, upon being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

Q Have you made a study of the order under review in this case with the plan and profile thereto attached?

A I have.

Q I call your attention to the provision of the order and plan relating to the increased width of the crossing at Essex street, is there at the present time an undergrade crossing and what is the width of that crossing?

A Thirty-two feet as shown on the plans submitted by the City of Paterson.

Q What is the proposed width of that crossing as required by this order and plan forming part thereof?

A Fifty feet.

Q Have you made an estimate of the cost of widening Essex street as required by that order and plan?

A I have.

Q In that estimate have you used the same unit prices as in the previous estimates made in the hearings before the Board of Public Utility Commissioners?

A Yes, this estimate is—it is a separation of the items of the work which it will be necessary to do in connection with the widening of this undergrade crossing.

Q That is to say, this estimate is included in the total of the figures as previously given in the testimony before the Board?

A It is merely a separation of the items to show the cost of this particular piece of work.

Q Which did not appear in the previous testimony?

A The items in this form do not appear, but they were included in the previous testimony submitted.

Q What is the amount of your estimate for this one item, the widening of Essex street?

A $80,225.73.

(First estimate marked Exhibit Erie 16.)

Q If the work of eliminating the several crossings involved in this proceeding was carried out as ordered by the Board, but leaving Essex street at its present width of 32 feet, would the company be saved this estimate of $80,000?

A Yes.

Q In other words, this estimate represents the increased cost to the company due solely to the widening of Essex street?

A Yes.

Q When you refer to the city plan as showing the present width of Essex street as thirty-two feet what plan did you refer to?

A The plan which is in evidence in this case, being the plan of the present tracks through the City of Paterson.

Q It is not the plan which the city offered to the Board as the plan under which it desired to have the crossings eliminated?

A It is not a plan showing the proposed elimination of grade crossings, but simply a map showing the existing conditions.

Q On the city's plan presented to the Board, on the basis of which it requested the elimination, Essex street is shown as fifty feet?

A It is shown as fifty feet.

Q And the Board apparently adopted that part of the plan?

A They did.

Q You have made a careful study in connection with this case of the entire scheme of eliminating grade crossings in Paterson, have you not, for some two or three years past?

A Yes.

Q Is there any occasion or any necessity to increase the width of Essex street from thirty-two feet to fifty feet in order to eliminate the grade crossings in question in this proceeding?

A I can see no reason for it.

Q According to the plan as ordered by the Board and which you have examined, will you please state whether this increased width of Essex street involves a widening of the street only on one side, or does it involve a widening on both sides?

A According to the plans it involves a widening on both sides.

Q The result of which would be that both of the existing abutments or walls at this present undergrade crossing would have to be removed?

A Yes.

Q In this estimate Exhibit Erie 16 have you made any allowance for the value of the old material from those walls?

A No, sir.

Q Would that amount to any considerable sum?

A Yes, sir. The present value of those walls is about $14,000.

Q Would they be worth $14,000 to the Erie after they were torn down?

A No, sir.

Q Then this estimate of $14,000, if I understand you correctly, represents the—

A Value of the—

Q Of the walls?

A Yes, sir.

Q Of the walls as they now are which would have to be destroyed?

A Yes, sir.

Q And have you also included in an estimate a statement of the value of the existing bridge at Essex street?

A Yes.

Q Would that also have to be destroyed in case the street were widened?

A It would.

Q What does the whole thing amount to, of all the materials?

A The walls, the present value of the structure that would be destroyed is $27,535.

Q And no part of that is included in this estimate of increased cost?

A No, sir.

Q Now turn to the proposed new station at Market street, does the plan of the Board require the relocation and reconstruction of a passenger station at Market street?

A It does.

Q Have you prepared an estimate of what it would cost to relocate and rebuild Market street as required by order of the Board?

A I have.

Mr. Sommer. Market street or the station?

Mr. Hobart. Market street station.

Q Does that estimate already appear in the figures you have already presented?

A It does.

Q But not the details or the particular items as I understand it?

A No.

Q Then the present estimate shows the details of that as distinguished from the general figures which were heretofore offered, is that correct?

A Yes, this estimate covers the increased cost of the items that we would have to consider in addition to the items that it would be necessary to consider just for raising the tracks and leaving the station where it is. In other words, it is the increased cost due to moving the station from one side to the other of Market street.

Mr. Hobart. I offer the estimate.

(Second estimate marked Exhibit Erie 17.)

Q In order to carry out the plan for the elimination of grade crossings as required by this order, is there any occasion or necessity for changing the location of the station at Market street?

A No.

Q Can the present station where it now stands be modified in such a way as to conform to the proposed reconstruction of the tracks?

A It can.

Q In what way?

A We could erect platforms elevated to the new level of the track with canopies to protect the passengers waiting for trains and with stairways up from the side of the present station.

Q And would—what would be the approximate cost of so doing?

A The cost of the canopies and elevated platforms are already in the estimate and are not considered in the estimate just submitted, but the cost of building stairways and changing the roof could be done for between six and seven thousand dollars.

Q With particular reference to the station platforms at Market street, is there any way of changing or shifting the tracks when elevated as proposed so that the present station at Market street might still be used without changing it over to the other side of Market street as required by the order?

A I believe there is enough width between the track and Ramapo avenue for a platform. If the width was not sufficient the platform could overhang Ramapo avenue as there is sufficient height to enable vehicles to get underneath, and stairways could be built down from this platform.

Q And I suppose as a last resort we could ask the city to vacate Ramapo avenue?

A Yes, we could move the tracks further to the south and get more platform room.

Q Or vacate Ramapo avenue in whole or in part?

A We could; it is possible to do so.

Q According to the plan as proposed, as required by the order, what becomes of the present station building?

A It is destroyed.

Q Do you know what the present value of the station building is?

A In the neighborhood of $21,000. I believe the tax returns show it is $21,800.

Q Is that a fair estimate, in your judgment?

A It is.

Q Have you examined this plan with particular reference to proposed change of location of Market street station with a view to see whether the new location would encroach upon the property of any other railroad company?

A I have.

Q What property would it encroach on?

A The property of the New York, Susquehanna and Western Railroad Company.

Q At what point and to what extent?

A Adjacent to the right of way of the Erie Railroad Co. and immediately west of Park avenue it is proposed to build a waiting shed and stairways to the platform on the New York, Susquehanna and Western property, and to move the present sidewalk out into the roadway, narrowing up the driveway on Crosby Place.

Q You are familiar with the situation at present at Crosby Place, are you not?

A Yes.

Q This new location of the sidewalk which adjoins the present right of way of the Erie Railroad or the Paterson and Ramapo Railroad—

A Yes.

Q Would that sidewalk be interfered with by this new location?

A It would. It would be entirely used by the new waiting shed and stairway.

Q Would any part of the roadway at Crosby Place be used or interfered with?

A I believe a small portion of it would, but the present sidewalk would be moved out and narrowed up to a four or five-foot sidewalk which will be located in the present roadway.

Q That is to say, the present sidewalk would be entirely occupied by a part of the new station?

A By a part of the new station.

Q And the plan requires another sidewalk to be constructed which would extend into the roadway four or five feet?

A Yes, sir.

Q Referring now to the part of the order and plan which requires a change of the siding and other facilities of Morris & Co., will you state what the plan as ordered requires to be done in that connection?

A The present facilities of Morris & Co. will be destroyed to provide a location for the new passenger depot at Market street. The plan proposes to

erect a new building for Morris & Co. on Railroad avenue just opposite the present freight station in the vicinity of Cedar street.

Q Have you made an estimate of what that would cost?

A Yes, $40,000. That already appears in the testimony.

Q That includes a reproduction, as I understand it, of their present facilities?

A Yes, in the new location.

Q Does not include anything for cost of land because Morris & Co. does not own the land where they now are?

A No.

Q Does not include any item for loss of business, if any?

A No.

Q Is there anything on this plan as proposed for the elimination of these crossings which makes it necessary as a part of the plan of elimination to destroy the present facilities of Morris & Co. and to change the location of them and furnish new facilities as required by that plan and order?

A No. If the grade crossings were eliminated without moving Market street station, then Morris & Company's facilities could remain where they are, but the track serving them would have to be elevated.

Q Is there anything in the elimination plans as required which make it necessary for the railroad company or anybody else for that matter to relocate the facilities of Morris & Co.?

A Yes; the moving of the station—

Q The moving of the station would—

A Would require the destruction and the finding of other facilities for Morris & Co.

Q Provided they wanted to keep on doing business?

A Yes, sir.

Q Is there anything in the elimination of the crossings?—

A No.

Q —which makes it necessary?

A No, the crossings could be eliminated without making these proposed changes in Morris & Company's facilities.

Q And without providing new facilities for them?

A Yes.

Q Have you examined the plans with reference to the Fullers Express Co.?

A I have.

Q And what is required by the plan as to that company?

A The destruction of their present facilities and the rebuilding of their buildings and additional side tracks in a new location on the side of the present passenger station.

Q What is the estimated cost of doing that work?

A $12,000.

Q You have included that in the estimate on the same sheet as the estimate of Morris & Co.?

A I have. It is the same figure that was used in the previous testimony taken in the grade crossing case.

Mr. Hobart. I offer this estimate for Morris & Co. and Fullers Express Co.

(Marked Exhibit Erie 18.)

Q Is there anything in the elimination plan which makes it necessary to make these changes in the location of Fullers Express Co.?

A No.

Q Can the elimination be carried out properly and successfully without making any change whatever in Fullers Express Co.?

A No, there would be some changes to be made to adapt the building to the level of the tracks.

Q Is there anything in the elimination of the crossings which would make it necessary to destroy the building now occupied by the Express Company?

A No, the crossings could be eliminated without doing that.

Q And is there anything in the elimination which would make it necessary to the success of carrying out the elimination scheme which makes it necessary to provide other facilities for Fullers Express Co. as required by this order?

A No.

Q I ask you to turn to the River street station, have you prepared an estimate of the cost of the relocation and rebuilding of that station?

A I have.

Q And this estimate is based upon the order under review and the plan?

A It is.

Q And what is the amount of that estimate?

A $24,265.

Mr. Hobart. I offer the estimate.

(Marked Exhibit Erie 19.)

Q This estimate of $24,265, does that represent the increased cost of relocating and rebuilding the River street station as required by the order as compared with the cost of modifying the present station?

A Yes.

Q What would it cost to adapt the present station to the tracks if elevated as required by the order?

A Not over $1,500.

Q For the purpose of carrying out the elimination plan is there any occasion or necessity for rebuilding or relocating River street station?

A No, sir.

Q Is it necessary as a part of the plan to tear down the old station?

A No, sir.

Q What is the present value of that station?

A In the tax returns I find it is valued at $1,180.

Q Does the plan require the destruction of the existing station?

A It does.

Q And the construction of a new station?

A Yes.

Q On a different location?

A Yes.

Q On that relocated station at River street is there any part of the order or plan which requires the relocation or the reconstruction of sidewalks?

A There is.

Q Please state what that is as shown on the plan as ordered by the Board?

A The crossing at River street is moved farther west than at present, and where the sidewalk crosses diagonally at the present time it is changed to run parallel to the railroad track on the railroad right of way to the new undergrade crossing.

Q Is the location of the sidewalk shown on the plan?

A The location of the proposed sidewalk is shown on the plan.

Q And it is different from the existing location of the sidewalk at that crossing or as you approach the crossing?

A Yes.

Q Shown on that plan by what—dotted lines?

A Dotted lines.

Q Now, I will ask you to turn to the crossings at Clay and Straight streets, does the plan as ordered continue those crossings as they now are?

A The plan proposes to eliminate the crossings by undergrade crossings on the lines of the present streets.

Q And to have two undergrade crossings at the lines of the present streets?

A One at each street.

Q Separate crossing at each street?

A Yes.

Q Have you considered the question of eliminating the existing grade crossings at Clay and Straight streets by a consolidation of those two crossings?

A I have.

Q Have you prepared a plan showing how Clay and Straight street crossing could be consolidated?

A I have.

Q And is this the blue-print that you have before you?

A Yes.

Q And have you prepared an estimate of the saving to the railroad company?

A I have.

Q How much does that amount to?

A The saving in the plan amounts to $58,951.13.

Q That is the saving in the plan by consolidating the two crossings over what the order of the Board requires, that is to say, to keep each crossing separate as they now are?

A Yes.

Mr. Hobart. I offer the blue-print and the estimate together.

(Marked Exhibit Erie 20, consisting of two sheets and a blue-print.)

Q Will you state generally how this consolidation of these two crossings could be made at this saving? Of course the plans speak for themselves, but you may state it in a general way, if you will.

A The plan proposes to lay out new street lines, the center line of the street commencing at the south side of the tracks at the intersection of Clay and Straight streets; thence running across the railroad to a point midway between the intersection of Plum street and Clay street and Peach street and Straight

street. The highway parallel to the railroad is directly in a line with the intersection of Plum street and Clay street and Straight and Peach street. The plan calls for a 36-foot driveway and two 12-foot sidewalks, making a 60-foot roadway. The grades proposed on the new streets are four per cent., the same as used in the plan ordered by the Board of Public Utility Commissioners, and the track work is just the same as that ordered by the Board of Public Utility Commissioners; in other words, the track is raised and there are only three tracks as shown on the plan. This plan simply proposes a change in the layout of the streets.

Q And of those two streets only?

A Yes.

Q It does not affect the general plan for elimination as ordered by the Board?

A No.

Q Have you included in your estimate of the cost of doing the work in this manner any allowance for the real estate that would be required to be taken?

A I have.

Q You put that in at $45,000?

A $45,000 land and damages. Damages probably about $1,000, and $44,000 for the land.

Q I want to call your attention to that part of the order and plan which substitutes for the existing crossing at Cedar street a crossing under the railroad at Taylor street; is there at the present time a crossing at Cedar street?

A Yes, sir.

Q Have you examined the order and the plan to see whether or not it requires the railroad to construct a crossing at Taylor street?

A The order and plan requires the construction of an undergrade crossing at Taylor street.

Q Is there a crossing there at the present time?

A There is not.

Q Never has been?

A To my knowledge, no.

Q Have you made a detailed estimate of the cost of constructing this undergrade crossing at Taylor street?

A I have.

Mr. Hobart. I offer it.

(Marked Exhibit Erie 21.)

The Witness. This estimate covers the items that are affected by the building of this undergrade crossing and are included in the estimates as previously submitted in this case.

Q It is not in addition?

A These figures are all in on the old estimate, but this is a separation of them showing the items that are chargeable to this undergrade crossing.

Q Is there anything in the plan for the elimination of these crossings which makes it necessary to construct this new crossing at Taylor street?

A No.

Q Can the plan for the elimination of the crossing be carried out just as well without building any such new crossing at Taylor street?

A It could.

Q Now, call your attention to that part of the order and plan which requires the construction of an undergrade crossing at Montgomery street, is there any crossing at grade or otherwise at that street at the present time?

A There is not.

Q Does the plan require the railroad to build a crossing at Montgomery street?

A The plan requires the railroad company to build an undergrade crossing at Montgomery street.

Q Have you prepared an estimate showing the cost of that part of the work?

A I have.

Q Is that included in the general or total estimates previously offered in evidence?

A It is.

Q And this is merely a separation of the items chargeable to that particular work also?

A It is.

Mr. Hobart. I offer it.

(Marked Exhibit Erie 22).

Q Is there anything in the elimination plan which makes it necessary to construct a new undergrade crossing at Montgomery street?

A No.

Q Could the plan be carried out just as well without such a construction?

A It could.

Q Now, calling your attention to the crossings at Governor street and Fulton street; at the present time are there undergrade crossings there?

A There are undergrade crossings at both at the present time.

Q And what does this plan of the Board require to be done with those crossings?

A Requires that abutments and bridges be raised, and that new approaches be constructed for a side walk.

Q Have you made an estimate of the cost of changing the existing undergrade crossings at those two streets in order to conform to this plan as ordered?

A I have.

Mr. Hobart. I offer estimate of the cost of changing crossings at these two streets.

(Marked Exhibit Erie 23.)

Q Have you included in the estimates for Governor street and for Fulton street any allowance for the present value of the material that would be de-

stroyed by making these changes as required by the Board?

A I have not. At Governor street it would be $4,250 and at Fulton street $3,400.

Q You have included those estimates in the estimate previously referred to as the present value of the material destroyed at Essex street, have you not?

A Yes, sir.

Mr. Hobart. I offer this estimate.

(Marked Exhibit Erie 24.)

Q I want to call your attention to an estimate previously made by you for Madison avenue, being included in Exhibit R-104 at page 1327 of the present record, in which appears among other items an item of $15,000 for land; what is the occasion for including that allowance in the estimated cost relating to Madison avenue?

A The order of the Public Service Commission calls for the relocating of a portion of the street to enable the approaches to the overhead crossing to be built so that the present traffic from Madison avenue into the highway running parallel with the railroad to Lakeview will not be disturbed, and the amount used in the estimates for the value of that land was $15,000, to provide for the relocation of Madison avenue.

Q Under the present order of the Board the tracks at Madison avenue are not changed, are they?

A No.

Q How is the crossing eliminated?

A By an overhead crossing.

Q That is, the street is carried over?

A The street is carried entirely over the railroad.

Q So far as the tracks are concerned, is there any occasion for changing the location of the highways, any necessity for it?

A No.

Q Now, calling your attention to an estimate which was included under the item of signals and wires, Exhibit R-102 at page 1307 of the present record, you have included in this a charge of $20,000 for signals and wires, does that include all the wires and signals along the present right of way?

A It does.

Q Which would be affected by the Board's order?

A Yes.

Q What part of that, approximately, would be Western Union Telegraph wires as distinguished from other wires?

A Why, taking care of the wires will cost about $15,000. About two-thirds of that, or $10,000, would be the cost to the Western Union, and the other third would be chargeable to the Erie Railroad Company's wires.

Q Have you prepared another and entirely different plan for the elimination of the crossings at Straight street, Clay street and Cedar street, involving the combination of Straight street and Clay street?

A I have.

Q And have you prepared an estimate of it?

A I have.

Mr. Hobart. I offer the estimate and blueprint together.

(Marked Exhibit Erie 25.)

Q State generally what this last mentioned plan contemplates to be done?

A I find that by combining Clay street and Straight street into one crossing midway between the present location of the streets that the tracks can be —that it is not necessary to raise the tracks as high as in the plan ordered by the Board. Under this plan the tracks will be raised 4 feet at Straight and Clay streets, and the drainage will be into the 40-inch

brick sewer on Clay street draining to the manhole at the corner of Madison street and Clay street.

Q And what becomes of the Cedar street crossing?

A The Cedar street grade crossing will be eliminated by an undergrade crossing.

Q Substantially on the present lines of Cedar street?

A Within the present lines of Cedar street for the undergrade crossing. The undergrade crossing will consist of one roadway twenty-four feet wide and one six foot sidewalk, the sidewalk running from Straight street to Railroad avenue, and thence to the present surface of Railroad avenue by means of stairs. The approach to the subway on Railroad avenue will be twenty-four feet wide without any sidewalk.

Q Now does this proposed plan of yours cover any particular subdivision of the crossings as designated in the order of the Board?

A This plan covers the eliminations of the same crossing as is done under section C of the plan ordered by the Board.

Q Does it cover all of C?

A It covers all of C.

Q And what is the estimated saving in the cost to the Railroad Company as shown by your estimate Exhibit Erie 25?

A $360,381.20.

Q And is there anything in this present plan of yours which would affect the elimination of the other crossings in the other sections as ordered by the Board?

A No.

Q Those other crossings could be taken care of in the same way as now ordered?

A They could. If you want me to further describe those driveways—

Q Please give further details as to the approaches and the driveways at Cedar street under your present plan?

A We leave an eighteen foot driveway along the McNabb & Harlin building on Cedar street, and the plan contemplates the purchase of a ten foot strip from the Graham Brewing Co. and the moving of their frame stables ten feet in on their property. This is to provide an eighteen foot driveway to Ramapo avenue.

Q Anything further on this plan?

A I would say that under this plan the Railroad Company's facilities in connection with the yard and freight house would remain—would operate as at present.

Q As contrasted with what method of operation as ordered by the Board?

A As contrasted with the operation on the plan ordered by the Board, being from the middle of the yard with a switchback movement into the freight house.

Q Which is the better scheme from the operating standpoint?

A This scheme.

Q The one that you now suggest?

A Yes.

Q Have you made a careful study of the plan and profile attached to the order of the Board with a view to ascertaining the effect of carrying out said plan upon the various sidings?

A I have.

Q And have you before you a copy of the plan attached to the order?

A I have.

Q Referring to this plan and the profile in connection with it, state what effect the carrying out of the order in conformity with that plan and profile would have upon the siding of the Passaic Steel Company?

A The siding of the Passaic Steel Company from Straight street to the Newark branch will be destroyed.

Q Is there any provision for another siding to take its place?

A There is no provision made on the plan for another siding to take the place of it.

Q What effect does the plan have upon the siding of R. H. McDonald?

A The siding will be destroyed.

Q And the Paterson Vehicle Co.?

A The siding will be destroyed.

Q And the Paterson Beef Co.?

A The siding will be destroyed.

Q And David G. Rogers Co.?

A The siding will be destroyed.

Q And as to all of them is there any provision made for any other siding or any other facilities?

A No.

Q Have you prepared an estimate of the value of those sidings that are thus ordered to be destroyed?

A I have.

Q Is this the estimate?

A Yes.

Mr. Hobart. I offer it.

(Marked Exhibit Erie 26.)

Q Now take up the sidings described in the proceedings as the sidings of G. A. Zabriskie, Commercial Lumber & Millwork Co., Christopher Kelley, M. Gobel, National Wood Co. and Standard Oil Co.; what effect does the order have upon those sidings?

A The siding to G. A. Zabriskie—the siding at present is on the railroad right of way. The building is owned by the occupant and is built on land leased by the Railroad Company. Siding is moved to an average distance of twenty feet from the building. Siding at present is practically level. Plan proposes to put this siding on a 2.3 per cent. grade, depressing track at the end of the building .6 of a foot and raising it at the west end of the building .6 of a foot.

The owner will have to build—there will have to be a platform built in front of the building.

Commercial Lumber & Millwork Co. The siding is in front of their building and is on their own property, and it will have to be lowered three feet, which will interfere with unloading as the siding is close to the building and the doors will have to be changed.

C. Kelley. The siding is on the railroad right of way. Building is owned by C. Kelley, land owned by Railroad Co. and leased to C. Kelley. Siding at present close to building. Will be moved to an average distance of 15 feet from buildings and placed on a 2.3 per cent. grade. Track will be raised .6 of a foot on east end and three and one-half feet at west end. Will have to build platform for unloading purposes.

M. Gobel. Siding on railroad right of way. Building owned by M. Gobel. Land leased from Railroad Co. Siding at present time close and parallel to building. Plan proposes to move it to average distance of forty-two feet from building and place on a 2.3 per cent grade. Track will be raised three and one-half feet at east end of building and 4.6 feet at west end.

National Wood Co. Siding on railroad right of way. Building owned by National Wood Co. on land leased from Railroad Co. Siding at present close to and parallel to building. Plan proposes to move siding to average distance of sixty-five feet from building and place on 2.3 per cent. grade. Track raised 4.6 feet east end and five feet on west end of building.

Standard Oil Co. The siding is off—siding and building off railroad right of way. The siding will be moved to an average distance of thirty feet from property line and raised six and one-half feet. The sidings for G. A. Zabriskie, Commercial Lumber Co., C. Kelley, M. Gobel, National Wood Co. and Standard Oil Co. are all served from the same siding at the present time.

Q At the present time?

A Yes. The new plan proposes to serve the Commercial Lumber Co. and G. A. Zabriskie from one siding. C. Kelley, M. Gobel and National Wood from another siding, and Standard Oil Co. from still another siding. These sidings will require two bridges over the proposed undergrade crossing at Taylor street.

Q Is there any bridge across Taylor street at the present time which corresponds to the proposed bridge as required by this plan?

A No.

Q In each of the cases that you have mentioned, namely, Zabriskie, Commercial Lumber Co., Kelley, Gobel, National Wood Co. and Standard Oil Co., are the sidings as they now exist required to be destroyed by this order. By sidings I mean the actual rails and ties on the ground?

A Except the Commercial Storage Warehouse Co. Their siding on their own property is simply lowered but the leads to it from the siding on the railroad property will be destroyed—will be changed altogether.

Q In other words, the existing sidings, with the exception you have named, are destroyed?

A Are taken up. They are destroyed as far as their present location is concerned. They are taken up and relaid in other places.

Q Provided the material is in condition to be relaid?

A Yes; I have estimated that it is.

Q Please give us a little further description of the proposed new bridge across Taylor street as required by this plan as to size and location, etc.?

A The siding of the Standard Oil Co. requires an entire new bridge spanning the entire street, and the sidings serving Commercial Lumber Co., Zabriskie, Kelley, Gobel and National Wood Co. require the construction of another bridge over Taylor street completely spanning the street.

Q Two separate bridges?

A Two separate bridges.

Q Neither of which now exists?

A Neither of which now exists.

Q Would these several sidings to which you have just referred, if they were built or rebuilt as required by that plan be capable of being used unless these two new bridges were built?

A No.

Q Please turn to the sidings of John Agnew Co. and state the effect of the order upon those sidings. There are two of them I think?

A Yes, two of them. There are really three. The siding of John Agnew running off the property of the company near the freight house at Cedar street and through Green street to Mr. Agnew will not be affected. The siding leading from the railroad property across Hamilton avenue into the coal shed of John Agnew Co. will be raised sixteen feet. This siding west of Hamilton avenue is off the railroad company's property. The lead from Hamilton avenue east to the main track is on the company's property. Will necessitate reconstruction of trestle and sheds on whole property and to reach same will require a bridge over Hamilton avenue.

Q Is there any bridge at the present time over Hamilton avenue?

A There is not. The siding just east of Governor street leading off from the company's property and on to the property of John Agnew Co.—these sidings will have to be torn down and rebuilt at the height of twenty-six feet whereas now there—now they are only sixteen. Thirty-two feet I should say, whereas they are only sixteen now.

Q In each case those two sidings would be destroyed and rebuilt?

A Yes.

Q Using that material—the old material—if practicable?

A I doubt whether you would be able to use the old material in this case.

Q Now turn to the several sidings described in the proceedings. Sidings of McNabb & Harlin Co., Graham Brewing Co., National Biscuit Co., Hygeia Ice Co., Paterson Consolidated Ice Co. and Bon Arbor Chemical Co. Please state the effect of the order upon those sidings?

A The sidings in front of the buildings themselves where they are used will not be changed. The lead from the westbound main track to the siding will be lengthened on account of the elevation of the tracks. The lead at the present time starts from the track about 250 feet east of Essex street and on the new plan will leave the main track about twenty feet east of Essex street. This lead will necessitate the construction of a retaining wall in Ramapo avenue.

Q That is one of the public streets in Paterson?

A Yes.

Q Are any of these sidings just mentioned at the present time located on or through public streets?

A The entire siding, with the exception of the lead, is on a public street; that is the portion of the siding west of Cedar street is. East of Cedar street it is on the property of McNabb & Harlin Manufacturing Co.

Q Well how much of this proposed new lead is located in a public street according to the plan?

A There is about 160 feet of it located entirely in the street and for 320 feet there is half on the railroad company and half within the public street, and the remainder of it is on the railroad company's property, that is, the division line between the railroad company's property and the street runs down the center of the track.

Q Now refer to Morris & Co. and Fullers Express Co., you have already given us the details of them,

but just to follow the thing in order, you may state generally what the result of the order is as to them?

A The building occupied by Morris Beef Co., which is owned by the Railroad Company on railroad land at present time, will be destroyed.

Q How about the siding?

A And the siding will also be destroyed to make room for the new depot. The Morris Beef Co.—the plan calls for the erection of a building for Morris & Co. on Railroad avenue just west of Cedar street.

Q And for a new siding at that point?

A No, the present siding will be moved over a little bit to accommodate.

Q Is there at the present time—

A There is a siding there and Morris & Co. in the new location can use that siding with slight modification.

Q What is that siding used for now?

A Team track.

Q It is a public siding?

A Public siding.

Q Not for the private use of any particular company?

A No.

Q Now as to Fullers Express Co.?

A The building occupied by Fullers Express Co. is on property of the railroad company. The building will be destroyed, and the siding will be destroyed to make room for the new depot. The plan proposes to build a new building for the Fullers Express Co. on the site of the present passenger station just east of Market street with a siding from the yard extended to serve their new building.

Q Is there any siding at that point at present?

A No.

Q So far as that siding is concerned it will be new construction?

A Yes.

Q Please turn to the siding that leads to the properties of Herman Co. and Sulzberger Sons Co.?

A The location of the siding—

Q There is one siding for both of those concerns?

A There is a siding that leads to Sulzberger Sons Co. and it is an extension of the siding that passes the property of Herman Co. There is only one lead from the main line track to reach both of these sidings.

Q What does the order require as to that siding?

A Requires that the siding be raised fifteen feet and requires a bridge over Ellison street. The siding at the present time for the Sulzberger Sons Co. is entirely on the Sulzberger Company's property. The siding to the Herman Co. is half on and half off the railroad company's property.

Q And where will the new sidings be with reference to the railroad property?

A Will be in exactly the same location as at present.

Q Same relative position?

A But raised fifteen feet.

Q Is there any bridges at the present time over Ellison street?

A There is not.

Q Turn now to the siding of Armour & Co., what effect does the order have upon that?

A At the present time the siding to Armour & Co. leaves the main track 360 feet west of Hamilton avenue and runs for 210 feet on the railroad company's property, and then leaving the railroad company's property runs about 130 feet through Ramapo avenue to Armour & Company's building. The plan proposes that Armour & Co. shall be served by a siding leaving the main track just east of Keen street and paralleling the main track over Lafayette, Montgomery, Fulton and Governor streets to the place where the siding leaves the railroad company's right of way at the present time.

Q Is that an entirely different location from the existing siding?

A It is.

Q Are there any new bridges required in connection with that new siding?

A There are four new bridges required.

Q At what points?

A One at Lafayette street, one at Montgomery street, one at Fulton street and one at Governor street.

Q Are there any bridges at those points at the present time?

A Not for any sidings; there are two main track bridges only.

Q At each of the four streets?

A At Governor street and Fulton street but not at Montgomery street or Lafayette street.

Q Now turn to the siding of the Hinchcliffe Brewery; what effect does the order have upon that siding?

A The siding is entirely upon the railroad company's right of way and the location will not be changed. The siding will be raised sixteen and one-half feet.

Q It will be in the same relative position?

A Same position as it is now, but just sixteen and one-half feet higher.

Q Turn to the siding of the Katz Brewery?

A The siding, the present siding for the Katz Brewery, leaves the main track about fifty feet east of Fulton street and extends to within about thirty feet of Governor street paralleling the main track. The plan proposes to move this track over approximately thirteen feet adjoining the long siding which is to be built to be used by Armour & Co. about seventy feet east of Fulton street, and thence using the long siding across Fulton street, Montgomery street, Lafayette street, and joining the main track just east of Keen street.

Q At those streets will this siding be carried over on the same bridges that you mentioned in connection with the siding of Armour & Co.?

A Yes.

Q Take the siding of P. S. Van Kirk Co.?

A At the present time the siding for P. S. Van Kirk Co. leaves the main track about seventy feet east of Montgomery street and extends on the company's property about 170 feet, then off the railroad company's right of way a distance of about 200 feet. The plan proposes to raise this siding about three feet and connect with the long siding described as running to Armour & Co. across Montgomery street, Lafayette street and joining the main track just east of Keen street.

Q Take the siding of the Diamond Coal Co.?

A The siding of the Diamond Coal Co. at present leaves the siding to the P. S. Van Kirk Co. about 160 feet east of Montgomery street, thence on the railroad company's property for a distance of about 210 feet, and then paralleling the railroad company's property for a distance of about 100 feet. The plan proposes to place this siding on a trestle partly on and partly off the company's property.

Q Olive Oil Soap Co.?

A The Olive Oil Soap Co. uses the same siding as P. S. Van Kirk Co.

Q And the same remarks apply to it as to P. S. Van Kirk Co.?

A Yes.

Q Taking the siding of A. H. Smith?

A At the present time the siding of A. H. Smith leaves the main track about 100 feet east of Warren street, and thence parallels the main track to within ten feet of Lafayette street about thirteen feet distant from the main track. The siding is entirely upon the railroad company's property. The plan proposes to move this siding about seventeen feet to a position

parallel with the right of way line of the railroad company and raising it twelve feet. This siding will lead toward the long siding described as being built to reach Armour & Co. just east of Lafayette street and extends parallel to the right of way line across Franklin street and then becomes a part of the siding to Meyer & De Vogel.

Q Is this new siding partly off the railroad property?

A The plan shows a siding leading from the siding above mentioned on to the property of A. H. Smith.

Q To what extent is it off the railroad property?

A The plan only shows it extending approximately twenty-five feet off the railroad company's right of way.

Q Now the siding of Meyer & De Vogel; what happens to that under the order?

A The siding of Meyer & De Vogel leaves the siding to A. H. Smith, about thirty feet west of Keen street and thence crossing Keen street parallels the right of way line of the railroad company and Franklin street. The new plan proposes to make the Meyer & De Vogel siding an extension of the new siding to A. H. Smith and it will be built at an elevation fifteen feet higher than the present siding.

Q Is it partly off the right of way?

A Entirely on the railroad company's right of way.

Q Armstrong Sons' Co.; what happens to that siding?

A Armstrong Sons' Co. siding will be raised sixteen feet and is entirely upon the railroad company's right of way. The present siding is an extension of the siding leading across—leading from Warren street across Keen and Franklin and Lafayette streets. The proposed plan is to make the lead for this siding from the main track about 110 feet east of Montgomery street, crossing Montgomery street on a new bridge

and thence on a trestle on the railroad company's right of way 150 feet long. The new track will be sixteen feet higher than the present siding.

Q Is there any bridge at Montgomery street at the present time?

A No.

Q There is another siding of A. H. Smith which has been referred to in the proceedings here and on the siding map Exhibit 23a as No. 32, what happens to that?

A That is the industry adjacent to the railroad just west of Lafayette street. The present siding is a continuation of the siding from Warren street across Keen and Franklin streets, the lead to said siding being a cross-over between the siding and the main track located just east of Franklin street. This siding is entirely on the railroad company's right of way. The new location is the same as the present but is raised sixteen feet.

Q Now the siding of D. Fullerton & Co.?

A The same remarks as apply to A. H. Smith No. 32.

Q Now take the sidings of Atherton Grain Co. and J. A. Lydecker?

A The sidings serving the Atherton Grain Co. and the J. A. Lydecker Co. are on the long siding extending from Warren street across Keen to Franklin street. Entirely upon the railroad company's right of way. The new siding is—the proposed siding is on the same location as the present but will be raised sixteen feet, requiring a bridge across Keen street.

Q Is there any bridge there at the present time?

A No.

Q Take now the siding of the Public Service Gas Co.?

A At the present time the Public Service Gas Co. have two sidings leading from the siding serving the Erie freight station at River street. They cross Wait

street into the property—on to the property of the Public Service Corporation of New Jersey. The present—the proposed plan leads this siding from the siding to J. A. Vander Hendel at the east end of the freight house, extends through Wait street to a point just east of Lyon street and thence on to the lands of the Public Service Corporation of New Jersey.

Q Does the new siding cross or pass through one or more public streets?

A Passes through Wait street.

Q For how long a distance approximately?

A 390 feet. No, more than that, 420 feet.

Q What part of the new siding for the Public Service Gas Co. is required to be constructed off the railroad right of way?

A All of it.

Q Take the siding of J. Vander Hendel, is that affected?

A J. Vander Hendel siding is not affected otherwise than to install this turnout from it.

Q Take the sidings of Swift & Co., H. M. Post, Ashley & Bailey, National Silk Dyeing Co., Grasselli Chemical Co., Auger & Simon Co., Center Paper Box Co. and Waldo Silk Ribbon Co., what effect does the order have upon those sidings?

A The siding to Swift & Co. at the present time leaves the siding to the freight house at a point about forty feet west of Lowe street. The plan proposes to lead the switch to Swift & Co. from a new track to be built parallel and about eight feet from the right of way line of the company. The change made will practically be all on the lands of the Erie Railroad Company. Henry M. Post siding will not be changed, except that a turnout will be laid where this siding leaves the main track to enable the building of the track from which Swift & Company's siding will lead. The siding to Ashley & Bailey will not be changed as to location, but the turnout where it leaves the siding

on the railroad company's property will be raised about six inches. The same applies to the National Silk Dyeing Company's siding, but the track will be raised about two feet, necessitating the raising of the track across the public street, which will require regrading to get over the raised elevation of the siding. The same applies to the Grasselli Chemical Co. whose siding will be raised approximately two feet where it leaves the main side track and the street will have to be raised about two feet where this siding crosses it. The same applies to the Auger & Simon Silk Dyeing Company's siding. The siding to the Center Paper Box Mfg. Co. and the Waldo Ribbon Co., both concerns using the same siding, will remain in its present position and will be raised about three feet. All of the siding except the turnout is located off the railroad company's right of way.

Q Of these several sidings last mentioned, Swift & Co., H. M. Post, etc., can you state which of the required construction is off the right of way and which is on?

A The raising of the turnout and a small portion of the track is on the railroad company's right of way, and there will be about sixty to seventy feet of the track will have to be raised within the limits of Wait street.

Q How about the leads or connections of these several last mentioned sidings?

A They will have to be raised on the railroad company's property to make the connection with the new grade of the sidings.

Q So that the present connections will have to be destroyed and these other connections made?

A They will have to be raised up. Some of it might be destroyed. The present ballast would be destroyed and they would put new ballast in. I do not think it will be necessary to take it up altogether. I just figured on raising—

Q At any rate, there would have to be some changes made?

A Yes.

Q Have you taken the plan attached to the order and indicated on that plan in any way the various changes in the sidings to which you have testified?

A I have taken the plan attached to the order of the Board of Public Utility Commissioners, and on that plan I have shown in red the location—the present location—of the sidings where they will be changed as to location. The present location of the siding being shown in red.

Q The plan as I understand it shows the sidings as they will be when this work is done?

A The plan shows the sidings as they will be when this work is completed.

Q And have you this plan with these sidings noted there in red before you?

A I have.

Mr. Hobart. I offer it.

(Marked Exhibit Erie 27.)

Q Have you prepared an estimate of the cost of making these changes to which you have testified in the sidings and leads and connections and buildings and the new bridges to which you have referred?

A I have.

Mr. Hobart. I offer it in evidence.

(Marked Exhibit Erie 28.)

Q Have you in preparing this estimate divided the cost with reference to the constructions that are on the railroad property as compared with the constructions off the railroad property?

A Yes.

Q And you have so indicated on the estimate in the appropriate column?

A I have.

Q Together with the total?

A Yes.

Q You have testified to the necessity of constructing certain bridges in order to conform to the Board's plan as ordered?

A Yes.

Q Have you included the cost of those bridges in this estimate Exhibit Erie 28?

A I have.

Q And how have you divided that cost with reference to the several siding owners?

A I have divided the cost of the bridges between —equally among the siding owners using said bridges.

Q And as to some of these leads, you mentioned several leads that went to different sidings or at least to more than one?

A Where there is more than one switch owner on a siding, I have divided the cost up equally between the siding owners for the common work. That is, the work on the siding where it would be used by each of them.

Q In this estimate that you have here there is apparently a summary of the cost, have you taken that summary from actual details?

A Actual detail figures.

Q Which you prepared?

A Which I did myself.

Q Referring again to these several bridges which you mentioned in connection with the construction of the new sidings or new leads, are there any of those bridges that carry the main line tracks as they now exist or that proposes to carry main line tracks?

A No.

Q In every case do they carry merely side tracks?

A Just the siding tracks or leads.

Q So far as the elevation of the main line tracks is concerned as required by this order, is there any necessity for the construction or building of these new

bridges for the sidings and leads; in other words, is it necessary to have those other bridges if you elevated merely the main line tracks and cut off your connection with the sidings?

A No. You could raise the sidings up to the level of the main line tracks and get on to them just as you do now without crossing the streets.

Q Would any bridges be necessary under such an arrangement?

A It might be necessary to build a bridge over Keen street.

Q If, however, the main line tracks alone are elevated and the sidings are not touched, is there anything in the elevation of the main line tracks which would require either the elevation of the siding tracks or the construction of bridges on which the siding tracks might be placed; in other words, can you elevate the main line and disregard entirely these sidings and these new bridges that are required?

A Yes, but by cutting off the industries.

Q Have you examined this plan of the Board with a view to determining what effect it would have upon the present construction of the railroad yards and the operation of those yards?

A I have.

Q And what would be the effect upon the construction and the operation?

A I think that the plan as proposed would seriously interfere with and impair the operation of the yard.

Q For what reason?

A On account of the grades that are used and the movement into the yard not being a direct movement but a switchback movement. It would require considerable more switching and probably heavier engines or using lighter trains and more engines to perform the amount of switching that has to be performed at this time.

Q Would it be more expensive to the railroad to operate it that way than at present?

A It would.

Cross examination by Mr. Merrey.

Q All these matters that you have testified to were contained in the plan proposed by the City of Paterson to the Board of Public Utility Commissioners, were they not?

A Not all. The plans—the changing of the sidings and the estimates for the sidings were all contained in the proceedings before the Board of Public Utility Commissioners, but they were not separated into the items as they are separated now. The matter of the combination of Straight and Clay streets into one crossing was brought to the attention of the Board as a suggestion by Mr. R. C. Falconer, superintendent of construction of the Erie Railroad Company, and the suggested treatment of Cedar street, due to the plan proposed at Straight and Clay by combining the crossing and only raising the track four feet enabled us to work out a plan such as has been presented on Cedar street. That plan was not presented to the Board, but works out in consequence of the suggestion made by Mr. Falconer as to the combining of Straight and Clay streets.

Q The plan adopted by the Commission is substantially the plan proposed by the City of Paterson, was it not?

A It is, with the exception of Madison avenue.

Q Outside of the treatment of Madison avenue, then all these criticisms might have been directed to the plan of the City of Paterson as proposed to the Commission?

A I believe so.

Q At the time the matter was pending before the Commission you were called by the Erie Railway Company to criticize a plan that was proposed by the city?

A Yes.

Q And outside of the suggestion as to the consolidation of Clay and Straight streets, did you make any of these suggestions which you have made to-day?

A There is only one change suggested that I have made to-day, which was the treatment of Cedar street. Outside of that—

Q You suggest now the changing of the station, that is, instead of putting the new station as proposed by the plan by the city you say the station may remain where it is now and serve its purpose by having platforms erected on either side of the track?

A I believe I have testified to that as could be done. I have prepared estimates showing the cost of making the change or moving the station across the street, which I submitted, and incidentally that would require the taking care of the present facilities in their present location if that was not done. I have just merely shown the increased cost to the railroad by doing that.

Q But you did not suggest in your examination before the Commission that it was possible to maintain the depot at its present place instead of changing it?

A I don't remember that I did.

Q You did not criticize or object to the widening of Essex street at that time?

A I think not.

Q And the widening of Essex street was as proposed by the city in its original plan?

A It was.

Q Nothing was said as to maintaining the Nelson Morris & Company's beef house in its present location was there before the Utility Commission?

A I do not remember that anything was by this company. I believe I remember Morris & Company's attorney or representative at that time mentioning something about it.

Q But no plan was suggested to the Commission whereby that might be done?

A No.

Q Nor whereby the Fullers Express Company building could be maintained in its present location?

A None that I know of.

Q The building of the Fullers Express Company is an old freight station?

A It is.

Q And it is in a very dilapidated condition now?

A It is.

Q And would probably be very difficult to elevate it or move it about any way?

A That all depends upon the construction of it and I have not examined it in detail.

Q The company did suggest a change, did it not, at River street, in the city's plan?

A I do not know that I suggested it. It may have been suggested by Mr. Falconer or some other official of the company.

Q And this is the first plan that you know of for the consolidation of the crossing at Straight and Clay streets that has been presented?

A Yes, the first plan.

Q The suggestion was made heretofore that it might be done?

A Yes, by Mr. Falconer.

Q This plan that you offer now for the consolidation of Straight and Clay streets requires the taking of some private property at this point for the connection with the street on the one side of the railroad with Straight street and Clay street?

A It does.

Q The property sought to be taken is property owned by the Commercial Lumber and Millwork Co. or E. M. Stiles?

A It is.

Q And is referred to in various parts of this testimony because of the switch running into it?

A It is. It also takes the property of Robert McDonald on the corner of Straight and Peach streets.

Q That is property that McDonald occupies?

A Occupies.

Q You don't know who the owner of the property is?

A I don't. I think McDonald. As far as I know, McDonald does.

Q You have given an estimate that the cost of making an undergrade crossing at Montgomery street would be about $38,451?

A Yes, just for the work; building the abutments, bridges, and work in the street.

Q Is not Montgomery street now opened at grade?

A No.

Q The plan of the Commission that proposes the opening of Montgomery street, does it not propose the closing of a street nearby?

A It does.

Q You have given us the estimated cost of putting in an undergrade crossing at Taylor street. This crossing is put in in lieu of the one now at Cedar street, is it not?

A It is.

Q And in your new proposed plan for changing the plan of the Board at Cedar, Clay and Straight streets have you considered the saving by not opening Taylor street?

A Yes.

Q You have given us the cost of the changing of the undergrade crossing at Governor street and at Fulton street; those streets are now open?

A They are.

Q What does the order of the Commission provide?

A For raising the abutments and bridges sixteen feet higher than they are at the present time, and also for the construction of a new bridge at each street to serve industries.

Q In this estimate which you gave us and which is shown in exhibit marked Erie 23, was the cost of those bridges to serve industries charged?

A Yes.

Q So that we have those in Exhibit Erie 23 and also in Erie 28?

A Those are the same figures.

Q They are duplicated?

A Duplicated.

Q The same thing would refer to Fulton street?

A Yes.

Q If the tracks of the company are elevated as proposed by the Commission it is necessary to do this work at Governor and Fulton streets?

A Not necessary, no. That is, it is necessary to do the—to raise the abutments, yes, and raise the bridges.

Q And in Erie 23 you are simply giving us the cost of doing that work?

A Yes.

Q That work cannot be saved and the tracks elevated at that point?

A No.

Q You have shown us in Exhibit Erie 24 the value of the work on Essex street which is destroyed; now then if Essex street was not widened to fifty feet as proposed by the Commission some of that present value would be retained?

A It would.

Q And could the walls of Essex street be used in case the tracks were raised as required by the Commission?

A The walls of the—on most of the structure would be or could be. All across the yard those walls could be retained if the street was not widened, and the bridges could be retained, just simply raised a foot.

Q You testified that one of the sidings of the Passaic Steel Co. marked No. 3 would be destroyed if this plan were followed?

A So the plan shows.

Q How many sidings are there into the works of the Passaic Steel Co.?

A I should think there were seven or eight.

Q And these others are not affected in any way?

A No.

Q So that the plan does not contemplate the cutting off of service to the Passaic Steel Co., but merely the elimination of one of their several buildings?

A Yes.

Q Can the company be served over these other sidings in lieu of No. 3, which is destroyed?

A I could not say that.

Q The siding of David S. Rogers is destroyed; is that now in use?

A Yes, I have occasionally seen cars in there—coal cars.

Q But it is not used for serving the mill?

A I don't believe so; it is used for getting in coal.

Q And the siding of the Paterson Beef Co., is not now in use?

A I could not say. I have seen cars in there on the siding; whether they were using it or not I don't know.

Q Has not the Paterson Beef Co. gone out of business and its business taken over by Morris & Co.?

A I could not say. I know the National Conditioning Co. is in there.

Q The siding of the Paterson Vehicle Co. is not in use at present?

A It is there and can be used. Whether they do use it or not I am unable to say.

Q You mentioned in your testimony that it would be necessary to put a number of bridges over Mont-

gomery and Fulton and Lawrence and some other streets in order to relieve those industries?

A Yes.

Q Those are merely extensions of the main line bridges, are they not?

A No, they would have to be entirely new bridges, separate bridges, because they are at a different elevation from the main track.

Q But these bridges are all adjacent to the bridges which carry the main track?

A Oh, yes.

Q And they would be built upon the same retaining walls?

A But the retaining walls to support the main tracks would be about sixteen feet higher than the retaining walls to support these bridges to the industries.

Q And there would simply be little extensions of the retaining walls that hold up the main track?

A They would be extensions of the abutments that hold up the main track?

Q And they are necessary in order that you may serve these various industries?

A According to the plans proposed by the Commission, yes.

Q You made a statement that by filling up and bringing this up to the height of the main tracks it would not be necessary to do that. I wish you would explain that?

A Take Armour & Co. If their siding was built on a trestle or a bridge up to their second story, their siding could leave the main tracks in their new elevation, and it would not be necessary to carry their siding down across Fulton street.

Q Then I take it that the siding of Armour & Co. runs into their industry at about the present grade?

A It does.

Q So that it must be carried down from the main tracks which are elevated?

A Yes.

Q And your proposition is that if instead of carrying them at grade they were brought at the same grade as the main tracks that the bridge would be saved?

A You would not have to build the bridge because you could get right off the main track.

Q But that would give us an amount of trestle?

A It would.

Q In any of these estimates have you shown the cost of this other kind of construction?

A No, I have just shown the cost of construction as proposed by the Board of Public Utility Commissioners, and I have not suggested any other method of treatment.

Q So that it may be that the method you suggest would be just as expensive in the end as the method proposed by the Commission?

A It may be.

Q And that because of other changes which would be made necessary?

A It might be just as expensive.

Q In referring to the McNabb & Harlin switch, you refer to the siding being on a public street, the new siding being on a public street; that is known as Ramapo avenue, is it not?

A Ramapo avenue.

Q That street is not paved?

A No.

Q And is not really used as a public thoroughfare?

A No, it is just used by the industries that are located on it for teaming purposes, and I believe there is one dwelling on it that is used just behind Royal's machine shop.

Q And that is at the lower end of the street?

A Lower end of the street.

Q And that part of the street is not affected by the proposed plan?

A Not affected.

Q The principal industry on this street is McNabb & Harlin?

A It is.

Q As a matter of fact it is the only industry upon the street at that point?

A No, there is a brewing company, and Bon Arbor Chemical Co. and National Biscuit Co.

Q But the brewing company does not use this street to go in and out?

A No.

Q They can get in from Straight street and also another side street?

A Yes.

Q The switch running from—running through this street now is somewhat above the grade of the roadway?

A Only at the lower end. The major portion of it, I would say, is about the level of the roadway.

Q The road is hardly passible for teams?

A Hardly.

Q Do you know whether McNabb & Harlin use it to team in or out?

A I do not know who is using it, I have seen teams in there.

TESTIMONY CLOSED FOR PROSECUTOR.

DAVID A. NEWTON,
Supreme Court Examiner.

Exhibits for Prosecutor.

Offered in connection with affidavits taken pursuant to order of September 27, 1915.

EXHIBIT ERIE 1.

Map entitled "New Susq. & Western R. R. map of lands at Straight street terminal, Paterson."

EXHIBIT ERIE 2.

THIS INDENTURE, made the tenth day of March in the year of Our Lord, One Thousand Eight Hundred and Eighty-two between GARRET A. HOBART and JENNIE HOBART, his wife, of the City of Paterson, in the County of Passaic and State of New Jersey of the First Part: and THE PATERSON EXTENSION RAIL ROAD COMPANY, a corporation organized under the laws of the State of New Jersey of the Second Part:

WITNESSETH:

That the said party of the first part, in consideration of the sum of One dollar to them duly paid before the delivery hereof, have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim to the said party of the second part, and to its successors, heirs and assigns, ALL those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey.

The First Tract: BEGINNING on what is now or was formerly known as the old road leading to what was formerly known as Posts Tavern adjoining lands now or late of Capt. Henry Van Blarcum and running thence North five degrees and forty minutes East one hundred and sixty-five feet along said Van Blarcum's land thence North eighty-three degrees and twenty minutes West sixty-six feet, thence South five degrees

and forty minutes West one hundred and sixty-five feet to the road thence along the road South Eighty-three degrees and twenty minutes East sixty-five feet to the place of Beginning. Containing one quarter of an acre.

The Second lot: BEGINNING on the Easterly line of the Paterson and Ramapo Rail Road at the distance of two hundred and seven feet six inches Southerly from the Southerly line of Ellison Street running thence (1) Easterly one hundred and thirty feet six inches to the North East corner of the Van Blarcum lot thence (2) Southerly along said lot fifty-six feet (3) Westerly one hundred and twenty-seven feet six inches to a point in the Westerly line of the said Rail Road distant seventy feet Southerly from the aforesaid Beginning (4) Northerly along the Rail Road seventy feet to the place of beginning.

Third Lot: BEGINNING on the South side of lands now or late belonging to the Society for Establishing Useful Manufacturers and running thence Southerly along the line of Straight Street one hundred and fifty feet to a lot of land designated as lot No. 9 on a map of lands belonging to the Estate of the late Jacob Van Blarcum deceased made by Cornelius Van Wagoner Surveyor thence Westerly along the line of said lot one hundred and eleven feet six inches to lands nor or lately owned by Thomas O. Colt thence Northerly along the line of said Colt one hundred and fifty feet to land of the Society aforesaid thence Easterly along said lands about one hundred feet to Straight Street the place of Beginning. Being lots designated Nos. 10, 11, 12, 13, 14 & 15 on said map above referred to and bounded on the North by lands of the Society U. M. West by lands of Thomas O. Colt South by lot No. 9 and East by Straight Street.

The Fourth Lot: BEGINNING at the point where the Northerly line of Willis Street intersects the Easterly line of Paterson and Ramapo Rail Road thence (1)

Northerly along said Rail Road two hundred and seventy two feet to the South West corner of a lot conveyed to Henry Muzzy & George H. Welles by the Society for Establishing Useful Manufacturers by deed dated July 7-1854 (2) Easterly along that lot one hundred and twenty seven feet six inches to Van Blarcum's lot (3) Southerly along that lot one hundred feet to the North East corner of the Parker lot (4) Westerly along that lot sixty six feet to the North west corner of said Parker lot (5) Southerly along said lot one hundred and sixty five feet to Willis Street (6) Along Willis Street Westerly forty eight feet to the place of Beginning.

EXCEPTING however thereout and from the above the following: Beginning on the Northerly line of Willis Street at the South West corner of a lot now of Hugh Riddle (1) Westerly along Willis Street sixty three feet (2) Northerly parallel with the said Riddle's Westerly line one hundred and twenty feet and nine tenths of a foot (3) Easterly sixty three feet to a point on the Westerly side of said Riddle's lot produced Northerly one hundred and nineteen feet and six tenths of a foot from the Northerly line of Willis Street and (4) Southerly along said Riddle's lot one hundred and nineteen feet and six tenths of a foot to Willis Street and place of Beginning. The above described premises being the same as were conveyed by the party of the first part hereto by deed of Thomas Beveridge and wife by deed dated April 15, 1881 and recorded in Passaic County Clerk's Office in Book S-6 of deeds page 617 &c. with the appurtenances, and all the estate, right, title and interest, dower and right of dower of the said party of the first part therein.

TO HAVE AND TO HOLD the above mentioned and described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

Exhibit Erie 3.

IN WITNESS WHEREOF the said party of the first part, have hereunto set their hands and seals the day and year first above written.

GARRET A. HOBART (SEAL).
JENNIE HOBART (SEAL).

Signed, Sealed and Delivered
in the Presence of
Word "heirs" twice erased and six
words on first page before execution.
ALBERT A. WILCOX.
(Acknowledgment Attached.)

EXHIBIT ERIE 3.

THIS INDENTURE, made the twenty-eighth day of May in the year one thousand eight hundred and eighty-one, between THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a body corporate, of the first part, and The Paterson Extension Railroad Company, a Corporation of the State of New Jersey, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Six thousand three hundred and fifty Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, ALL that plot, piece or parcel of land situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey and bounded and described as follows:

BEGINNING at a point in the westerly line of Straight Street distant one hundred feet Northerly from the

Northwesterly corner of Willis and Straight Streets: running thence Northwardly along the Westerly line of Straight Street ninety feet to the southerly line of land of Muzzey and Wells; thence Westwardly along the said Southerly line of land of Muzzey and Wells one hundred and eleven feet six inches to the Easterly line of land known as the Parker property; thence Southwardly along the Easterly line of said Parker property ninety-one feet; and thence Eastwardly one hundred and eighteen feet four inches to the Westerly line of Straight Street at the place of beginning.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD all and singular the above mentioned and describer premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit and behoof forever.

Subject, nevertheless, to all unpaid taxes, assessments, water rents and all other unpaid State, County, Town or City impositions or charges of every kind and nature.

And the said party of the first part does covenant, promise and agree to and with the said party of the second part, its successors and assigns, that it has not made, done, committed or executed any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter, shall or may be impeached, charged, or incumbered, in any manner or way whatsoever.

Exhibit Erie 4.

IN WITNESS WHEREOF, the said parties of the first part have hereunto caused their corporate seal to be affixed and these presents to be subscribed by their Vice-President and Secretary the day and year above written.

RICHARD A. McCURDY,,
Vice-Prest.

(SEAL)

Attest:

ISAAC I. LLOYD,
Secy.

(Acknowledgment attached.)

EXHIBIT ERIE 4.

THIS INDENTURE, made the Thirtieth day of August in the year one thousand eight hundred and eighty-three between The New York, Susquehanna and Western Railroad Company, successor corporation to the Paterson Extension Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania, party of the first part, and Henry B. Crosby of the City of Paterson in the County of Passaic and State of New Jersey, party of the second part:

WITNESSETH, that the said part——of the first part, for and in consideration of the sum of Seven thousand (7000) Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged; and the said party of the second part, his heirs, executors and administrators forever released and discharged from the same, by these presents, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release,

convey and confirm unto the said party of the second part, and to his heirs and assigns forever,

ALL that certain piece or parcel of land situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey and bounded and described as follows:

BEGINNING in the westerly line of Straight Street distant one hundred feet and twenty four hundredths of a foot (100.24) northerly from the northerly line of Willis Street, thence (1) northerly along the westerly line of Straight Street forty seven feet and thirty four hundredths of a foot (47.34), thence (2) westerly and parallel with Willis Street seventy feet (70), thence (3) Southwesterly and parallel with the southeasterly side of the brick passenger depot of the party of the first part, fifty feet and eighty seven hundredths of a foot (50.87) to the easterly line of a lot of Henry B. Crosby, thence (4) southerly and along said lot of Crosby's twenty six feet and seven hundredths of a foot to a point that is distant one hundred feet northerly from the northerly line of Willis Street, and thence (5) easterly and parallel with Willis Street along lands of Richard Hartley, R. B. Garrison and H. B. Worden one hundred and nineteen and fifty one hundredths of a foot (119.51) to the place of beginning.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof,

And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the

appurtenances, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit and behoof forever.

SUBJECT, however, to the rights of the tenants now in occupation of said premises.

And the said party of the first part for themselves, their successors and assigns, doth covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said party of the first part at the time of the sealing and delivery of these presents was lawfully seized in its own right of a good, absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted, bargained and described premises, with the appurtenances thereunto belonging and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, his successors, heirs or assigns, or of any other person or persons lawfully claiming or to claim the same.

And that the same now are free, clear, discharged and unencumbered of and from all forms and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature and kind soever.

And also that the said party of the first part and its successors and assigns, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises by, from, under or in trust for them, shall and will at any time or

times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, his heirs and assigns, forever as by the said party of the second part, his heirs or assigns, or his counsel learned in the law, shall be reasonably devised, advised or required.

And the said party of the first part, its successors and assigns, heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and its successors and assigns and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF the said party of the first part has caused its common or corporate seal to be hereunto affixed and signed by its President and Secretary the day and year first above written.

THE NEW YORK, SUSQUEHANNA, AND
WESTERN RAILROAD COMPANY,

By F. A. POTTS,
President.

(Forty printed words stricken out and six words interlined before execution.)

(L. S.) Attest:

J. P. RAFFERTY,
Secretary.

(Acknowledgment attached.)

Exhibit Erie 5.

EXHIBIT ERIE 5.

THIS INDENTURE, made the Seventh day of September, in the year of our Lord one thousand eight hundred and eighty three Between The New York, Susquehanna and Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania, party of the first part, and Henry B. Crosby, of the City of Paterson, in the County of Passaic and State of New Jersey, party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One (1) Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remised, released and quit-claimed and by these presents doth remise, release and quit-claim unto the said party of the second part, and to his heirs and assigns, forever,

ALL that certain triangular piece or parcel of land, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, bounded and described as follows:

Beginning at a point in the westerly line of lands conveyed to the party of the second part, by the party of the first part by deed bearing date August 30″, 1883, which point is distant one hundred and twenty six feet and seven hundredths of a foot from the northerly line of Willis Street, thence running southwesterly twelve feet and eight five hundredths of a foot (12.85) to a point in the division line of lands of Henry B. Crosby and the party of the first part to a point, thence easterly and along said Crosby's line eleven feet and seventy one hundredths of a foot (11.71) to the line of lands first mentioned, thence northerly along said line five feet and forty seven hundredths of a foot to the place of beginning. Containing thirty two (32) square feet of land be the same more or less.

Exhibit Erie 6.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof with the appurtenances.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said part— of the first part has hereunto set its corporate seal and caused these presents to be signed by its President and Secretary the day and year first above written.

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY.

(SEAL) By F. A. POTTS,
President.

Attest:

J. P. RAFFERTY,
Secretary.

(Acknowledgment attached.)

EXHIBIT ERIE 6.

THIS INDENTURE, made the 30″ day of October, in the year of Our Lord One Thousand Eight Hundred and Eighty four, between The New York, Susquehanna and Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania, party of the first part, and Henry B. Crosby, of the City of Pater-

son, in the County of Passaic and State of New Jersey, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Fifteen hundred (1500) dollars lawful money of the United States of America, to it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever,

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey,

BEGINNING at a point in the westerly line of Straight Street distant one hundred and forty seven feet and fifty eight one hundredths of a foot northerly from Willis Street, and running thence (1) northerly along Straight Street twenty five feet, thence (2) westerly about one hundred and eighty four feet and seventy three one hundredths of a foot to the northwest corner of the buildings owned by Henry B. Crosby, thence (3) easterly along the north side of said buildings about fifty one feet and thirty five one hundredths of a foot to a cut thereon, thence (4) still easterly sixty three feet and seventy two one hundredths of a foot to a corner post, and thence (5) still easterly seventy feet to Straight Street and place of beginning and containing about 2052 square feet of land. Said tract being an irregular shaped piece of land more fully shown on a map of property of the New York, Susquehanna and Western Railroad Company, Paterson, New Jersey, made by Hilton and Menger of Paterson, August 27th,

1883, and on file in their office. And being the property marked in green on the map hereto attached and made part hereof.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining; Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof.

TO HAVE AND TO HOLD all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part doth for itself, its successors covenant and grant to and with the said party of the second part, his heirs and assigns, that it the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

And Also that the said party of the first part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid,

And Also that it will WARRANT, secure and forever defend the said land and premises unto the said party

of the second part, his heirs and assigns, forever, against the lawful claims and demand of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part has caused its corporate seal to be hereunto affixed and signed by its President and Secretary the day and year first above written.

NEW YORK, SUSQUEHANNA &
WESTERN RAILROAD COMPANY,
By F. A. POTTS,
President.

Attest:

J. P. RAFFERTY,
Sect'y.

Signed, Sealed and Delivered
in the presence of
(Acknowledgment attached.)

EXHIBIT ERIE 7.

THIS INDENTURE, made the Seventh day of August in the year of Our Lord One Thousand Eight Hundred and Eighty six, between The New York, Susquehanna and Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania, party of the first part, and Henry B. Crosby of the City of Paterson, in the County of Passaic and State of New Jersey of the Second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Five hundred (500.00) Dollars lawful money of the United States of America to it in hand well and truly paid by the said party of the second part, at or before the sealing

and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns, forever

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey,

Beginning on the westerly line of Straight Street at the distance of one hundred and seventy two feet and fifty eight hundredths of a foot (172.58) northerly from the northwest corner of Straight & Willis Streets, thence (1) northerly along Straight St. thirteen (13) feet, thence (2) in a southwesterly direction one hundred and eighty seven feet and ninety six hundredths of a foot (187.96) to the northwest corner of a lot of H. B. Crosby's said corner being distant one hundred and twenty feet and ninety one hundredths of a foot (120.91) northerly from Willis St., thence (3) in a northeasterly direction one hundred and eighty four feet and seventy three hundredths of a foot (184.73) to the place of beginning, containing 1174, 75/100 square feet. It being a triangular piece of land lying on the northerly side of the lot that was conveyed to H. B. Crosby by the New York, Susquehanna & Western R. R. Co. by deed bearing date Oct. 30th, 1884.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining:

Also all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of

the first part of, in and to the same and of, in and to every part and parcel thereof.

To Have and To Hold all and singular the above described land and premises, with the appurtenances, unto said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part, doth for itself, its successors, covenant and grant to and with the said party of the second part, his heirs and assigns, that it the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel theerof, with the appurtenances thereunto belonging; and that the said land and premises, or any part theerof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

And Also that the said party of the first part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid.

And Also that it will WARRANT, secure and forever defend the said land and premises unto the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

IN WITNESS WHEREOF the said party of the first part has caused its corporate seal to be hereunto annexed

Exhibit Erie 8.

and these presents to be signed by its President and Secretary the day and year first above written.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
By F. A. POTTS,
President.

Signed, Sealed and Delivered
in the presence of
(21 printed words struck out before execution.)

(L. S.) Attest:

J. P. RAFFERTY,
Sec'y.

(Acknowledgment attached.)

EXHIBIT ERIE 8.

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD CO.
to
HENRY B. CROSBY.

This Agreement made this First day of November, A. D. 1884 by and Between The New York, Susquehanna and Western Railroad Company, party of the first part, and Henry B. Crosby of the City of Paterson, New Jersey, party of the second part: Witnesseth that for and in consideration of the sum of One Dollar, by each party to the other paid, the receipt whereof is hereby acknowledged, and of the mutual benefit and advantages to be derived herefrom, the parties hereto respectively covenant and agree each with the other as follows:

First: The party of the first part hereby covenants and agrees that the party of the second part may lay and maintain for the period of ninety nine (99) years from the date hereof a flag sidewalk of

Exhibit Erie 8.

the widths hereinafter mentioned on its land in the City of Paterson, in the County of Passaic and State of New Jersey, known and described as follows:

Beginning at a point in the westerly line of Straight street distant about one hundred and seventy two (172) feet northerly from Willis street and running thence westerly along the northerly side of the property conveyed to the party of the second part by the party of the first part by deed bearing date the Thirtieth day of October, 1884, about one hundred and eighty-five (185) feet to the northwesterly corner of the lands of the party of the second part and thence from said northwesterly corner southerly along the westerly side of the premises owned by said party of the second part to Willis street said sidewalk so to be laid and maintained by the party of the second part to be of the width of ten (10) feet from Straight street along the northerly side of the property of the party of the second part as hereinbefore mentioned to said northwesterly corner and from said northwesterly corner to Willis street of the width of six (6) feet.

Second: The party of the first part further covenant and agree that during the period for which said sidewalk is to be laid and maintained it will keep open and place no obstruction thereon, a roadway of the width of twenty five (25) feet around the said sidewalk as to be laid and maintained by the party of the second part which roadway together with said sidewalk shall from a private roadway of the width of thirty-one (31) and thirty-five (35) feet respectively for the use of the parties hereto and *thier* patrons and customers.

Third: The party of the second part hereby covenants and agrees that he will without delay, lay and maintain the said sidewalk at his own expense the said sidewalk to be laid with the best blue flagging and have the necessary curbing and gutters and that

Exhibit Erie 8.

he will keep the same in good repair during the continuance of this agreement, at the expiration of which he will remove the same without cost to the party of the first part.

In Witness Whereof, the party of the first part has hereunto affixed its corporate seal and caused these presents to be signed by its President and Secretary and the party of the second part has hereunto set his hand and seal the day and year first herein written.

Executed in duplicate.

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY,
By F. F. POTTS,
President.

Signed, sealed and delivered in the presence of

(L. S.) Attest:
J. P. RAFFERTY,
Secty.

Witness as to Henry B. Crosby,
THOS. S. PENDREIGH.

HENRY B. CROSBY. (L. S.)

(Acknowledgment attached.)

EXHIBIT ERIE 9.

CERTIFICATE OF INCORPORATION of the ERIE RAILROAD COMPANY

Dated November 13, 1895.

Filed and Recorded November 14, 1895, in the Office of the Secretary of State of the State of New York.

Certificate of Incorporation of the Erie Railroad Company.

WHEREAS, The property and franchises of The New York, Lake Erie and Western Railroad Company, a domestic stock corporation, were sold pursuant to the judgment and decree of the Circuit Court of the United States for the Southern District of New York, the same being a court of competent jurisdiction, to Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, and said sale having been duly confirmed by said Court, the said property and franchises were, in pursuance of said decree and the orders of said Court made thereon, conveyed to the said Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, who have thereby acquired title to the said property and franchises in the manner prescribed by law;

AND, WHEREAS, The said purchasers, Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, have associated with themselves the following-named persons, namely: Temple Bowdoin, John Henderson Emanuel, Jr., Albert Henry Gillard, Abran Banta Hopper, Thomas Washington Joyce, Walter Schuyler Kemeys, John Pierpont Morgan, Jr., Francis Lynde Stetson, Mortimer Fitzalan Smith, William Stevens Townsend, John Henry Tierney, Eben Briggs Thomas, all of whom are citizens and residents of the State of New York; and the said purchasers and their associates desire to become a corporation pursuant to the laws of the State of New York, and as such to

take and possess the property and franchises thus sold and which were at the time of sale possessed by said The New York, Lake Erie and Western Railroad Company, except the leases and contracts which, as specified in said deed of conveyance, said purchasers have elected not to assume or adopt, and such other leases and contracts sold with said property as the new corporation formed hereunder by said purchasers and their associates shall hereafter lawfully elect not to assume:

NOW, THEREFORE, In conformity with the provisions of the laws of the State of New York in such case made and provided, we, the undersigned, Charles Henry Coster, Louis Fitzgerald, Anthony Johnson Thomas, Temple Bowdoin, John Henderson Emanuel, Jr., Albert Henry Gillard, Abram Banta Hopper, Thomas Washington Joyce, Walter Schuyler Kemeys, John Pierpont Morgan, Jr., Francis Lynde Stetson, Mortimer Fitzalan Smith, William Stevens Townsend, John Henry Tierney, Eben Briggs Thomas, being the said purchasers and their associates, do hereby certify:

FIRST. The name of the corporation whose property and franchises they have acquired as aforesaid is The New York, Lake Erie and Western Railroad Company, and said corporation was organized under a certain act of the Legislature of the State of New York, entitled "An Act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11, 1874, being Chapter 430 of the Laws of 1874, as amended by an act, passed June 2, 1876, being Chapter 446 of the Laws of 1876, entitled "An Act to amend chapter four hundred and "thirty of "the laws of eighteen hundred and seventy-four, en- "titled 'An Act to facilitate the reorganization of rail- " 'roads sold under mortgage, and providing for the " 'formation of new companies in such cases.' "

Exhibit Erie 9.

SECOND. The sale aforesaid was made by authority of the United States Circuit Court for the Southern District of New York, under and pursuant to a decree authorizing and directing the same, which decree was made and entered in said court on the 21st day of August, 1895, in a certain consolidated cause in equity pending in said court, wherein bills in equity were filed by Trenor Luther Park against said The New York, Lake Erie and Western Railroad Company, and by the Farmers' Loan and Trust Company against said The New York, Lake Erie and Western Railroad Company and Trenor Luther Park; and also by authority of a decree of the Circuit Court of the United States for the Northern District of New York, entered on the 28th day of August, 1895; a decree of the Circuit Court of the United States for the District of New Jersey, entered on the 3d day of September, 1895; a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, entered on the 26th day of August, 1895; a decree of the Circuit Court of the United States for the Western District of Pennsylvania, entered on the 28th day of August, 1895; a decree of the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, entered on the 30th day of August, 1895; a decree of the Circuit Court of the United States for the southern District of Ohio, Western Division, entered on the 29th day of August, 1895; a decree of the Circuit Court of the United States for the District of Indiana, entered on the 30th day of August, 1895; a decree of the Circuit Court of the United States for the Northern District of Illinois, entered on the 27th day of August, 1895; a decree of the Circuit Court of the United States for the Southern District of Illinois, entered on the 28th day of August, 1895; each of which decrees was ancillary to said decree of the Circuit Court of the United States for the Southern District of New York.

Exhibit Erie 9.

THIRD. (This paragraph is a description of the property sold at said sale. Included in said description is the following):

"All and singular the railway of said The New York, Lake Erie and Western Railroad Company, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York, and also all other railways belonging to the defendant Railroad Company, in the States of New York, Pennsylvania and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to said Railroad Company, and all the tolls, income, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action of whatsoever name or nature in law or in equity conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, or by Union Railroad Company, a corporation existing under the laws of the State of New Jersey. * * *"

FOURTH. The name of the new corporation intended to be formed by the filing of this certificate is ERIE RAILROAD COMPANY.

Exhibit Erie 9.

FIFTH. The maximum amount of the capital stock of such new corporation shall be one hundred and forty-six million dollars ($146,000,000), divided into one million four hundred and sixty thousand shares. Said capital stock shall consist of

Three hundred thousand shares of Non-Cumulative Four Per Cent. First Preferred Stock, of the par value of one hundred dollars each;

One hundred and sixty thousand shares of Non-Cumulaitve Four Per Cent. Second Preferred Stock, of the par value of one hundred dollars each, and

One million shares of Common Stock of the par value of one hundred dollars each.

THE FIRST PREFERRED STOCK shall be entitled to non-cumulative dividends, at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year beginning after the 30th day of June, 1896, in preference and priority to any payment, in or for such fiscal year, of any dividend on other stock; but only from undivided net profits of the Company when and as determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, after providing for the payment of full dividends for any fiscal year on the First Preferred Stock, there shall remain any surplus undivided net profits, the Board out of such surplus may declare and pay dividends for such year upon the Second Preferred Stock.

THE SECOND PREFERRED STOCK shall be entitled to non-cumulative dividends, at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year beginning after the 30th day of June, 1896, in preference and priority to any payment, in or for such fiscal year, of any dividend on the Common Stock; but only from undivided net profits of the Company remaining after providing for the payment of the full dividends for such fiscal year on the First

Preferred Stock when and as such undivided net profits shall have been determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom.

THE COMMON STOCK shall be subject to the prior rights of holders of all classes of Preferred Stock at any time outstanding, according to the preferences thereof.

If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

The new corporation shall have the right to redeem at any time either or both classes of its Preferred Stock at par in cash, if such redemption shall then be allowed by law.

All classes of stock of the new Company (except such number of shares as may be disposed of to qualify Directors) are to be vested in voting Trustees in the manner and for the period of time and subject to the terms and conditions set forth in the plan of readjustment and reorganization hereinafter mentioned.

SIXTH. The affairs of the new corporation shall be managed by thirteen Directors. The names and post-office addresses of the Directors for the first year are as follows:

(Then follow names and addresses.)

SEVENTH. Previous to the time of such sale, the purchasers thereat entered into a plan for, or in antici-

pation of, the formation of such new corporation and of the readjustment of the respective interests of the mortgage creditors and stockholders of said The New York, Lake Erie and Western Railroad Company, and for the representation of such interests of creditors and stockholders in the bonds or stock of such new corporation, and such purpose was made pursuant to such plan.

Such plan is as follows, viz:

(Then follows details of Plan of Readjustment and Reorganization of Interests in the New York, Lake Erie and Western Railroad Company.)

EIGHTH. No mortgage other than that provided for in such plan shall be put upon any property vested under such plan in the corporation, or hereafter acquired by the use of any of the bonds to be issued under its said mortgage, nor shall the amount of the First Preferred Stock be increased, except in each instance of the execution of any such mortgage, or of the increase of the First Preferred Stock, with the consent of the holders of a majority of the whole amount of the First Preferred Stock and a majority of the whole amount of the Second Preferred Stock, given at a meeting of the stockholders called for that purpose, and with the consent also of the holders of a majority of such part of the Common Stock as shall be represented at such meeting, the holders of each class of stock voting separately; nor shall the amount of the Second Preferred Stock of such corporation be increased except with like consent by the holders of a majority thereof and also of a majority of such part of the Common Stock as shall be represented at the meeting; but nothing herein contained shall limit the right or the power (hereby expressly reserved) of the new corporation to execute a mortgage in the nature of a purchase-money mortgage upon the Buffalo and Southwestern Railroad to secure bonds for the prin-

cipal sum of $1,000,000 (besides interest), to be issued in part payment for the stock of that Company.

NINTH. The corporation may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness, of any corporation, domestic or foreign, and issue in exchange therefor its stocks, bonds or other obligations, from time to time, when and as determined by the Board of Directors; and the President and such other officers as shall from time to time be designated by the Board of Directors may, and when elected shall, in behalf of this corporation, act as Director in any other corporation in which this corporation shall be stockholder.

(Then follows testimonium clause and signatures of incorporators, acknowledgment and certificate.)

EXHIBIT ERIE 10.

THIS AGREEMENT, made and executed in duplicate, this 24th day of January, 1908, by and between the ERIE RAILROAD COMPANY, (hereinafter called the "Railroad Company") party of the first part, and FULLERS EXPRESS COMPANY, (hereinafter called the "Express Company") party of the second part:

WITNESSETH:

THAT WHEREAS, the Express Company is engaged in the handling of property and merchandise between the Cities of Jersey City, New Jersey, and Paterson, New Jersey, and desires to arrange with the Railroad Company for the use of certain property of the Railroad Company at Jersey City and Paterson for the more convenient handling of such property and merchandise and for the transporting of the same between said points.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) to each of the parties herein by

the other in hand paid, the receipt whereof is hereby duly acknowledged, and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

FIRST: The Railroad Company hereby agrees to permit the Express Company to use the freight house in the City of Paterson which has heretofore been used by said Express Company, located between Ellison and Market Streets, for receiving, loading, unloading, billing and recording of property and merchandise handled by said Express Company; and the said Express Company agrees not to use said freight house for any other purpose than for the transaction of the business covered by this agreement, and not to permit said premises or any part thereof to be used for any other purpose without the written consent of the Railroad Company.

SECOND: The Railroad Company hereby agrees to permit the Express Company to use the portion of the freight house on Pavonia Avenue in Jersey City, formerly known as the freight house of the Northern Railroad of New Jersey, which has heretofore been used by said Express Company for receiving, loading, unloading, billing and recording of property and merchandise handled by said Express Company; and the said Express company agrees not to use said freight house for any other purpose than for the transaction of the business covered by this agreement, and not to permit said premises or any part thereof to be used for any other purpose without the written consent of the said Railroad Company.

THIRD. The Railroad Company agrees, without extra charge, to do the necessary switching and placing of cars for the Express Company at the aforesaid freight stations in Paterson and Jersey City, for the purpose of loading and unloading; and the Express Company agrees, at its own expense, to load and

unload into and from cars, all property and merchandise shipped or received by it, and to properly tally and record the same without any charge to the Railroad Company.

FOURTH: It is understood and agreed that in case the Railroad Company shall at any time during the existence of this agreement deem it necessary or convenient to provide the Express Company with freight house facilities at points in Paterson or Jersey City other than those hereby assigned to this service or subsequently assigned in accordance with this article in place and in lieu thereof, the Railroad Company may assign other locations suitable for handling the traffic of the Express Company, and the Express Company agrees, at its own expense, to vacate the premises theretofore assigned and to transfer its business to such other places as may be so assigned, and all of the provisions of this agreement shall thereafter apply to such new locations and the business transacted thereat to the same extent as to the prior location and the business previously transacted thereat.

FIFTH. All business handled under this contract shall be way-billed by the Express Company in the customary manner for way-billing by express companies, and the Express Company agrees to forward to the Auditor of the Railroad Company at the close of each month, and not later than ten days thereafter, all original way-bills for property and merchandise transported in either direction under this agreement during such month, also all forwarded and received abstracts covering such billing, together with recapitulations or summaries and such other statements as may be requested by the Railroad Company, in order that the same may be checked by the Auditor of the Railroad Company. The Express Company further agrees that it will always keep its books at Paterson, Jersey City or New York City in such manner that its

way-bills and statements of weight and revenue can at any time be verified, and said books shall at all times be accessible to the Railroad Company, its officers or agents, for such inspection.

SIXTH: It is further agreed and understood by and between the parties hereto that if the said Railroad Company shall at the request of the Express Company place or make delivery of cars at any other points than the freight houses at Jersey City and Paterson assigned to the Express Company's business or other locations substituted therefor in accordance with Article Fourth hereof or public team delivery tracks, the Express Company shall pay the Railroad Company switching charge for such service in addition to the other payments herein provided for.

SEVENTH: The Railroad Company hereby agrees to transport the property and merchandise of the said Express Company to and from Jersey City and Paterson only in the local passenger or freight trains of the said Railroad Company which run between those points, it being understood that freight trains will be used as far as possible, and that only when the traffic cannot be handled satisfactorily in such trains shall the Railroad Company be required to move the traffic on passenger trains.

EIGHTH: It is understood and agreed that the rate to be paid by shippers to the Express Company for traffic carried under this agreement shall in no case be less than the regular published tariff freight rate of the Railroad Company between New York and Paterson.

NINTH: The Express Company hereby covenants and agrees to pay to the Railroad Company an amount equal to thirty per cent. of the gross revenue derived from transportation, cartage, handling or other sources on all traffic handled by said Fullers Express between New York City, Jersey City and

Paterson, in either direction, which amount shall be paid in monthly payments covering an amount equal to thirty per cent. of the gross revenue so derived during the preceding month, and shall be paid promptly by the Express Company upon receipt of bill or voucher from the Railroad Company therefor; it being understood and agreed that the payment assured to the Railroad Company by the Express Company shall not in any event be less than Thirty-five thousand dollars ($35,000) per annum.

At the end of each year while this agreement is in force, an accounting shall be had and the Express Company shall promptly pay to the Railroad Company any balance that may be found due the latter Company on account of the minimum hereinbefore provided for.

TENTH: The said Express Company further agrees to work exclusively over the lines of the said Railroad Company between the points herein specified, and further agrees to use every possible endeavor to increase and enlarge the business between those points, cooperating in every way with the officials of the Railroad Company.

ELEVENTH: The Express Company assumes all liability for loss of or damage to property or merchandise transported by the Railroad Company for the Express Company, and agrees to indemnify and save harmless the said Railroad Company and all lines or companies owned, leased or operated by it, their respective successors or assigns, of and from all such liability so assumed by the Express Company, whether arising from the dishonesty or negligence of the Railroad Company its officers, agents or employes, or from any other cause whatever, and from all costs and expenses connected therewith.

The said Express Company further assumes all risk of loss of or damage to its property or of injury to the persons of its officers, agents or employes occa-

sioned by, arising out of, or in any way connected with the carrying out of this agreement or the enjoyment of the rights and privileges herein provided for, whether caused by the negligence of the said Railroad Company or by that of any line or company leased, owned or operated by it or of its or their officers, agents or employes or otherwise, and hereby agrees to indemnify and save harmless it or them or either of them of and from all claims for such loss, damage or injury so assumed, and from all costs and expenses connected therewith.

TWELFTH: It is hereby further understood and agreed by and between the said Railroad Company and the said Express Company, that nothing in this agreement shall be construed or understood as giving to the said Express Company exclusive rights or privileges which may not be given to other parties upon the same terms as expressed in this agreement.

THIRTEENTH: The Express Company further agrees that it will not do any business between the said or any other points in opposition to the Railroad Company, but will contribute to the growth of the traffic of said Railroad Company, and said Express Company further agrees not to sell, assign, transfer or sublet any of its rights under this agreement or the whole or any part of the premises referred to herein to any other person or persons without the written consent of the Railroad Company first had and obtained, and in consideration thereof the Railroad Company agrees in every practicable and lawful way to protect the Express Company in the maintenance, enjoyment and increase of the traffic under the trade-mark which it uses as long as it continues to handle its business via the lines of the Railroad Company.

FOURTEENTH: It is mutually understood and agreed by and between the parties hereto, that in case

any decision of the courts or of any lawful constituted commission or body of the United States or of the States of New Jersey or New York having jurisdiction thereof shall be rendered, or any act of the Legislature of either of the said States, or of the Congress of the United States shall be passed, adverse to the continuance of the arrangement herein provided for, then this agreement shall cease and become null and void, and the said Railroad Company shall be released from all its obligations hereunder.

FIFTEENTH: The Railroad Company agrees, during the continuance of this agreement, so far as it lawfully may, to issue three annual passes good between Jersey City, New Jersey, and Paterson, New Jersey, to employes of said Express Company.

SIXTEENTH: This agreement, unless abrogated as hereinbefore provided, shall continue in full force and effect for the period of one (1) year from the date hereof, and shall continue thereafter until terminated by either party giving to the other one (1) year's notice in writing of its intention to cancel and terminate the same.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective presidents, and their corporate seals, attested by their respective secretaries, to be hereto affixed on the day and year first above written.

ERIE RAILROAD COMPANY,

By F. D. UNDERWOOD,
President.

Attest:
DAVID BOSMAN,
Secretary.

FULLERS EXPRESS COMPANY,

By E. W. GUINDON,
President.

Attest:
W. L. BERDAN,
Secretary.

Exhibit Erie 10.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

On the 30th day of January, 1908, before me personally came David Bosman to me known, who, being by me duly sworn, did depose and say, that he resides in Rutherford, New Jersey; that he is the Secretary of the Erie Railroad Company, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

H. MURRAY ANDREWS,
Notary Public, Kings County,
Certificate filed in New York County.

STATE OF NEW JERSEY,
COUNTY OF PASSAIC. } *ss.*

On the 24th day of January, 1908, before me personally came William L. Berdan, to me known, who being by me duly sworn, did depose and say that he resides in Paterson, N. J., that he is the Secretary of Fullers Express Company, one of the corporations described in and which executed the above instrument, that he knows the seal of said corparation, that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

BEULAH LOCKWOOD,
Notary Public of New Jersey.

EXHIBIT ERIE 11.

THIS LEASE, made in duplicate this 14th day of May, A. D. 1910, by and between ERIE RAILROAD COMPANY, hereinafter designated as the Lessor, and MORRIS AND COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, hereinafter designated as the Lessee;

WITNESSETH THAT:

Said Lessor, in consideration of the rents to be paid and the covenants to be performed by said Lessee, as hereinafter recited, hereby leases to said Lessee the following described premises situate in the City of Paterson, County of Passaic and State of New Jersey, viz:

BEING so much of the first floor of the brick building known as the "Old Machine Shop" of said Lessor located on the northerly side of Market street, as lies south of a partition crossing said building at right angles distant one hundred two (102) feet eight (8) inches, measured northerly along the outside of the easterly wall of said building, from the southeasterly corner of same.

AND ALSO so much of the second floor of said building as lies directly over said first floor between the above mentioned partition and a partition on the second floor crossing said building at right angles at a point distant twenty-four (24) feet eight (8) inches, measured northerly along the outside of the easterly wall of said building, from the southeasterly corner of same to a height not exceeding five (5) feet ten (10) inches.

AND ALSO the premises bounded and described as follows:

BEGINNING at a point in the northerly line of Market street, which point is the southwest corner of the said "Old Machine Shop": running thence northerly along the westerly side of the said "Old Machine

Shop" ninety-seven (97) feet; thence westerly at right angles to the last mentioned course six (6) feet; thence northerly at right angles to the last mentioned course twenty-five (25) feet; thence westerly at right angles to the last mentioned course nineteen (19) feet; thence southerly parallel to said westerly side of the said "Old Machine Shop" to the said northerly line of Market Street; thence southeasterly along said line of Market Street twenty-seven (27) feet to the point of beginning, in substantially the location and position shown enclosed by red lines on the blue print hereto annexed and made a part hereof.

To Have and to Hold the same unto said Lessee for the term of one year from the first day of February, A. D. 1910, subject to all the conditions and covenants hereinafter recited: it being mutually understood and agreed that his lease may be terminated and cancelled by said Lessor, its successors or assigns, at any time by giving at least sixty (60) days previous notice in writing to said Lessee of the time when the same will be so terminated and cancelled; but in case of non-payment of rent by said Lessee as hereinafter provided, or the violation of any of the other provisions of this lease by said Lessee, said Lessor, its successors or assigns, may terminate and cancel this lease by giving not less than three (3) days similar notice to said Lessee: it being further understood and agreed that if this lease shall continue for the full term above specified, then it shall continue on the same terms and conditions except as modified by mutual agreement until terminated by either party hereto giving to the other party hereto at least sixty (60) days previous notice in writing of such termination. The notice herein provided for to be given by said Lessee shall be served on the General Land and Tax Agent hereinafter mentioned, and either of the notices herein provided for to be given of said Lessor, its successors or assigns, may be served personally

upon said Lessee, or by leaving it with any person occupying said premises, or with any servant or employe of said Lessee on said premises or by mailing such notice directeed to said Lessee at Paterson, N. J., aforesaid, and upon expiration of the time limited in any notice herein provided for, said Lessor, its successor or assigns, may forthwith enter upon and take and maintain possession of said leased premises and remove all persons therefrom without let or hindrance and without liability therefor; any law, usage or custom of said State to the contrary notwithstanding.

Said lease hereby agrees to pay for said premises the yearly rent of One thousand ($1000.00) Dollars payable in equal semi-annual payments in advance to the Station Agent of said Lessor, its successors or assigns, at Paterson, N. J.: it being mutually understood that rent paid in advance for a period subsequent to the termination of this lease shall be repaid to the Lessee within thirty (30) days after demand unless such termination shall be on account of violation of non-fulfillment of any of the provisions of this lease by said Lessee, and that any demand of rent made by the Lessor after the date it is due shall have the same effect as if made on the day it is due, any law or custom of said State to the contrary notwithstanding.

Said Lessee further agrees that so long as this lease continues it will, at its own cost and expense, keep all buildings and other structures covered by this lease and on said premises in as good condition and repair as they are at the beginning of this lease, ordinary wear and decay and casualties unavoidable with due care and caution excepted and put any and all such additions and repairs on said buildings and other structures as it itself may require, and said Lessee shall have the privilege of removing any building and improvements placed by it on said premises, provided the same can be removed without injury to

the freehold; keep said leased premises and appurtenances in good sanitary condition free from all accumulations of rubbish so as to fully meet the requirements of the Health Officer or any other proper authority of the City in which said leased premises are located; perform all the duties imposed upon the owners or occupants of said premises as to the care of the same and in general keep said leased premises and appurtenances in good order and occupy and use the same in a careful, safe and orderly manner and so as not to interfere in any way with the maintenance or operation of the Railroad or any of its appurtenances operated by said Lessor, its successors or assigns, and use said premises for the purpose only of an office and cold storage meat warehouse and site for shed and stable.

Said Lessee further agrees to pay such portion of all taxes, assessments, water rates or rents, assessed, charged or levied during the continuance of this lease on or on account of said premises and any other property which may be assessed or charged therewith as the value of the premises herein demised and the improvements thereon of said Lessee bear to the value of the entire premises against which such taxes, assessments, water rates or rents are assessed, charged or levied, and said Lessee further agrees that the Lessor, its successors or assigns, may at its or their option pay such taxes, assessments, water rates or rents, and that in case of such payment said Lessee will repay such portion thereof as aforesaid to said Lessor, its successors or assigns, within thirty (30) days after receipt of bill or voucher therefor.

Said Lessee further agrees that so long as this lease continues, it will not sell, barter or give away or permit to be sold, bartered or given away on or about said leased premises any intoxicating liquor, either spirituous, vinous or fermented without the consent of said Lessor, its successors or assigns, first had in writing.

New Jersey State Library

Exhibit Erie 11.

Said Lessee, for itself, its successors and assigns, hereby assumes all risk of loss, damage or injury by fire or otherwise to property or person on or about said leased premises, arising out of the condition or location of said leased premises or the operation, maintenance or existence of the railroad operated by said Lessor, its successors or assigns, or any of its appurtenances and agrees to indemnify and save harmless said Lessor, its successors and assigns, from all claims for any and all such loss, damage or injury, whether caused by the negligence of said Lessor, its successors or assigns, or by the negligence of its or their servants, agents or employes or otherwise.

Said Lessee further covenants and agrees to give to said Lessor, its successors or assigns, the transportation of all materials and products under the control of said Lessee, shipped to and by said Lessee, to and from Paterson, N. J., aforesaid, from and to all points reached by the lines of said Lessor, its controlled and allied Companies and their connections provided that the rates for such transportation shall be as low as by any other line or lines of Railroad to and from the same points.

Said leased premises shall not be sublet nor shall this lease be assigned in whole or in part by said Lessee without the consent of said Lessor, its successors or assigns, first had in writing.

It is mutually understood that this lease is given without covenant of warranty on the part of the Lessor and is accepted subject to all encumbrances, conditions, covenants and easements to which the title or possession of the Lessor is subject.

It is mutually agreed that this lease supersedes and cancels as of February 1, 1910, a certain lease dated April 1st, 1908, from said Lessor to said Lessee covering a portion of the above described premises, said lease being known as No. A-638.

Exhibit Erie 12.

IN WITNESS WHEREOF, the parties hereto execute this lease: dated the day and year first above written.

ERIE RAILROAD COMPANY,

By HARRISON WILLIAMS,

General Land & Tax Agent.

MORRIS AND COMPANY,

By F. W. HESS,

Attorney in Fact.

Correct

J. T.

J. H. B.

EXHIBIT ERIE 12.

ERIE RAILROAD COMPANY

Office of the General Freight Agent

21 Cortlandt Street

New York

Feb. 25, 1898.

Bill against Myer & DeVogel, Paterson, for construction of siding.

My Dear Mr. Gaddis,

I return herewith bill against Myer & DeVogel of Paterson.

It appears that our Superintendent, Mr. Maguire, holds a written agreement dated October 26th, 1897, wherein Myer & De Vogel agreed to pay not to exceed $454.03 on account of this switch, and this amount has been reduced to $430.19.

The figures given herein are the actual cost of the switch, of which you will also note the Erie assumed a proportion amounting to $70.74.

Exhibit Erie 12.

It would be impracticable for us to make any reduction in this bill.

Yours truly,

R. M. PARKER,
2nd Asst. Gen. Frt. Agent.

To Mr. Elisha B. Gaddis,
Newark, N. J.

Encl. P.40.
Dict. R.M.P.

COLLECTION VOUCHER.

No. Maintenance of Way and Structures Department — Month of December 1897

MEYER and DE VOGEL
Paterson, N. J.

To the ERIE RAILROAD COMPANY, Dr.
General Offices: 21 Cortlandt Street, New York.

If this bill is found to be incorrect, or further information relative thereto is required, address J. T. WANN, Auditor. Remit to EDWARD WHITE, Treasurer.

In Remitting Please quote
Record No.....
Month of.....
.....

Memo
1897 To

Dec.	Cost of siding for your accommodation East of River St., Paterson.			
	Rail		107.85	
	Frogs and Switches		54.30	
	Spliers, Spikes & Bolts		34.18	
	Switch Timber & Ties		107.20	
			303.53	
	Labor	179.45		
	10%	17.95		
			197.40	
				500.93
	Less Erie proportion			
	Rail		62.08	
	Spliers, Spikes & Bolts		8.66	
				70.74
				430.19
	Cr. by payment on account			169.00
				261.19

Exhibit Erie 12.

COLLECTION VOUCHER.

No. Maintenance of Way and Structures Department — Month of December, 1897

MEYER and DE VOGEL
Paterson, N. J.

To the ERIE RAILROAD COMPANY, Dr.
General Offices: 21 Cortlandt Street, New York.

If this bill is found to be incorrect, or further information relative thereto is reuired, address J. T. WANN, Auditor. Remit to EDWARD WHITE, Treasurer.

In Remitting Please quote
Record No. 1593
Month of Dec. 1897

1897 To				
December	Cost of siding for your accommodation East of River St. Paterson.			
	Rail		107.85	
	Frogs & Switches		54.30	
	Spliers, Spikes & Bolts		34.18	
	Switch, Timber & Ties		107.20	
			303.53	
	Labor	179.45		
	10%	17.95		
			197.40	
				500.93
	Less Erie proportion			
	Rail		62.08	
	Spliers, Spikes & Bolts		8.66	
				70.74
				430.19
	Cr. by payment on account			169
	Balance to be paid March 1st, 1898			261.19
	Credit M. of W. Payroll report			197.40
	R. & B. Material			232.79
				430.19
	R. R. Frogs & Switches			54.30
	Spliers, Spikes & Bolts			25.52
	Cross Ties R. F.			107.20
	Rails			45.77
	Roadway & Track			197.40
				430.19

169.00 remitted to treasurer 1-12-98.

Paid in Full
W. A. WEAVER, *Agt.*
July 27/98

Correct, M. W. MAGUIRE, *Superintendent.*
Correct, N. F. BALDWIN, *Eng'r of M. of Way.*
Correct, JNO. RAUCH, *Road Master.*
Approved, C. R. FITCH, *General Supt.*

Auditors Office
Received Jan. 22 1898 Forwarded Jan. 22 1898

EXHIBIT ERIE 13.

ARTICLES OF AGREEMENT between the Paterson Railway Company hereafter called the Paterson Company, party of the first part, and The New York, Lake Erie and Western Railroad Company, hereafter called the Erie Company, party of the second part,

WITNESSETH:

WHEREAS, the route of the Paterson Railway Company, owning and operating a line of horse or street railroad within the City of Paterson, New Jersey, crosses or may cross the tracks of the Paterson and Ramapo Railroad, or the tracks of the Paterson, Newark and New York Railroad Company called and known as the Newark Branch, now and for a long time past leased and operated by the said Erie Railroad Company, at River Street, Market Street, Broadway and divers other streets within the City of Paterson.

AND WHEREAS, the said Paterson Railway Company are about to use electric power upon their said line and route and to carry passengers over the same in cars propelled by said power or by other power than by horses.

AND WHEREAS, the use of such power increases the danger in the estimation of the said Erie Company, of such crossings, and it is contemplated that in operation by means of such electric power overhead wires shall be used.

AND WHEREAS, the Erie Company is willing that such crossings shall be made upon the terms and conditions hereafter stated.

NOW, THEREFORE, THE SAID COMPANIES AGREE with each other as follows:

First. The Erie Company agrees that the Paterson Company may continue and maintain their street

railway across the present tracks of said Paterson and Ramapo Railroad or of said Newark Branch or any other track or tracks of either of said railroads leased to the Erie Company, within the city aforesaid, as more particularly shown and specified upon the map and diagram hereto annexed and marked Schedule A. and at the points delineated thereon.

Second. The Paterson Company shall at their own cost and expense construct said crossings at the points shown upon said diagram, and in the manner agreed upon with the representatives of the Erie Company, and will thereafter keep and maintain such crossings and their tracks thereat in good and safe condition, satisfactory to the Erie Company, during the continuance of this agreement, and so as shall from time to time be best adapted to secure safety at such crossings, and under the supervision and direction of the Erie Company, and shall restore to it or to their former condition any such track or tracks of the said Erie Company displaced or injured in constructing or repairing said crossings, work to be commenced with all convenient speed after the execution of this contract.

Third. The Paterson Railway Company will stop all their cars at or before reaching the said crossings or any of them for at least ten seconds and sufficiently to ascertain if there is any danger in crossing, and will stop no car on either of said crossings at any time.

Fourth. The Erie Company may, if it see fit at any time do any reasonable work, construction or repair to the said crossing or either of them, which the said Paterson Railway Company shall fail to do and which shall be necessary or advisable to be done for the safe operation of the said crossing, and the expense thereof shall be payable by the Paterson Railway Company to the Erie Company on demand.

Exhibit Erie 13.

Fifth. The Erie Company shall in all cases have the right of way and passage over their said railroad for their cars and trains and rolling stock whatsoever, whenever arriving in preference and precedence of the cars of said Paterson Railway Company, the passage by said Erie rolling stock never to be impeded by any of said Paterson Railway cars.

Sixth. Flagmen and gatemen shall be employed by the said Erie Company at such crossings in such number and at such wages as said Erie Company shall think best, the service of said flagmen and gatemen to be regulated as to time and hours by the said Erie Company. The said Paterson Railway Company shall pay to the said Erie Company one-third of the expense of said employment of said flagmen and gatemen monthly or on or before the fifteenth day of each month, the bills for such payment or for any other expense in connection with said crossings agreed to be borne by the Paterson Company to be rendered between the first day and the eighth day of each month.

Seventh. Should it in the future become necessary or in the judgment of the Erie Company expedient to erect gates at any of the crossings over the streets aforesaid, the same are to be built by and at the expense of the Erie Company, and said Paterson Railway Company are thereupon to pay one-third of the cost of such erection, and of all repairs and renewals thereof, and of maintaining the same, such costs to be certified to them by the said Erie Company monthly as aforesaid, and such payment of the proportion of said Paterson Railway Company to be made on or before the fifteenth day of the said month in which such certificate shall be delivered.

Eighth. It being contemplated that the cars of said Paterson Railway Company shall be propelled as aforesaid by electric power derived by use of over-

head wires, it is further agreed that any overhead wires erected or used by said Paterson Company shall be erected and kept and maintained at a height of at least twenty feet in the clear above the top of the rails of the railroad tracks of the said Erie Company at such points of crossing, and that no poles or supports for said wires shall be *pleased* so near the tracks of said Erie Company or their lessors as in the opinion of the Engineer of the Erie Company to be a source of danger or inconvenience to said Erie Company in operating its railroad.

Ninth. The crossing by said Paterson Railway Company hereby permitted and agreed for shall be by not more than two tracks covering a space of no more than twenty nine feet in width, running as nearly as possible, having regard to the Paterson Company's necessities, at right angles to the lines of the said Erie Company's tracks or track.

Tenth. It is mutually agreed that this contract shall not impair or in any wise affect any of the legal or equitable rights of either of the said Companies as they would exist if this contract had not been made, except so far and so far only as each Company has agreed herein.

Eleventh. It is further mutually agreed that in case of the failure of said Paterson Company to make the payments herein provided for when due, or to keep and observe all said covenants and agreements, the Erie Company shall have the right upon thirty days notice in writing to terminate this contract and declare the same null and void, whereupon the same shall forthwith cease and determine.

In Witness Whereof each of said corporations has caused its corporate seal to be affixed, attested by the signature of its President and Secretary, this

Exhibit Erie 13.

26th day of February one thousand eight hundred and ninety two.

THE PATERSON RAILWAY COMPANY,

By GARRET A. HOBART,
President.

Sealed and delivered in the presence of:

ALBERT A. WILCOX,

(SEAL) *Secy.*

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY,

By E. B. THOMAS,
1st Vice Prest.

Attest:

A. R. MACDONOUGH,
Secretary.

New York, May 20th, 1898

It is hereby mutually agreed that the provision in the sixth section of the foregoing contract reading as follows:

"The said Paterson Railway Company shall pay to the said Erie Company one third of the expense of said employment of said flagmen and gatemen monthly on or before the fifteenth day of each month," shall be suspended for the period of ten (10) years from and after this date, but shall thereafter be in full force and effect; it being understood that all the other provisions of this contract remain unaltered

and in full force and effect, as if the foregoing change had not been made.

ERIE RAILROAD COMPANY,
By E. B. THOMAS,
President.

(SEAL)

Attest:

T. A. MIDDLETON,
Secretary.

THE PATERSON RAILWAY COMPANY,
By WM. BADBOUD,
Vice President.

Attest (SEAL)

ALBERT A. WILCOX,
Secretary.

EXHIBIT ERIE 14.

THIS AGREEMENT made in duplicate this sixth day of February in the year one thousand nine hundred twelve between Erie Railroad Company (hereinafter called the Erie Company), party of the first part and Public Service Railway Company (hereinafter called the Public Service Company), party of the second part,

WITNESSETH THAT

WHEREAS on February 26, 1892, the New York, Lake Erie and Western Railroad Company, the predecessor in interest of the Erie Company, and The Paterson Railway Company, the predecessor in interest of the Public Service Railway, entered into an agreement covering the construction and maintenance of the street railway of the Paterson Railway Company across the tracks of the Paterson and Rama-

po Railroad Company at Market street in the City of Paterson, N. J., it being provided in said agreement that said crossing by said Paterson Railway Company should "be by not more than two tracks covering a space of not more than twenty-nine feet in width" and

WHEREAS, the Public Service Company desires to construct, maintain and operate one additional track across the tracks of the Paterson and Ramapo Railroad Company at Market street and Park avenue in said City of Paterson, N. J., and the Board of Public Utility Commissioners of the State of New Jersey on September 6th, 1910, approved an ordinance of the Board of Public Works of the City of Paterson, passed August 2, 1910, approved August 3rd, 1910, entitled "An ordinance granting permission to Public Service Railway Company to construct, operate and maintain additional street railway tracks and connections along the route of its street railway in the City of Paterson, County of Passaic and State of New Jersey" which ordinance so approved, among other things granted permission to the Public Service Company to construct and lay a track at grade across said tracks of Paterson and Ramapo Railroad Company at Market street and Park avenue in said City of Paterson, and

WHEREAS, Said Board of Public Utility Commissioners by a certificate dated January 2nd, 1912, determined that the construction of said additional track by the Public Service Company across the tracks of the Paterson and Ramapo Railroad Company at Market street and Park avenue in said City of Paterson will constitute an added factor of safety and granted permission to said Public Service Company, subject to the terms of said ordinance, to construct said additional track across the tracks of said Paterson and Ramapo Railroad Company at Market street and Park avenue in said City of Paterson.

Exhibit Erie 14.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions herein contained, IT IS AGREED that the Public Service Company shall be allowed to construct one additional track across the tracks of the Paterson and Ramapo Railroad Company at Market street and Park avenue in the City of Paterson, N. J.; that said crossing shall be constructed at grade and in substantially the location and position indicated by parallel red lines on the blueprint attached hereto, marked Exhibit "A" and hereby made a part hereof, and that said additional track shall be constructed, maintained and operated under and in accordance with the following terms and conditions:

FIRST: The Public Service Company shall bear and pay the entire cost and expense of the installation of said crossing by said additional track and the entire cost and expense of the construction, maintenance, repair, renewal or removal of said additional track, including the installation, maintenance and operation of such derails in said additional track as shall be approved by the General Superintendent or such other officer as may be designated from time to time by the Erie Company, or by the Board of Public Utility Commissioners;

SECOND: The work of constructing said additional track and installing said crossing shall be performed by the Public Service Company under the supervision and direction and subject to the acceptance and approval of the Superintendent or such other officer as the Erie Company may designate and at such times and in such manner as shall not unnecessarily interfere with or endanger the operation of the railroad of the Erie Company;

THIRD: It is the intention of the parties that when said additional track has been constructed by the Public Service Company across the tracks of the Pat-

erson and Ramapo Railroad Company in the manner hereinbefore provided, the provisions of said agreement of February 26th, 1892, shall apply to and cover said additional track and the obligations and liabilities of the parties with respect thereto to the same extent and as fully as though said additional track were specifically referred to therein.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,
By J. C. STUART.

Attest: (SEAL)
DAVID BOSMAN,
Secretary.

PUBLIC SERVICE RAILWAY COMPANY,
GEORGE J. ROBERTS,
Vice President.

Attest: (SEAL)
EDWIN W. HINE,
Secretary.

EXHIBIT "ERIE 15."

(1)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated June 1st, 1905.

AGREEMENT.

Between EDWARD T. STOTESBURY and GIRARD TRUST COMPANY and ERIE RAILROAD COMPANY. For issue of $2,000,000 Gold Equipment Trust Certificates. Dated June 1st, 1905. SERIES "H."

Exhibit Erie 15—(1).

LEASE.

Agreement dated June 1, 1905, between Edward T. Stotesbury and Erie Railroad Company. Witnesseth:

That for and in consideration as well of the sum of one dollar paid by the Railroad Company to the Lessor as of the rents and covenants hereinafter mentioned, the Lessor has let and leased and by these presents doth let and lease to the Railroad Company for the term of ten years from and after the first day of June, 1905; unless sooner terminated as hereinafter provided, the following described railroad equipment or rolling stock, to wit: (Then follows description and statement of numbers of 37 freight engines, 19 passenger engines and 100 freight engines) which said locomotive engines shall be delivered to the Railroad Company as they shall from time to time be received by the Lessor from the builders under the contracts dated December 29, 1904, and February 17, 1905, respectively, between the builders and the Lessor, at and for the rent hereinafter set out, and upon the terms and conditions and covenants following, to wit:

First. That the Railroad Company shall and will pay to the Lessor or his assigns at the office of Girard Trust Company in the City of Philadelphia as rent or hire for the said locomotive engines:

I. Upon demand on or after June 1, 1905, a cash payment of Five Hundred and Twenty-three Thousand Thirty-two Dollars and Fifty Cents ($523,032.50).

II. Half-yearly on the thirty-first day of May and the thirtieth day of November in each year, the first payment to be made on the 30th day of November, 1905:

(a) A sum equal to two per cent. on Two Million Dollars ($2,000,000), which sum thus paid shall be reduced from time to time by an amount

equal to two per cent. on such sum as the Railroad Company shall pay to the lessor to be applied in reduction of the sum of two million dollars as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the income or property of the trust which the Lessor or his assigns may be liable in taxes which may by law be charged against the Lessor on account of payments of rental hereunder.

III. Half-yearly on the 31st day of May and the 30th day of November in each year, beginning with the 30th day of November, 1905, the following sums, respectively:

On November 30, 1905.....$100,000
On May 31, 1906 100,000

(Then follows provision for further payments of $100,000 each on November 30th and May 31st of each year down to and including May 31, 1915).

Second. The Railroad Company covenants and agrees with the Lessor, or his assigns, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said locomotive engines in good order and repair, and to cause the said locomotive engines to be kept numbered as herein before mentioned and all of said locomotive engines to be plainly marked upon both sides thereof, with the words:

"E. T. STOTESBURY, Trustee, Owner."

And that it, the Railroad Company, will replace at its own cost any of said locomotive engines which may be destroyed from any cause whatever during the continuance of this lease, by other locomotive engines of

equal value as those destroyed and of substantially as good material, character and construction, and that it, the Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said locomotive engines as a designation which might be interpreted as a claim of ownership thereof; PROVIDED, however, that the Railroad Company may cause the said locomotive engines, and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein.

Third. The Company agrees to furnish an inventory of the engines once each year.

Fourth. The Company agrees there shall be no assignment or transfer of its rights, or interest in the engines without the consent of the Lessor or his assigns.

Fifth. That in case the Railroad Company shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable or shall fail to keep the said locomotive engines in good serviceable condition or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated and thereupon all installments of rent reserved hereunder whether said installments shall then have fallen due or not shall at once become forthwith due and payable, and the Lessor or his assigns may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said locomotive engines may be and may retake the said locomotive engines and withdraw the same from said railroad or premises.

Sixth. In case of such retaking the Company agrees to draw the engines to such points as shall be designated by the Lessor or his assigns and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that when it,

the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, shall and will, upon the payment by the Railroad Company to the Lessor or his assigns of the additional sum of one dollar, sell, assign and transfer or cause to be sold, assigned or transferred to the Railroad Company its successors and assigns as its absolute property all the locomotive engines held under this lease and evidence such sale and transfer by an appropriate bill of sale so that thereupon and thereafter the absolute ownership in said locomotive engines shall be and become vested in the Railroad Company, its successors and assigns; *Provided,* however, and it is hereby understood that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto Girard Trust Company as Trustee, all his right, title and interest in and to said locomotive engines hereby leased unto the Railroad Company, and as well all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Girard Trust Company as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor.

The Lessor hereby transfers and assigns unto the Railroad Company all its rights, claims and demands arising or which may arise against the Baldwin Locomotive Works (Burnham, Williams & Company), or the American Locomotive Company the builders, or either of them, under said contracts of December 29th, 1904, and February 17th, 1905, respectively, in case of the failure of either of said companies to deliver said

locomotive engines or any of them at the times or in the manner therein provided.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated June 1, 1905, between Edward T. Stotesbury, Girard Trust Company and Erie Railroad Company, WITNESSETH:

Recites the above lease; also that certain Bankers have secured subscriptions for $2,000,000 to "Erie Railroad Equipment Trust 'Series H'"; further, that Edward T. Stotesbury proposes to secure to the parties subscribing to said fund the repayment thereof in twenty semi-annual installments as follows:

Then follows list of repayments, beginning December 1, 1905, and ending June 1, 1915, each for the sum of One hundred thousand dollars—with interest at the rate of four per cent.

NOW, THEREFORE, this agreement witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto Girard Trust Company, as Trustee for the holders of the certificates hereinafter described, all the right, title and interest of the said Edward T. Stotesbury in and to a certain Indenture of Lease bearing date the first day of June, 1905, made by the said Edward T. Stotesbury to Erie Railroad Company, a copy of which is hereunto annexed, as hereinbefore stated, and in and to said locomotive engines so leased as aforesaid.

Second. The Trustee covenants and agrees that contemporaneously herewith it will execute and deliver to Drexel & Co. for distribution to the several subscribers to said "Erie Railroad Equipment Trust, Series H," Two thousand certificates in the following form, to wit:

Then follows form of Equipment Trust Certificates and of Dividend Warrant.

Third. Trustee agrees to keep a register at its office.

Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, Lessor, further covenants to perform and, so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said Lease and to apply and distribute the rentals thereunder when and as the same shall be received, for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad locomotive engines as are usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may be required to pay and any tax which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said trust certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable; the said warrants and certificates to be cancelled upon payment thereof.

It being distinctly understood and agreed that neither the Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own willful and intentional breach thereof.

Fifth. Erie Railroad Company becomes a party hereto in order to express its assent to the assignment herein contained by Edward T. Stotesbury to Girard Trust Company, as Trustee for the benefit of the subscribers to said "Erie Railroad Equipment Trust Series H," and does hereby accept all the terms of this assignment including the obligation to make payment

of the reasonable expenses of said Trustee and of all taxes herein above mentioned for which the Trustee may be liable or may by law be required to deduct from the principal of the said certificates or the dividends thereof.

Sixth. It is further herein settled and provided that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of the said lease, that the Trustees shall have the right as assignee of the said Edward T. Stotesbury, to declare the principal of all of said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said locomotive engines, it may either hold or lease or dispose of said locomotive engines or so many thereof as it may deem necessary, in such manner, at pulic or private sale, for cash or upon credit as the Trustee may deem most beneficial; and the proceeds of such lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property or the certificates aforesaid or the dividends thereof,

(1) to the dividend warrants then due and

(2) to the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata.*

and such retaking possession of the said locomotive engines by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company for

future accruing rent until such sum is realized, as, with the proceeds of the sale of said locomotive engines, is sufficient for the payment in full of all taxes and expenses as aforesaid together with all accrued dividend warrants and the principal of all of the said certificates;

Then follows testimonium clause and acknowledgments.

EXHIBIT "ERIE-15."

(2)

CAR LEASE AND AGREEMENT.

STANDARD STEEL CAR COMPANY to ERIE RAILROAD COMPANY,

Dated November 1st, 1906. SERIES J.

LEASE.

Agreement dated November 1, 1906, between Standard Steel Car Company, called the Lessor, and Erie Railroad Company, called the Railroad Company. WITNESSETH:

In consideration of One dollar and of the rents and covenants herein mentioned, the Lessor has leased for the term ending November 1, 1916, unless sooner terminated, five hundred Steel Underframe Gondola Cars; five hundred Steel Underframe Flat Cars.

Cars to be delivered to the Erie Railroad Company at the Car Works of the Lessor, between November 1, 1906, and March 1, 1907, on the following terms:

First. That the said Railroad Company shall and will pay to the Lessor, or its assigns, at the office of the Railroad Company in the City of New York, as rent or hire for the said railroad cars:

I. Upon demand a cash payment of Two Thousand One Hundred and Ninety-five Dollars ($2,195.00), and the air brakes, springs (truck and draft), brake

beams, brake shoes, journal boxes and lids, journal bearings and wedges and couplers for equipping such cars, receipt of which appliances is hereby acknowledged.

II. Half-yearly, on the first days of May and November in each year, the first payment to be made on the first day of May, 1907, the following sums:

(a) A sum equal to two per cent. on Nine hundred and Fifty Thousand Dollars, which sum thus paid shall be reduced from time to time by an amount equal to two per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of Nine Hundred and Fifty Thousand Dollars, as specified in Paragraph III of this Article:

(b) A sum equal to the taxes upon the property leased hereunder which the Lessor or its assigns may be liable to pay.

III. Half-yearly for nine and one-half years, on the first day of May and the first day of November in each year, beginning with the first day of May, 1907, the sum of Forty-seven Thousand Dollars, making nineteen semi-annual payments of Forty-seven Thousand Dollars each, and on the first day of November, 1916, the sum of Fifty-seven Thousand Dollars, making in all twenty payments amounting to Nine Hundred and Fifty Thousand Dollars.

IV. The payments of rental provided for in paragraphs II (a) and III shall be evidenced by Car Trust notes or certificates to be executed by the Railroad Company, and payment of such certificates and the coupons thereof shall be for all purposes equivalent to payment of the said portions of rental to the said Lessor, and such certificates and coupons shall be in form substantially as follows:

Then follows form of Car Trust Note, Trustee's Certificate and Coupon.

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said railroad cars in good order and repair and to cause the said railroad cars in good order and repair and to cause the said railroad cars to be kept numbered as hereinbefore mentioned, and all of said railroad cars to be plainly marked upon both sides thereof with the words, "Bankers Trust Company, Trustee, Assignee, Owner, and Lessor," and that it, the said Railroad Company, will replace at its own cost any of the said cars which may be destroyed from any cause whatever during the continuance of this lease, by other railroad cars of equal value as those destroyed and of substantially as good material, character and construction, and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said railroad cars as a designation which might be interpreted as a claim of ownership. PROVIDED, however, that the Railroad Company may cause the said cars and each of them, to be lettered "Erie," for convenience of identification of its lessee interest therein. PROVIDED, however, that the Railroad Company may, at its option, instead of replacing any of said cars, which may be worn out, lost or destroyed, pay to the Lessor the sum of Nine Hundred and Fifty Dollars for each car so worn out, lost or destroyed, all such money to be held by the Lessor until the termination of this lease, and, in the event that the Railroad Company exercises the option of purchase herein provided, after default or otherwise, to be turned over to said Railroad Company at the time of such purchase, and the Lessor agrees to pay to the Railroad Company interest thereon at a reasonable interest rate, not less than the highest rate paid general depositors of the Bankers Trust Company, of

New York, said interest to be retained by the Lessor, its successors or assigns, until all payments have been made in accordance with Article First, Paragraphs I, II and III.

It is provided further, that the Railroad Company shall exercise such option of substituting money for cars within thirty days after notice to the Accounting Department of the Railroad Company of the wearing out, loss or destruction of any such cars, or shall, within such period, notify the Lessor, its successors or assigns, of its election to replace said cars, and shall so replace the same as speedily as possible thereafter.

Third. The Railroad Company agrees to furnish an inventory in each year.

Fourth. The Railroad Company agrees that there shall be no assignment of its rights or interest without the consent of the Lessor or its assigns.

Fifth. In case the Railroad Company (a) shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition, or to perform any other obligations and covenants herein contained to be performed on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Lessor, then, and in each and every case of default as aforesaid, the Lessor may declare this lease terminated, and all outstanding bonds due and payable, and thereupon all installments of rent reserved herein and all said bonds, whether said installments of bonds shall have fallen due or not, shall at once become due and payable, and the Lessor may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein said cars may be,

and may retake said cars and withdrew the same from said railroad or premises.

But in such case of default the Railroad Company shall have the right, within thirty (30) days, after the Lessor shall have declared the lease terminated, to pay all outstanding bonds and interest thereon to the date of such payment. Thereupon, upon receipt of evidence of such payment and of the cancellation of all such bonds and interest coupons thereon, the Lessor, its successors or assigns, will make and deliver to the Railroad Company a bill of sale of all its rights, title and interest in and to the cars covered by this lease, and return to the Railroad Company all sums deposited by the Railroad Company with the Lessor, its successors or assigns, on account of cars worn out or destroyed, with accrued and unpaid interest.

Sixth. In case of such retaking the Railroad Company agrees to draw and deliver the cars to the Lessor.

Seventh. On payment of the rent, Lessor agrees to sell and transfer the cars to the Railroad Company.

Then follows testimonium clause and acknowledgment.

AGREEMENT.

Dated February 9, 1907, between Standard Steel Car Company, Bankers Trust Company and Erie Railroad Company.

Recites above lease; also that the Car Company has secured subscriptions to the amount of Nine hundred and fifty thousand dollars to a fund to be known as "Erie Railroad Equipment Trust, Series J"; recites that Car Company proposes to secure to the subscribers the repayment of Nine hundred and fifty thousand dollars in twenty installments, to wit, nineteen semi-annual payments of Forty-seven thousand dol-

lars each, beginning May 1, 1907 and a final payment of Fifty-seven thousand dollars on November 1, 1916, with interest at the rate of 4%.

THIS AGREEMENT, WITNESSETH:

First. Car Company assigns to the Trust Company as Trustee for the holders of the certificates all its right, title and interest in and to the railroad cars; also its right, title and interest to the above lease.

Second. The Trustee agrees to deliver to the Car Company Nine hundred and fifty certificates; then follows form of certificate, trustee's endorsement and form of coupon.

Third. Trustee agrees to keep a register in its office.

Fourth. Agreement as to payment of interest.

Fifth. The Trustee, as assignee of the said Standard Steel Car Company, Lessor, further covenants to perform and, so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals thereunder when and as the same shall be received, for the following purposes, to wit:

(a) To the payment of any taxes upon the railroad cars leased which it may be required to pay.

(b) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(c) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof. Provided, however, that the Railroad covenants and agrees to pay bonds or certificates and coupons issued under said lease at its office, in accordance with the terms and provisions of said bonds and coupons and

of this instrument and of said lease, and such payments shall to the extent thereof be satisfaction of the rental reserved in said lease and a discharge to the Trustee from all obligation to require the payment of rentals to that extent and to apply and distribute the same.

It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Sixth. The Railroad Company agrees to the assignment of the lease to the Trust Company.

Seventh. It is further herein agreed and provided that in case the Railroad Company (a) shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition or to perform all other obligations and covenants in said lease contained to be performed, on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Trustee, then and in each and every case of default as aforesaid, the Trustee shall have the right, as assignee of said Car Company, to enforce all the terms and stipulations of said lease subject to the right of the Railroad Company to exercise its option of purchase as therein set out, and in case the said Trustee shall re-take possession of the said cars, it may either hold or lease, or dispose of said cars or so many thereof as it may deem necessary in such manner at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale, together with any moneys in the hands of the Trustee in lieu of lost,

worn out or destroyed cars, and any unpaid interest thereon, shall be applied by the Trustee to the payment, after deducting all taxes which the Trustee may by law be required to pay in respect to the railroad cars covered by the said lease.

(1) Of the dividend warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then pro rata.

And such re-taking possession of the said railroad cars by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such sum is realized is as, with the proceeds of the sale of said cars, is sufficient for the payment in full of all taxes aforesaid, together with all accrued interest warrants and the principal of all of the said certificates.

The Trustee assumes no liability, however, saving for its own willful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty, however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is incumbent upon it.

Eighth. Provides for temporary receipts.

Ninth. Provides for compensation to the Trustee.

Tenth. Car Company agrees to protect the Trustee from all claims arising out of the use of any patents employed in the construction of said cars.

Then follows testimonium clause and acknowledgments.

Exhibit Erie 15—(3).

EXHIBIT "ERIE-15."

(3)

AGREEMENT dated April 1, 1913, between ERIE RAILROAD COMPANY, STANDARD STEEL CAR COMPANY and WELLS FARGO AND COMPANY.

Recites that the Express Company conducts the express business on the line of the Railroad Company and that twenty-five additional express cars are required, and that the Car Company is willing to construct, sell and deliver the same to the Express Company, and the Express Company is willing to purchase the same and lease them to the Railroad Company.

It is agreed as follows:

First. The Car Company shall construct, sell and deliver to the Express Company and the Express Company shall receive and purchase from the Car Company twenty-five (25) standard express cars to be numbered 375 to 399 inclusive at the prices and upon the terms hereinafter mentioned, each of said cars shall be constructed and equipped strictly in accordance with the Railroad Company's drawings and specifications therefor which have been agreed upon heretofore by the Car Company and the Railroad Company and uniform with the twenty-five express cars recently built by the Barney and Smith Car Company for the Express Company and leased to the Railroad Company, except that said cars are to be equipped with the Car Company's make of steel six wheel trucks as shown on a certain blue print numbered 14,630 heretofore delivered to the Railroad Company by the Car Company, with the Car Company's make of springs and with solid steel wheels manufactured by the Forged Steel Wheel Company; the aforesaid drawings, specifications and blue print being hereby made a part hereof to the same effect as if they were attached hereto.

Exhibit Erie 15—(3).

The Car Company shall promptly assemble the material for the construction of said cars and shall deliver them to or upon the order of the Express Company f. o. b. tracks of the Boston and Maine Railroad Company at Worcester, Massachusetts, during the month of May, 1913, unless prevented by strikes, fires, delays of material-men or carriers or other contingencies which are unavoidable or beyond the control of the Car Company, and which necessarily delay the prosecution or completion of the work of constructing said cars; and in the event of any delay so caused the time herein fixed for the completion and delivery of said cars shall be extended for a period equivalent to the time lost by reason of any or all of the aforesaid causes. It is understood that said cars are to be leased by the Express Company to the Railroad Company and it is agreed that the time herein specified at which the said cars are to be delivered to the Express Company shall be of the essence of this agreement.

Second. The total cash cost of constructing, equipping and delivering said cars in the manner hereinbefore provided shall be Seven thousand, eight hundred and forty-eight and 71/100 Dollars ($7,848.71) each and the Express Company shall pay such total cash cost to the Car Company in New York Exchange at the office of the Car Company upon the delivery of said cars in the manner hereinbefore provided and upon the certificate of an inspector or inspectors duly authorized by the Railroad Company, stating that said cars have been constructed and equipped in accordance with the provisions contained herein.

The Express Company shall also pay promptly upon the receipt thereof from the Railroad Company from time to time as the work of constructing said cars progresses all invoices or bills covering materials which the Express Company agrees under Article Third hereof to furnish or cause to be furnished

to the Car Company free of expense in connection with the construction of said cars; provided, however, that said vouchers or bills shall first be approved by the General Mechanical Superintendent of the Railroad Company or other officer designated by it.

Third. Provides for certain "specialities" to be included as part of the construction of said cars.

Fourth. Provides that the Railroad may have an inspector at the works of the Car Company.

Fifth. Concurrent with the delivery of said cars and their acceptance in the manner hereinbefore provided full legal title thereto shall be vested in the Express Company to the end that the Express Company shall lease said cars to the Railroad Company upon the terms and conditions hereinafter set forth.

Sixth. The Express Company hereby leases to the Railroad Company all and singular the said cars from the dates of the respective deliveries thereof until the first day of April, 1913, or the earlier termination of this agreement and lease as hereinafter provided.

Seventh. The Railroad Company agrees to accept and receive as and when ready for delivery at Worcester, Massachusetts, in good order and complete according to plans and specifications as agreed upon, all of such cars, in such installments as may from time to time be ready for delivery, upon and subject to all the terms and conditions of this agreement, and promises and agrees to faithfully perform and carry out all the terms and conditions hereof.

Eighth. The Railroad Company shall pay to the Express Company as rental for said cars the entire amount of money to be paid as aforesaid by the Express Company, including the total cash cost of all of said cars constructed and delivered pursuant to the

terms of this agreement and all sums paid in settlement of invoices or bills for materials furnished or caused to be furnished by it hereunder, in ten (10) semi-annual payments with interest payable semi-annually upon such part thereof as shall be outstanding at the rate of five per centum (5%) per annum; shall pay all taxes, licenses, assessments and charges of any kind which may be assessed or levied upon said cars or any part thereof; shall retain upon said cars the plate or stencil to be placed on each side thereof in the manner hereinbefore provided up to the time the last payment is made hereunder by the Railroad Company to the Express Company, and the lien of the Express Company upon said cars shall continue up to the time of making such final payments.

The Railroad Company hereby expressly reserves the right (which the Express Company agrees that the Railroad Company shall have) at any time during the continuance of this agreement, upon giving thirty (30) days' notice in writing of its intention so to do, to pay off all such sum or sums of money together with the interest thereon which it may owe to the Express Company under the provisions of this agreement.

Ninth. The Railroad Company agrees to assume and pay the cost of maintenance, renewals and repairs.

Tenth. Car Company agrees to pay royalties and other charges because of the use of patents.

Eleventh. The Railroad Company hereby agrees that in case of default by it in the payment when due of any sums herein agreed to be paid, the Express Company may withhold so much of any and all amounts due or to become due to the Railroad Company from the Express Company under the aforesaid agreement existing between said companies cov-

ering the conduct of express business over the lines of the Railroad Company as shall be necessary to pay said sums so in default and may apply the amount so withheld to the payment of said sums so in default until they are fully paid and satisfied.

Twelfth. The Express Company may in its discretion resort to any proceeding, legal or equitable, in its judgment necessary or proper for the enforcement of this indenture, and any remedies specially conferred by any of the provisions of this indenture shall be deemed cumulative and in addition to all other remedies in law or in equity in favor of the Express Company.

Thirteenth. The Express Company hereby covenants and agrees that when the Railroad Company shall have completed the payment of all the sums which it has agreed to pay as rental for said cars and has kept and performed all and singular the obligations and covenants of this agreement on its part, it, the said Express Company, shall and will, upon the payment by the Railroad Company to the Express Company, its successors or assigns, or the additional sum of One Dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned, and transferred to the Railroad Company, its successors and assigns, as its absolute property all of the said cars constructed and leased hereunder, and evidence such sale and transfer by an appropriate bill of sale or such other instrument as may be reasonably required by the Railroad Company, so that thereupon and thereafter, the absolute ownership in said cars shall be and become vested in the Railroad Company, its successors and assigns.

Then follows testimonium clause and acknowledgments.

Exhibit Erie 15—(4).

EXHIBIT ERIE-15.

(4)

AGREEMENT dated March 8, 1911, between ERIE RAILROAD COMPANY and BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY COMPANY.

Recites the parties desire that a portion of said line of said railroad be revised by eliminating the curvature thereof.

AGREED

First. Pittsburgh Company to furnish labor, tools and material necessary for the work as therein described.

Second. Pittsburgh Company agrees to comply with all ordinances, laws, etc.

Third. The entire cost of all labor, tools and materials employed on said work and all other costs and expenses connected therewith shall be borne and paid by the parties hereto in the following proportions and manner:

(a) That part of said cost and expense chargeable to operating expenses under the Classification of Expenditures for Additions and Betterments as prescribed by the Interstate Commerce Commission for Steam Roads in accordance with Section 20 of the Act to Regulate Commerce shall be borne and paid for by the parties hereto in the proportions that their respective wheel mileage upon said line of railroad for the second half of the fiscal year next preceding the date of the satisfactory completion of said work in the manner provided herein bear to the total wheel mileage thereon during said period.

(b) That part of said cost and expense chargeable to Capital Account under the aforesaid Classification shall be advanced and paid in the first instance by the Pittsburgh Company and the entire amount of said cost and expense chargeable to Capi-

tal Account so advanced and paid by the Pittsburgh Company as aforesaid shall be repaid by the Erie Company to the Pitsburgh Company in five equal, successive, annual payments, the time of making said payments to be reckoned from the date of the satisfactory completion of said work in the manner provided for herein and the first of said payments to be made at the expiration of one year from said date, with interest on unpaid balances at the rate of four and one-half per centum (4½%) per annum from the respective dates when the advances were made by the Pittsburgh Company, said interest to be payable semi-annually on the first day of June and the first day of December in each year; PROVIDED, however, that the Erie Company at its option may repay the whole of said amount or any part thereof to the Pittsburgh Company on any interest date prior to the date on which the last of said five annual payments shall be due.

(c) From and after the date of the completion of said work in the manner provided for herein and so long as the aforesaid agreement between the parties hereto dated July 1st, 1907, shall remain in effect, the Pittsburgh Company shall pay to the Erie Company interest at the rate of four and one-half per centum (4½%) per annum payable semi-annually on the first day of June and the first day of December in each year on such proportion of the aforesaid part of the cost and expense of said work chargeable to Capital Account as aforesaid as its wheel mileage upon said line of railroad for the period of six months of the fiscal year next preceding the interest date bears to the total wheel mileage thereon during said period.

Fourth. Said work to be fully completed on or before December 1, 1911.

Fifth. Agreement as to method of charging for loss or damage to property or person.

Sixth. The revised line is to become the property of the Erie Company or its Lessor the New York, Lake Erie and Western Coal and Railroad Company, and the Pittsburgh Company is entitled to the joint use thereof.

Then follows testimonium clause and acknowledgment.

EXHIBIT "ERIE 15."

(5)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated December 1st, 1905.

AGREEMENT.

Between EDWARD T. STOTESBURY and THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES and ERIE RAILROAD COMPANY, for issue of $7,000,000. Gold Equipment Trust Certificates. Dated December 3d, 1905. Series "I."

LEASE.

Agreement dated December 1, 1905 between Edward T. Stotesbury, called the Lessor, and the Erie Railroad Company, Witnesseth:

The Lessor leases to the railroad company, for the term ending June 1, 1916, unless sooner terminated, certain cars and locomotives as follows:

2,000 Steel Underframe box cars.
500 Steel Underframe box cars.
1,500 Steel Underframe box cars.
1,000 Steel Hopper cars.
1,000 Steel Hopper cars.
500 Steel Underframe Gondola cars.
25 Consolidation Freight Locomotives.
50 Consolidation Freight Locomotives.
25 Pacific Type Passenger Locomotives.

upon the terms and conditions and covenants following, to wit:

First. That the said Railroad Company shall and will pay to the Lessor, or his assigns at the office of The Pennsylvania Company for Insurance on Lives and Granting Annuities, in the city of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad cars and locomotives:

1. Upon demand after February 1st, 1906, a cash payment of one million six hundred and twenty-five thousand dollars, ($1,625,000);

2. Half-yearly, on the first days of June and December in each year, the first payment to be made on the first day of June, 1906, the following sums:

(a) A sum equal to two per cent. on seven million dollars ($7,000,000), which sum thus paid shall be reduced from time to time by an amount equal to two per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of seven million dollars, as specified in paragraph 3 of this article;

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease;

(c) A sum equal to the taxes upon the income or property of the trust which the Lessor or his assigns may be liable to pay, and any taxes which may by law be charged against the Lessor on account of the payments or rental hereunder.

3. Half-yearly, for ten years, on the first day of June, and the first day of December in each year, beginning with the first day of December, 1906, the following sums, respectively:

On December 1st, 1906	$350,000
On June 1st, 1907	350,000

Exhibit Erie 15—(5).

(Then follows provisions for further payments of $350,000 each on December 1 and June 1 of each year down to and including June 1, 1916.)

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said railroad cars and locomotives in good order and repair, and to cause the said railroad cars and locomotives to be kept numbered as hereinbefore mentioned, and all of said railroad cars and locomotives to be plainly marked upon both sides thereof with the words, "E. T. Stotesbury, Trustee, Owner," and that it, the said Railroad Company will replace at its own cost any of the said cars or locomotives which may be destroyed from any cause whatever during the continuance of this lease, by other railroad cars or locomotives of equal value as those destroyed and of substantially as good material, character and construction, and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said railroad cars or locomotives as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said cars and locomotives, and each of them, to be lettered "Erie" for convenience of identification of its lessee interest herein.

Third. The railroad company agrees to furnish an inventory of the cars and locomotives.

Fourth. The company agrees that there shall be no assignment or transfer of its rights or interest in the cars or locomotives without the consent of the Lessor, or his assigns.

Fifth. Divides cars and locomotives into three classes designated as numbers one, two and three; and provides for execution and delivery of a bill of sale at certain dates.

Exhibit Erie 15—(5).

Sixth. That in case the Railroad Company shall make default in the payment of any part of the said rental for more than thirty days after the same shall have become payable, or shall fail to keep the said railroad cars and locomotives in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor or his assigns may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad cars or locomotives may be, and may retake the said railroad cars and locomotives and withdraw the same from the said railroad or premises.

Seventh. In case of such retaking the company agrees to draw the cars and locomotives to such points as shall be designated by the Lessor or his assigns, and to deliver same.

Eighth. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned and transferred, to the Railroad Company, its successors and assigns, as its absolute property, all the railroad cars and locomotives held under this lease (or so many thereof as shall not have been previously assigned and transferred), and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter, the absolute ownership in said railroad cars and locomotives shall be and become vested in the Railroad Company, its successors and assigns.

Exhibit Erie 15—(5).

Provided, however, and it is hereby understood, that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee, all his right, title, and interest in and to said cars and locomotives hereby leased unto the Railroad Company, and as well all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor.

The Lessor hereby transfers and assigns unto the Railroad Company all the rights, claims and demands arising or which may arise against the American Car and Foundry Company, The Barney and Smith Car Company, Standard Steel Car Company, Pressed Steel Car Company, American Locomotive Company, or the Baldwin Locomotive Works (Burnham Williams & Co.), the builders, or any one or more of them, under the contracts under which the said cars and locomotives are built by them, respectively, in case of the failure of any of said companies to deliver said cars or locomotives or any of them at the times or in the manner therein provided.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(5).

AGREEMENT.

Agreement dated December 2, 1905, between Edward T. Stotesbury, Pennsylvania Company for Insurance on Lives and Granting Annuities and Erie Railroad.

Recites the above lease; also that certain bankers have secured subscriptions to the amount of $7,000,000 to Erie Railroad Equipment Trust, Series "I"; further, that Stotesbury proposes to secure to the parties subscribing to said fund the repayment thereof in 20 semi-annual instalments, as follows: (Then follows list of repayments beginning December 1, 1906, each for the sum of $350,000) with interest at the rate of four per cent. This agreement witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad cars and locomotives leased, as aforesaid, unto the Railroad Company, and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue under the lease aforesaid.

Second. The said Trustee covenants and agrees that contemporaneously herewith it will certify and deliver to Drexel & Co., for distribution to the several subscribers to said "Erie Railroad Equipment Trust, Series 'I'," seven thousand certificates in the following form, to wit: (Then follows form of equipment trust certificate, dividend warrant and guaranty).

Third. Trustee agrees to keep a register.

Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor, further covenants to

perform, and, so far as possible, to enforce the performance of all and singular the terms, conditions, and covenants, of the said lease, and to apply and distribute the rents thereunder when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad cars and locomotives, and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof.

It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own willful and intentional breach thereof.

Fifth. The Erie Railroad Company becomes a party hereto in order to express its assent to the assignment of the said lease by the said Edward T. Stotesbury to the said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee for the benefit of the subscribers to said "Erie Railroad Equipment Trust, Series 'I'," and does hereby accept all the terms of this assignment, including the obligations to make payment of the reasonable expenses of the Trustee, and of all taxes

hereinabove mentioned, for which the Trustee may be liable, or may by law be required to deduct from the principal of the said certificates or the interest thereon.

Sixth. It is further herein agreed and provided that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable, or shall fail to keep and perform all the terms and covenants of said lease, that the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and that in case the said Trustee shall retake possession of the said railroad cars or locomotives it may either hold or lease or dispose of said railroad cars or locomotives or so many thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may by law be required to pay in respect to the trust property, or the certificates aforesaid, or the interest thereon:

(1) Of the dividend warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata.*

And such retaking possession of the said railroad cars or locomotives by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such

sum is realized as, with the proceeds of the sale of said cars and locomotives, is sufficient for the payment in full of all taxes and expenses aforesaid, together with all accrued interest warrants and the principal of all of the said certificates.

The Trustee assumes no liability however saving for its own wilful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty, however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is incumbent upon it.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE-15."

(6)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated December 2, 1912.

AGREEMENT OF ASSIGNMENT OF LEASE

Between Edward T. Stotesbury and Commercial Trust Company, Trustee, and Erie Railroad Company, for issue of $2,000,000 Gold Equipment Trust Certificates, dated December 3rd, 1912. Series "S."

LEASE.

Agreement dated December 2, 1912, between Edward T. Stotesbury and Erie Railroad Company, Witnesseth:

That for and in consideration as well of the sum of one dollar, paid by the said Railroad Company to the Lessor, as of the rents and covenants hereinafter mentioned the Lessor has let and leased, and by these presents doth let and lease to the Railroad

Exhibit Erie 15—(6).

Company for the term of ten years from December 2nd, 1912, and ending December 2nd, 1922, unless sooner terminated as hereinafter provided, the railroad equipment more particularly described as follows: (Then follows description and statement of numbers of 1,000 steel underframe box cars, 500 steel underframe box cars, 30 Mikado locomotives, 5 K-2 Pacific locomotives) upon the terms, conditions and covenants following to wit:

Article First. The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment:

1. Upon demand after December 2nd, 1912, each payment aggregating five hundred and eleven thousand two hundred and nineteen ($511,219) dollars.

II. Half-yearly, on the first days of June and December in each year, the first payment to be made on the first day of June, 1913, the following sums:

(a) A sum equal to two and one-fourth per cent. on two million ($2,000,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of two million ($2,000,000) dollars, as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

III. Half-yearly, for ten years on the first day of June and the first day of December in each year, beginning with the first day of June, 1913, the following sums respectively:

On June 1st, 1913.....$100,000.
On December 1st, 1913..... 100,000.

(Then follows provision for further payments of $100,000. each on June 1st and December 1st of each year down to and including December 1st, 1922.)

Article Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense, the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each car or locomotive with the words: "E. T. Stotesbury, Lessor, Commercial Trust Company, Trustee, Owner." And that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie," for convenience of identification of its lessee interest therein.

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third. The Company agrees to furnish inventory.

Fourth. The Company agrees that there shall be no assignment or transfer without the consent of the Lessor.

Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all instalments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Article Sixth. In case of such retaking the company agrees to draw the said equipment to such points as shall be designated by the Lessor, and to deliver same.

Article Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the ab-

solute ownership of said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Article Eighth. Recites intention of the Lessor to assign all his right, title and interest to Commercial Trust Company as Trustee.

Article Ninth. Lessor transfers and assigns to the Railroad Company all claims against the builders of the equipment, in case of failure of said builders of said equipment to deliver same as required by the conditions of the contracts therefor.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated December 3, 1912, between Edward T. Stotesbury, Commercial Trust Company and the Erie Railroad Company, witnesseth:

Recites the above lease; also that certain bankers have secured subscriptions for $2,000,000. to Erie Railroad Equipment Trust, Series "S", and that the subscribers are to be repaid in 20 semi-annual instalments of $100,000. each beginning June 1, 1913, and ending December 1, 1922, with interest at the rate of 4½ per cent. Now therefore, this agreement, witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company, as Trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash payments aggregating five hundred and eleven thousand two hundred and nineteen ($511,219) dollars

due on demand after December 2nd, 1912, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

Second. The said Trustee covenants and agrees that contemporaneously herewith it will certify and deliver to Drexel & Company for distribution to the several subscribers to said "Erie Railroad Equipment Trust, Series 'S'," two thousand certificates substantially in the following form, to wit: (Then follows form of equipment trust certificate and dividend warrant.)

Third. Trustee agrees to keep a register at its office.

Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals payable on and after June 1st, 1913, thereunder, when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be cancelled upon payment thereof.

It is distinctly understood and agreed that neither the Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. The Erie Railroad Company becomes a party hereto in order to express its assent to the assignment herein contained of the said lease by the said Edward T. Stotesbury for the said Commercial Trust Company, as Trustee, for the benefit of the holders of the certificates of said "Erie Railroad Equipment Trust Series 'S,' " and does hereby accept and become bound by all the terms of this agreement and covenants to make payment of the reasonable expenses of the Trustee and of all taxes hereinable mentioned, for which the Trustee may be liable, or may by law be required to deduct from the principal of the said certificates or the dividends thereon.

Sixth. It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury, to declare the principal of all of said equipment trust certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said railroad equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale,

for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon,

(1) To the dividend warrants then due,

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata*.

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad of the future accruing rent until such sum is realized, as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates.

Seventh. There shall be no duty upon the Trustee to insure or repair or take care of any of the trust property, nor to record this agreement, or the Agreement of Lease, nor shall it be responsible for the performance or non-performance of any of the covenants and agreements undertaken by the parties to said agreement; nor shall it be required to undertake any active duty hereunder until fully indemnified to its satisfaction, the Trustee assuming no liability save for its own wilful or gross neglect.

The Commercial Trust Company hereby constitutes and appoints Thomas Dewitt Cuyler to be its attorney for it and in its name and as and for its corporate act and deed to acknowledge this instrument before any person having authority by the Laws of the Common-

wealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

The Erie Railroad Company hereby constitutes and appoints F. D. Underwood to be its attorney for it and in its name and as and for its corporate act and deed to acknowledge this instrument before any person having authority by the Laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(7)

American Car and Foundry Company, Columbia-Knickerbocker Trust Company, Trustee, and Erie Railroad Company. Conditional Sale Agreement and Indenture of Lease. Dated June 14, 1913. Series "T."

Recites request of railroad to the Trustees to secure certain cars. Parties agree as follows:

First. The Car Company agrees to manufacture for and to sell and deliver to the Trustee, f. o. b. tracks at Car Company's works at Madison, Ill., on or prior to the 31st day of December, 1913, the following described railroad equipment and rolling stock, to wit:

Fifteen Hundred 30-ton steel underframe box cars to be numbered 87500 to 88999, both inclusive, and to be lettered "Erie," (comprising the trust equipment in this instrument mentioned), built in accordance with specifications heretofore agreed upon between the Railroad and the Car Company; and agrees to accept as full payment for all said cars, the principal sum of One Million Five Hundred and Eighty-seven Thousand Three Hundred and Twenty-five ($1,587,325.00) dollars, of which sum Two Hundred and Sixty-seven Thousand Three Hundred and Twenty-

five ($267,325.00) Dollars shall be paid in cash in the manner and at the times hereinafter provided, and the remaining One Million, Three Hundred and Twenty Thousand ($1,320,000) Dollars of said principal sum shall be in the "equipment notes" (hereinafter described) of the Railroad to be issued and delivered as hereinafter provided for.

Second. The Trustee agrees to, and does hereby, lease unto the Railroad, and the Railroad does hereby hire and lease from the Trustee, all and singular the said trust equipment, from the times and at the place of the respective deliveries thereof to the Trustee by the Car Company and until the 15th day of June, 1923 (or the earlier termination of this agreement as hereinafter provided for), at the rental and upon and subject to the terms and conditions hereinafter stated.

Third. The railroad agrees to receive and accept the equipment and to pay for the same as set forth in the agreement; the delivery and acceptance of the equipment of the railroad shall not vest any right or title in the railroad other than as defined.

And it is further covenanted and agreed by and between the parties:

I. The Railroad agrees, as a consideration for the leasing to it of the trust equipment, to faithfully observe and comply with all and every the terms, provisions and conditions of this agreement by it to be observed and complied with; and agrees to pay to the Trustee, to and for the account of the Car Company, in cash and in the manner and at the times hereinafter provided, the sum of two hundred and sixty-seven thousand three hundred and twenty-five ($267,325.00) dollars; and agrees to pay as rental for said trust equipment:

(a) The entire principal sum of the equipment notes issued in accordance with the provisions hereof according to their tenor, as the same severally mature,

together with interest at the rate of five (5%) per cent. per annum upon the principal of said notes, according to the tenor of the coupons thereto attached—all such payments both of principal and interest to be in gold coin of the United States of the present standard of weight and fineness, or its equivalent; (b) any and all taxes which may be assessed or levied upon the trust equipment, or any part thereof; and any and all taxes which the Trustee may be required to pay on the equipment notes issued hereunder, and the interest coupons thereon, or by reason of this agreement; (c) compensation and expenses of the Trustee hereunder; and (d) all expenses incurred in the printing or lithographing (or both) of the notes and coupons herein provided for, and in the execution, acknowledgment filing and recording of this agreement and of all agreements supplemental hereto or amendatory hereof wherever in the opinion of the Trustee or the Car Company it may be necessary or proper to record or file the same for the complete protection of the holders of the notes issued in accordance with the terms of this agreement, and for the purpose of securing the Trustee in the ownership of the trust equipment until all payments herein provided to be made shall have been made and until all things herein required to be done by the Railroad shall have been done.

II. The Railroad agrees to forthwith execute and deliver to the Trustee its notes (herein designated "equipment notes") aggregating in principal amount One Million Three Hundred and Twenty Thousand ($1,320,000) Dollars. Such notes shall be designated as "Erie Railroad Equipment Notes, Series T"; shall be for the principal sum of One Thousand Dollars each; shall all be dated as of June 14, 1913 and bear interest (to be evidenced by interest coupons attached) from June 15, 1913, at the rate of five per cent. per annum, payable semi-annually, on the fifteenth day

of December, and of June in each year, beginning December 15, 1913, and ending June 15, 1923.

Said notes shall be numbered consecutively from 1 to 1320 inclusive; each said note shall have endorsed thereon a certificate of the Trustee, as hereinafter specified; and said notes shall mature as follows: (Then follows list of numbers and dates of maturity of the notes, running from number 1 to number 1320, and maturing between December 15, 1913 and June 15, 1923.

Then follows the form of note, coupon and Trustees certificate and further provisions as to the amount and the terms of such notes).

III. The Car Company agrees to complete the delivery of the entire trust equipment on or prior to December 31, 1913—its obligation with respect to deliveries however, being made expressly subject to delays caused by accidents, labor troubles, fires, delays of sub-contractors or in receipt of material, or any other cause or causes beyond the control of itself or of its sub-contractors it being understood that time is of the essence of this agreement.

The Trustee hereby transfers and assigns unto the Railroad, for the protection of the Railroad's interests as lessee hereunder, all the rights, claims and demands arising or which may arise against the Car Company as the builder of said railroad equipment, or any part thereof, under the contract which the said railroad equipment is built by it, in case of the failure of the Car Company to deliver said railroad equipment, or any part thereof at the times or in the manner and in accordance with the specifications therefor as in said contract provided, but nothing in this article contained shall affect or divest the title of the Trustee in and to said equipment.

IV. Railroad agrees to keep an inspector at the works of the car company.

V. (a) The Railroad agrees that upon delivery of each one hundred (100) cars of the trust equipment, and from time to time as the same are delivered, it will execute and deliver, in duplicates, to the Car Company and to the Trustee a certificate or certificates executed by its President or by one of its Vice-Presidents and by either its Secretary, one of its Assistant Secretaries, its Treasurers, or one of its Assistant Treasurers, showing the number (in every case one hundred (100) or a multiple thereof) of the cars so delivered and the road numbers thereof—which certificate shall be taken and acted on by the Trustee as conclusive evidence of its right to pay to the Car Company, either in cash or partly in cash and partly in equipment notes, as hereinafter specified, for the cars so delivered.

(b) The Railroad agrees to pay to the Trustee the sum of $267,325, specified in Article I hereof, and to pay said sum to the Trustee at such times and in such amounts as will enable the Trustee forthwith to make to the Car Company the payments hereinafter specified for the cars as delivered.

(c) Upon or at any time after the Trustee shall have received from the Railroad the equipment notes (whether permanent or temporary) above mentioned, it shall, upon the written request of the President or Treasurer of the Car Company, authenticate and deliver all of said notes, provided, however, that such authentication and delivery shall not be made unless the Trustee shall receive for the notes so authenticated and delivered an amount in cash equal to the face value of the notes so authenticated and delivered with accrued interest thereon to the date of such authentication and delivery. In the event of such authentication and delivery of the equipment notes, the cash so received by the Trustee shall be held by it in trust for the benefit of the Car Company, to be paid to it from time to time not otherwise than as hereinafter pro-

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vided for, viz: Whenever there shall be delivered to the Trustee a bill or bills of the Car Company for cars forming part of the trust equipment delivered by it (in every case one hundred (100) or a multiple thereof), approved as to amount by the President or a Vice-President of the Railroad, and accompanied by a certificate executed as specified in foregoing subdivision (a) hereof, together with a certificate of inspection executed as specified in Article IV of this instrument, the Trustee shall pay over in cash to the Car Company the full amount of such bill or bills—retaining the balance of the said moneys so received by it in trust for the benefit of the holders of the equipment notes, but subject to its prior obligation to pay therefrom the bills of the Car Company for cars forming part of the trust equipment that shall thereafter be delivered by the Car Company in conformity with the provisions hereof.

In no event shall the Trustee be liable to the holders of outstanding equipment notes, nor to the Car Company, for an amount in excess of the cash which it shall receive under the provisions of this article V and of preceding Article I of this agreement.

(d) If there shall be no authentication and delivery of the equipment notes as provided for in preceding subdivision (c) hereof, then the Trustee, upon the presentation to it of certificate or certificates executed as specified in preceding subdivision (a) hereof, and upon the payment to it of the moneys specified in preceding Article I of this instrument, in accordance with the provisions of subdivision (b) of this Article V of this instrument, shall pay to the Car Company, with respect to each lot of one hundred (100) cars, in cash, the sum of Seventeen thousand eight hundred dollars ($17,800) out of the moneys to be paid to it by the Railroad for the account of the Car Company as specified in said Article I of this instrument; and shall also certify and deliver to the

Car Company, or on its order, with respect to each lot of one hundred (100) cars, the equipment notes of the Railroad of the face value of Eighty-eight thousand Dollars ($88,000)—in each case of the earliest maturities then remaining undelivered by the Trustee.

Any balance of the cash or of the equipment notes not theretofore paid or delivered shall be adjusted upon the delivery to the Trustee of the certificate of the Railroad respecting the last lot of cars to be delivered hereunder. And as soon as may be after the delivery of the last lot of cars, the Railroad and the Car Company shall account together respecting such allowance of interest as may be due from the Car Company to the Railroad, and the Railroad will thereupon pay to the Trustee for the account of the Car Company the balance of the cash payment hereunder of Two Hundred and Sixty-seven Thousand, Three Hundred and Twenty-five ($267,325.00) dollars then remaining unpaid, less such amount of interest as may then be owed by the Car Company to the Railroad.

As the cars comprising the trust equipment are paid for, as hereinabove specified, title thereto shall vest in the Trustee, and the Trustee shall be entitled to have from the Car Company a bill or bills of sale, or other instrument or instruments evidencing that fact.

Anything herein contained to the contrary notwithstanding, in the event that any of the cars deliverable by the Car Company hereunder shall remain undelivered on April 1, 1914, all moneys theretofore deposited with the Trustee by the Car Company or the Railroad as hereinbefore provided, and then remaining on deposit unapplied to cars delivered shall be applied by the Trustee under the direction of the Railroad to the purchase of steel underframe box cars of the same general design as the cars hereinbefore described and bearing the same lettering as to interest or ownership, and the cars so purchased shall be and

become subject to this Agreement as fully and in all respects as though said cars had been cars manufactured and delivered by the Car Company to the Railroad hereunder; and the title to all equipment so purchased shall be vested in the Trustee for the protection of the holders of the notes issued hereunder in like manner as the title to the other equipment herein described.

VI. Railroad to have possession and use of the equipment upon its railroad and connecting railroads. Equipment to be marked in a certain manner.

VII. Railroad agrees to keep equipment in proper order and repair, to replace such parts thereof as may be worn out or destroyed; shall furnish inventory of the numbers and descriptions of the cars included in the equipment.

VIII. Railroad agrees that it will not assign or transfer this indenture, or any of its rights hereunder, without the consent of the Trustee.

IX. The Railroad agrees that the title of the Trustee shall not be affected by any failure to comply with the Laws of the United States or of any State.

X. The Railroad agrees that the notes and coupons shall be paid at maturity, and that no notes or coupons in substitution thereof shall be issued; nor shall the railroad consent to the extension of the time of payment of the principal of any such notes or coupons.

XI. The Railroad agrees to make, execute and deliver all further agreements as the car company, or the Trustee, may require.

XII. Upon payment by the Railroad of the notes and interest, and upon performance by it of its covenants, the Trustee will execute and deliver a bill of sale to the railroad.

Exhibit Erie 15—(7).

XIII. The railroad entitled to possession of the equipment so long as it observes the conditions of the agreement; but in case of default which continues for 30 days after notice in writing by the Trustee, the Trustee may, at its option, retake the Trust equipment; on such default the railroad agrees to deliver the equipment to the Trustee and relinquish all claims or rights in and to the same.

Upon such election by the Trustee to retake the equipment, the whole of the principal of the notes may be declared due and shall be so declared upon the written request of the holders of at least one-fourth of the notes then outstanding; Trustee may sell the equipment with or without notice to the railroad and apply the net proceeds to the payment of its expenses and of the principal and interest on the notes.

The holders of fifty per cent. of the notes may waive default on the part of the railroad and shall have the right to direct and control the action of the Trustee.

XIV. The Trustee not to be liable for delay in delivery of the equipment, or for any failure or default on the part of the Railroad, or of the car company, or for any defect in equipment.

XV. Provides for service of notice upon the railroad by serving certain of its officers, either personally or by mail.

XVI. Trustee may resign on giving certain notice; or may be removed by a majority of the outstanding notes.

XVII. All parties may treat the bearer of any note or coupon as the absolute owner thereof.

XVIII. Defines the companies intended by the expressions "Car Company," "Trustee," and "Railroad."

Then follows testimonium clause and acknowledgments.

Exhibit Erie 15—(8).

EXHIBIT "ERIE-15."

(8)

Agreement dated December 1, 1911, between Erie Railroad Company, Barney and Smith Car Company and Wells Fargo & Company.

Recites, the Express Company conducts the express business and that 25 additional express cars are required; and that the car company is willing to construct, sell and deliver the cars to the express company, and the express company is willing to purchase the cars and to lease them to the railroad. Agreed as follows:

First. The car company agrees to construct and sell to the express company 25 express cars in accordance with certain drawings and specifications.

The car company agrees to deliver same at Dayton, Ohio, commencing March 1, 1912, and to complete delivery March 31, 1912.

Second. The total cash cost of constructing and delivering said cars in the manner hereinbefore provided shall be as follows:

(a) For each of said cars provided with large automobile door in one and six thousand one hundred forty five and 63/100 dollars ($6,145.63).

(b) For each of said cars not so provided Six Thousand, One Hundred Thirty Two and 93/100 Dollars ($6,132.93).

The Express Company shall pay said total cash cost to the Car Company in New York Exchange at the office of the Car Company upon the delivery of said cars to it in the manner hereinbefore provided and upon the certificate of inspectors duly authorized by the Railroad Company stating that said cars have been constructed and equipped in accordance with the provisions contained herein.

Exhibit Erie 15—(8).

The Express Company shall also pay promptly upon the receipt thereof from the Railroad Company from time to time as the work of constructing said cars progresses all invoices or bills covering materials which the Express Company agree under Article Third hereof to furnish or cause to be furnished to the Car Company free of expense in connection with the construction of said cars; provided, however, that said vouchers or bills shall first be approved by the General Mechanical Superintendent of the Railroad Company or other officer designated by it.

Third. Express Company agrees to furnish certain special specialities.

Fourth. The railroad agrees to keep an inspector at the works.

Fifth. The delivery of the cars and their acceptance to vest legal title in express company.

Sixth. The express company leases the cars to the railroad company from the dates of delivery until December 1, 1916.

Seventh. The railroad company agrees to accept cars as the same may be ready for delivery.

Eighth. The Railroad Company shall pay to the express company as rental for said cars the entire amount of money to be paid as aforesaid by the Express Company, including the total cash cost of all of said cars constructed and delivered pursuant to the terms of this agreement and all sums paid in settlement of invoices or bills for material furnished or caused to be furnished by it hereunder, in ten (10) semi-annual payments with interest payable semi-annually upon such part thereof as shall be outstanding at the rate of five per centum (5%) per annum; shall pay all taxes, licenses, assessments and charges of any kind which may be assessed or levied upon said cars or any part thereof; shall retain upon said

cars the plate or stencil to be placed on each side thereof in the manner hereinbefore provided up to the time the last payment is made hereunder by the Railroad Company to the Express Company, and the lien of the Express Company upon said cars shall continue up to the time of making such final payment.

The Railroad Company hereby expressly reserves the right (which the Express Company agrees that the Railroad Company shall have) at any time during the continuance of this agreement, upon giving thirty (30) days notice in writing of its intention so to do, to pay off all such sum or sums of money together with the interest thereon which it may owe to the Express Company under the provisions of this agreement.

Ninth. The Railroad Company assumes cost of maintenance and repairs.

Tenth. The Car Company agrees to pay royalties.

Eleventh. The Railroad Company hereby agrees that in case of default by it in the payment when due of any sums herein agreed to be paid, the Express Company may withhold so much of any and all amounts due or to become due to the Railroad Company from the Express Company under the aforesaid agreement existing between said companies covering the conduct of express business over the lines of the Railroad Company as shall be necessary to pay said sums so in default and may apply the amount so withheld to the payment of said sums so in default until they are fully paid and satisfied.

Twelfth. Express Company may resort to any proceedings to enforce this agreement.

Thirteenth. The Express Company agrees to sell and transfer the cars to the Railroad Company upon payment of the sums agreed to be paid as rental.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(9).

EXHIBIT "ERIE-15."

(9)

Agreement dated November 28, 1915, by and between Baldwin Locomotive Works, Lessor, and Erie Railroad Company, Lessee; Witnesseth:

First. The Lessor loans to the Lessee ten locomotives of certain numbers with the privilege of using the same at the Lessee's risk upon its railroad for the term of 37 months.

Second. It is agreed that the value of each of said locomotives is twenty-four thousand, three hundred twenty-seven dollars and eighty-six cents ($24,327.86) and that if all or any of said locomotives are not purchased by the lessee as provided in this agreement, and are in any way lost or destroyed prior to actual redelivery to the lessor, said value with interest from the date of this agreement shall become immediately due and payable by the lessee to the lessor; and in case said locomotives, or any of them shall be returned to, or be reclaimed by the lessor, under the provisions of this agreement, in a damaged condition, the amount of any such damage (except depreciation from reasonable use) shall be paid by the lessee to the lessor; and in case said locomotives or any of them shall be returned to, or be reclaimed by the lessor under the provisions of this agreement, without any injury or damage, except depreciation from reasonable use, the amount of such depreciation shall be determined as hereinafter provided, and the amount so determined shall be paid by the lessee to the lessor.

Third. Lessee not to use the locomotives other than as provided in the agreement, without the written consent of the lessor.

Fourth. The lessee will pay to the lessor as rent for said locomotives the value of each thereof, as

mentioned in the first section of this agreement, together with interest on unpaid balances during the term of this agreement, making in all the sum of two hundred sixty-four thousand, six hundred twenty-four dollars and six cents ($264,624.06), in the following payments:

On December 28th, 1913, Twenty-four thousand, three hundred twenty-seven dollars and sixty-six cents—$24,327.66.

On March 28th, 1914, and quarterly thereafter up to and including December 28th, 1916, the sum of Twenty thousand, twenty-four dollars and seventy cents ($20,024.70) as the amount of each quarterly payment.

Fifth. If the lessee shall have faithfully performed all the terms and conditions of this agreement, in the manner and form as herein provided, without default, then it is agreed, that the lessee may, at its option, at any time during the term of this agreement, or within one month after the expiration thereof, purchase said ten (10) locomotives at the price of one dollar ($1.00) and upon the payment of said sum to the lessor, the lessor will convey said ten locomotives to the lessee by good and sufficient bill of sale.

Sixth. Title of the lessor to remain until the rent and purchase money have been paid and until a bill of sale has been delivered by the lessor.

Seventh. Provision for arbitration in case of disagreement as to the amount to which the lessor is entitled.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(10).

EXHIBIT "ERIE-15."

(10)

LEASE.

Standard Steel Car Company to Erie Railroad Company; dated July 1st, 1907.

AGREEMENT.

Between Standard Steel Car Company and Bankers Trust Company and Erie Railroad Company, for issue of $2,140,000 Gold Equipment Trust Certificates. Dated July 1st, 1907. Series "L."

LEASE.

Agreement dated July 1, 1907, between Standard Steel Car Company and Erie Railroad Company, Witnesseth:

That for and in consideration of the sum of one dollar, paid by the said Railroad Company to the Lessor, as well as of the rents and covenants hereinafter mentioned, the Lessor has let and leased, and by these presents doth let and lease to the Railroad Company for the term ending July 1, 1917, unless sooner terminated, as hereinafter provided, the cars, more particularly described, as follows:

Two thousand (2,000) Steel Hopper Cars, 100,000 pounds capacity each, marked "Erie" and numbered from 27,000 to 28,999, inclusive.

Which said cars shall be delivered to the Railroad Company on tracks at the Car Works of the Lessor, between July 1st, 1907, and December 1st, 1907, at and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First. That the said Railroad Company shall and will pay to the Lessor, or its assigns, at the office of the Railroad Company in the City of New York, as rent or hire for the said railroad cars:

Exhibit Erie 15—(10).

I. Upon demand a cash payment of Fifty-five Thousand One Hundred Dollars ($55,100.00), and the springs (truck and draft), brake beams, journal boxes and lids, journal bearings and wedges and couplers for equipping such cars, receipt of which appliances is hereby acknowledged.

II. Half-yearly, on the first days of January and July in each year, the first payment to be made on the first day of January, 1908, the following sums:

(a) A sum equal to 2½ per cent. on Two Million One Hundred and Forty Thousand Dollars, which sum thus paid shall be reduced from time to time by an amount equal to 2½ per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of Two Million One Hundred and Forty Thousand Dollars as specified in Paragraph III of this Article:

(b) A sum equal to the taxes upon the property leased hereunder which the Lessor or its assigns may be liable to pay.

III. Half-yearly for Ten years, on the first day of January and the first day of July in each year, beginning with the first day of January, 1908, the sum of One Hundred and Seven Thousand Dollars, making twenty semi-annual payments of One Hundred and Seven Thousand Dollars each.

IV. The payments of rental provided for in paragraphs II (a) and III shall be evidenced by Car Trust notes or certificates to be executed by the Railroad Company, and payment of such certificates and the coupons thereof shall be for all purposes equivalent to payment of the said portions of rental to the said Lessor, and such certificates and coupons shall be in form substantially as follows:

(Then follows the form of car trust certificate, trustees certificate and coupon; then follows provisions for the numbering of the certificates, from 1 to 2140, each

for the sum of $1000, Nos. 1 to 107 payable January 1st, 1908 and then each series of 107 notes payable on each of the following July 1st and January 1st down to and including July 1st, 1917.

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said railroad cars in good order and repair, and to cause the said railroad cars to be kept numbered as hereinbefore mentioned, and all of said railroad cars to be plainly marked upon both sides thereof with the words "Bankers Trust Company, Trustee, Assignee, Owner and Lessor," and that it, the said Railroad Company, will replace at its own cost any of the said cars which may be destroyed from any cause whatever during the continuance of this lease, by other railroad cars of equal value as those destroyed and of substantially as good material, character and construction, and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said railroad cars as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said cars and each of them, to be lettered "Erie," for convenience of identification of its lessee interest therein. Provided, however, that the Railroad Company may, at its option, instead of replacing any of said cars, which may be worn out, lost or destroyed, pay to the Lessor the sum of Ten Hundred and Seventy Dollars for each car so worn out, lost or destroyed, all such money to be held by the Lessor, until the termination of this lease, and, in the event that the Railroad Company exercises the option of purchase herein provided, after default or otherwise, to be turned over to said Railroad Company at the time of such purchase, and the Lessor agrees to pay to the Railroad Company interest thereon at a reasonable interest rate, not less

than the highest rate paid general depositors of the Bankers Trust Company, of New York, said interest to be retained by the Lessor, its successors or assigns, until all payments have been made in accordance with Article First, Paragraphs I, II and III.

It is provided further, that the Railroad Company shall exercise such option of substituting money for cars within thirty days after notice to the Accounting Department of the Railroad Company of the wearing out, loss or destruction of any such cars, or shall, within such period, notify the Lessor, its successors or assigns, of its election to replace such cars, and shall so replace the same as speedily as possible thereafter.

Third. The Railroad agrees to furnish an inventory.

Fourth. The Railroad agrees that there shall be no assignment and transfer of its rights without the consent of the Lessor.

Fifth. In case the Railroad Company (a) shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition, or to perform any other obligations and covenants herein contained to be performed on its art, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Lessor, then, and in each and every case of default aforesaid, the Lessor may declare this lease terminated, and all outstanding bonds due and payable, and thereupon all installments of rent reserved herein and all said bonds, whether said installments of bonds shall have fallen due or not, shall at once become due and payable, and the Lessor may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon and wherein said cars may be, and may retake said cars

and withdraw the same from said railroad or premises.

But in any such case of default the Railroad Company shall have the right, within thirty (30) days, after the Lessor shall have declared the lease terminated, to pay all outstanding bonds and interest thereon to the date of such payment. Thereupon, upon receipt of evidence of such payment and of the cancellation of all such bonds and interest coupons thereon, the Lessor, its successors or assigns, will make and deliver to the Railroad Company a bill of sale of all its rights, title and interest in and to the cars covered by this lease, and return to the Railroad Company all sums deposited by the Railroad Company with the Lessor, its successors or assigns, on account of cars worn out or destroyed, with accrued and unpaid interest.

Sixth. In case of such retaking the Railroad agrees to draw the cars to such points as designated by the Lessor and to deliver the same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, and all other payments which it may have agreed to make, it, the said Lessor, shall and will upon the payment by the Railroad Company to the Lessor, or its assigns, of the additional sum of One Dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad cars held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter, the absolute ownership in said railroad cars shall be and become vested in the Railroad Company, its successors and assigns, and also to repay to the Rail-

road Company all amounts theretofore paid to it by the Railroad Company, in accordance with Section Second hereof on account of cars worn out, lost or destroyed, together with the interest thereon accrued and unpaid.

PROVIDED, however, and it is hereby understood, that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over uno the Bankers Trust Company, as Trustee, all its right, title and interest in and to said cars hereby leased unto the said Railroad Company, and as well all its claims, demands and remedies under this lease accruing or to accrue; and that any bills of sale of said equipment or any part thereof at any time hereafter executed by said Bankers Trust Company, as Trustee, or any duly appointed successor Trustee, conveying such title as it has received, delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; the Lessor, shall, however, join in any such bill of sale and warrant the title of the said cars against any and all claiming title to, or a lien upon, said cars through the Lessor.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated July 1, 1907, between Standard Steel Car Company, Bankers Trust Company and Erie Railroad Company.

Recites the above lease; also that the Car Company has secured subscriptions for $2,140,000 to Erie Railroad Equipment Trust, Series "L"; further, that the Car Company proposes to secure to the subscribers the repayment thereof in 20 semi-annual pay-

ments of $107,000 each beginning January 1, 1908 and ending July 1, 1917, with interest at the rate of five per cent. This agreement witnesseth:

First. The Car Company assigns to the Trust Company, as Trustee, all its right, title and interest in the said railroad cars; also all its right and title to the repayment of money deposited in lieu of the replacement of cars lost or destroyed; and to the delivery of a bill of sale on the termination of the lease.

Second. Trustee agrees to certify and deliver to the Car Company 2,140 certificates. (Then follows form of certificate and coupon.)

Third. As all of the bonds to be executed by the Railroad Company and secured by said Indenture of Lease will bear date the first day of July, 1907, and the interest thereon, represented by the coupons attached thereto, will date from the first day of July, 1907, the Car Company agrees to pay to the Railroad Company, in cash, such sum as may represent the interest which may accumulate on the said bonds from July 1, 1907, to the average date the cars referred to in the Indenture of Lease are delivered; said payment of interest by the Car Company to the Railroad Company to become due and payable immediately following the delivery of the last of the said cars.

Fourth. The Trustee, as assignee of the said Standard Steel Car Company, Lessor, further covenants to perform, and, so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals thereunder when and as the same shall be received, for the following purposes, to wit:

(a) To the payment of any taxes upon the railroad cars leased which it may be required to pay.

(b) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(c) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof. Provided, however, that the Railroad covenants and agrees to pay bonds or certificates and coupons issued under said lease at its office in accordance with the terms and provisions of said bonds and coupons and of this instrument and of said lease, and such payments shall to the extent thereof be satisfaction of the rental reserved in said lease and a discharge to the Trustee from all obligations to require the payment of rentals to that extent and to apply and distribute the same.

It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. The Railroad Company assents to the assignment of said lease by the Car Company to the Trust Company.

Sixth. It is further herein agreed and provided that in case the Railroad Company (a) shall at any time make default in the payment of any part in the rental in said lease reserved for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition or to perform all other obligations and covenants in said lease contained to be performed, on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Trustee, then and in each and every case of default as aforesaid, the Trustee shall have the right, as assignee of said Car Company, to enforce all the terms and stipulations of said lease subject to the right of the Railroad Company to exercise its option of purchase as therein set out, and in case the said Trustee shall re-

take possession of the said cars, it may either hold or lease, or dispose of said cars or so many thereof as it may deem necessary in such manner at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale, together with all moneys in the hands of the Trustee in lieu of lost, worn out or destroyed cars, and any unpaid interest thereon, shall be applied by the Trustee to the payment, after deducting all taxes which the Trustee may by law be required to pay in respect to the railroad cars covered by the said lease.

(1) Of the dividend warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata.*

And such retaking possession of the said railroad cars by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such sum is sufficient for the payment in full of all taxes aforesaid, together with all accrued interest warrants and the principal of all of the said certificates.

The Trustee assumes no liability, however, saving for its own wilful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty, however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is encumbent upon it.

Seventh. Temporary receipts may be issued.

Eighth. Trustee shall receive reasonable compensation.

Ninth. The Car Company indemnifies the Trustee against loss by use of any patents.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(11)

LEASE.

Edward T. Stotesbury to Erie Railroad Company. Dated July 1, 1907.

AGREEMENT.

Between Edward T. Stotesbury and Girard Trust Company and Erie Railroad Company; for issue of $580,000. Gold Equipment Trust Certificates. Dated July 2d, 1907. Series "M."

LEASE.

Agreement dated July 1, 1907, between Edward T. Stotesbury and Erie Railroad Company; Witnesseth:

That for and in consideration as well of the sum of one dollar, paid by the said Railroad Company to the Lessor, as of the rents and covenants hereinafter mentioned, the Lessor has let and leased, and by these presents doth let and lease to the Railroad Company for the term ending July 1st, 1917, unless sooner terminated as hereinafter provided, the locomotives more particularly described as follows: (Then follows description of 3 Mallet Type Locomotives and 35 Consolidation Freight Locomotives.)

First. That the said Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Girard Trust Company, in the city of Philadelphia, State of Pennsylvania, as rent or hire for the said locomotives:

1. Upon demand, after August 1st, 1907, a cash payment of one hundred and forty-four thousand eight hundred and seventy-five dollars ($144,875);

2. Half-yearly, on the first days of January and July in each year, the first payment to be made on the first day of January, 1908, the following sums:

(a) A sum equal to two and one-half per cent. on five hundred and eighty thousand dollars ($580,000), which sums thus paid shall be reduced from time to time by an amount equal to two and one-half per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of five hundred and eighty thousand dollars, as specified in paragraph 3 of this article;

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease;

(c) A sum equal to the taxes upon the income or property of the trust which the Lessor his assigns may be liable to pay, and any taxes which may by law be charged against the Lessor on account of the payments or rental hereunder.

3. Half-yearly, for ten years, on the first day of January and the first day of July in each year, beginning with the first day of January, 1908, the following sums, respectively:

On January 1st, 1908.....$29,000
On July 1st, 1908..... 29,000

(Then follows provision for further payments of $29,000 each on January 1st and July 1st of each year down to and including July 1st, 1917.)

3. The Railroad Company agrees to furnish an inventory.

4. The Railroad Company agrees that there shall be no assignment or transfer without the consent of the Lessor.

Fifth. That in case the Railroad Company shall make default in the payment of any part of the said rental for more than thirty days after the same shall have become payable, or shall fail to keep the said locomotives in good serviceable condition, or to perform any of the other covenants herein contained to

be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all installments of rent reserved herein whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor or his assigns may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said locomotives may be, and may retake the said locomotives and withdraw the same from the said railroad or premises.

Sixth. In case of such retaking the Railroad Company agrees to draw the engines to such points as designated by the Lessor, and to deliver the same.

(Then follows the testimonium clause and acknowledgments.)

AGREEMENT.

Agreement, dated July 2, 1907, between Edward T. Stotesbury, Girard Trust Company and Erie Railroad Company.

Recites the above lease; also that certain bankers have secured subscriptions to the amount of $580,000 to Erie Railroad Equipment Trust, Series "M"; recites that Stotesbury proposes to secure to the parties subscribing to the fund the repayment thereof in 20 semi-annual instalments of $29,000 each, beginning January, 1908, and ending July 1, 1917, with interest at the rate of five per cent. This agreement witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto the Girard Trust Company, as Trustee for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said locomotives leased, as aforesaid, unto the Railroad Company, and to said indenture of lease and as well as all the claims, demands and remedies of the said Edward T.

Stotesbury accruing or to accrue under the lease aforesaid, to be deferred rentals aggregating five hundred and eighty thousand dollars, but reserving the cash payment of $144,875 due on demand after Aug. 1, 1907, which is to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used in part payment for said locomotives.

Second. Trustee agrees to deliver 580 certificates in the following form: (Then follows form of equipment Trust Certificate and Dividend Warrants.)

Third. Trustee agrees to keep a register.

Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor, further covenants to perform and, so far as possible, to enforce the performance of all and singular the terms, conditions, and covenants of the said lease, and to apply and distribute the rentals thereunder when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said locomotives and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof.

It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its

own or their own wilful and intentional breach thereof.

Fifth. Erie Railroad expresses its assent to the assignment of the lease by Stotesbury to the Trust Company.

Sixth. It is further herein agreed and provided that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable, or shall fail to keep and perform all the terms and covenants of said lease, that the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and that in case the said Trustee shall retake possession of the said locomotives it may either hold or lease or dispose of said locomotives or so many thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may by law be required to pay in respect to the trust property, or the certificates aforesaid, or the interest thereon:

(1) Of the individual warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata.*

And such retaking possession of the said locomotives by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such sum is realized

as, with the proceeds of the sale of said locomotives, is sufficient for the payment in full of all taxes and expenses aforesaid, together with all accrued interest warrants and the principal of all of the said certificates.

The Trustee assumes no liability however saving for its own wilful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is incumbent upon it.

(Then follows testimonium clause and Acknowledgments.)

EXHIBIT "ERIE 15."

(12)

LEASE.

Standard Steel Car Company to Erie Railroad Company. Dated July 1, 1913.

AGREEMENT OF ASSIGNMENT OF LEASE.

Between Standard Steel Car Company and Bankers Trust Company, Trustee, and Erie Railroad Company. Dated July 2, 1913. For Issue of $2,350,000. Equipment Trust Certificates. Dated July 2, 1913. Series "U."

LEASE.

Agreement dated July 1, 1913, between Standard Steel Car Company and Erie Railroad Company. Witnesseth:

That for and in consideration of the sum of one dollar, paid by the railroad company to the Lessor, as well as of the rents and covenants hereinafter mentioned, the Lessor has let and leased, and by these

presents doth let and lease to the Railroad Company, at and for the rent hereinafter set out, and upon the terms, conditions and covenants hereinafter expressed, for the term of ten years from the date hereof, unless sooner terminated as hereinafter provided, the cars, more particularly described as follows: (Then follows description of 1500 steel frame box cars, 500 steel hopper cars and 500 composite gondola cars.)

Said cars to be delivered beginning October 1, 1913 at the rate of not less than 20 cars per day thereafter.

Article First. The Railroad Company shall and will pay to the Lessor, or its assigns, at the office of the Bankers Trust Company in the City of New York, as rent or hire for the said railroad cars:

I. Upon demand after the execution of this agreement a payment of Four Hundred and Seventy-nine Thousand Three Hundred and Seventy-six dollars and Sixty-six cents ($479,376.66), of which amount Three Hundred and Twenty-one Dollars and Sixty-six cents ($321.66) shall be paid in cash at the office of the Bankers Trust Company in the City of New York and the balance by causing to be furnished, delivered at the works where the cars are to be constructed certain materials for equipping said cars of an aggregate value of Four Hundred Seventy-nine Thousand Fifty-five dollars ($479.055.00) consisting of the following:

For the one thousand five hundred (1,500) box cars: journal bearings, draft gears, truck bolsters, truck side frames, and break beams.

For the five hundred (500) hopper cars; journal bearings, draft gears, truck bolsters and truck side frames.

For the five hundred (500) composite gondola cars; draft gears, truck bolsters, truck side frames, and brake beams.

Said materials are to be furnished from time to time as needed for the construction of said cars.

Exhibit Erie 15—(12).

Article Second. The Railroad Company agrees to keep the said cars in good order and to mark the same in a certain manner; and to pay a certain sum if the car is lost or destroyed.

Article Third. The Railroad Company agrees to furnish an inventory.

Article Fourth. The Railroad Company agrees that there shall be no assignment or transfer without the consent of the Lessor.

Article Fifth. In case the Railroad Company (a) shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and servicable condition, or to perform any other obligations and covenants herein contained to be performed on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Lessor, then, and in each and every case of default aforesaid, the Lessor may declare this lease terminated, and thereupon all installments of rent reserved herein, whether said installments shall have fallen due or not, shall at once become due and payable, and the Lessor may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein said cars may be, and may retake said cars and withdraw the same from said railroad or premises.

Article Sixth. In case of such retaking the Railroad Company agrees to draw and deliver the cars to such point as designated by the Lessor.

Article Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, and all other payments which it may have agreed to make, it, the said Lessor, shall and will upon payment by the

Railroad Company to the Lessor, or its assigns, of the additional sum of One Dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad cars held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter the absolute ownership in said railroad cars shall be and become vested in the Railroad Company, its successors and assigns, and also shall and will repay to the Railroad Company all amounts theretofore paid to it by the Railroad Company in accordance with Article Second hereof on account of cars worn out, lost or destroyed, together with the interest thereon accrued and unpaid.

Provided, however, and it is hereby understood, that it is the intention of the Lessor forthwith upon the execution of this instrument, to assign, transfer, and set over unto the Bankers Trust Company, as Trustee, all its right, title and interest in and to said cars hereby leased unto the said Railroad Company, and as well all its claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Bankers Trust Company as Trustee, or any duly appointed successor Trustee, conveying such title as it has received, delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; the Lessor shall, however, join in any such bill of sale and warrant the title of the said cars against any and all claiming title to, or a lien upon, said cars through the Lessor.

(Then follows the testimonium clause and acknowledgments.)

Exhibit Erie 15—(12).

AGREEMENT.

Agreement dated July 2, 1913, between Standard Steel Car Company, Bankers Trust Company and Erie Railroad Company:

Recites the above lease; that the Car Company has secured subscriptions to the amount of $2,350,000 to Erie Railroad Equipment Trust, Series "U," to be repaid in 20 instalments, to wit, 10 annual payments of $117,000 each, payable January 1st of each year, beginning January 1, 1914, and ten annual payments of $118,000 each, payable July 1st of each year, beginning July 1st, 1914. This agreement witnesseth:

First. That the Car Company assigns and sets over to the Bankers Trust Company, as Trustee, for the holder of the certificates hereinafter set forth, all the right, title and interest of the said Car Company in and to said railroad cars leased, as aforesaid, unto the Railroad Company, and as well all the claims, demands and remedies of the said Car Company accruing or to accrue under the lease aforesaid.

The Car Company also hereby assigns and sets over to the Bankers Trust Company, as Trustee, for the holders of the certificates hereinafter set forth, all the right,title and interest of said Car Company in and to the above described lease and to rentals therein reserved, excepting only the payments aggregating four hundred and seventy-nine thousand three hundred seventy-six dollars and sixty-six cents ($497,376.66), which the railroad company upon demand of the Car Company after the execution of said lease, is to cause to be made as provided in Article First of said lease. But nothing herein contained shall be deemed or construed in any manner to impair the right, title and interest of said Bankers Trust Company, as Trustee, to said cars, including all the materials caused to be furnished from time to time to the car company, as provided in Paragraph L of Article First of said lease. It being understood and agreed, however, that the

Trustee neither incurs nor assumes any responsibility for the delivery of said cars by the Car Company, as in said lease provided.

Second. Trustee to execute and deliver Equipment Trust Certificates. (Then follows form of certificate, etc.)

Third. As all of the certificates to be executed by the Trustee and secured by said Indenture of Lease will bear date the second day of July, 1913, and the interest thereon represented by the dividend warrants attached thereto, will run from the first day of July, 1913, the Car Company agrees to pay to the Railroad Company, in cash, such sum as may represent the interest which may accumulate on the said certificates from July 1st, 1913, to the average date the cars referred to in the Indenture of Lease are delivered; said payment of interest by the Car Company to the Railroad Company to become due and payable immediately following the delivery of the last of the said cars.

The Railroad Company covenants and agrees that when and as said equipment trust certificates and dividend warrants shall mature as therein and herein provided, the said equipment trust certificates and dividend warrants shall be paid in accordance with the terms thereof and hereof.

The dividend warrants to be attached to the equipment trust certificates shall be authenticated by the fac-simile signature of the present or any future Treasurer of the Trustee, and the Trustee may adopt and use for that purpose the fac-simile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such officer at the time when such certificates shall be actually executed and delivered.

Fourth. The Trustee, as assignee of the said Car Company, Lessor, further covenants to apply and distribute the rentals payable on and after January 1,

1914, under said lease, when and as the same shall be received by it, for the following purposes and in the following order of priority, to wit:

(a) To the payment of any taxes upon the railroad cars leased which it may be required to pay and to the payment of expenses and charges as set forth in subdivisions "c," "d," and "e" of Article First, Paragraph II, of said lease hereinbefore referred to.

(b) To the payment of the dividend warrants attached to the said equipment trust certificates when and as the same shall become payable.

(c) To the payment and redemption of the principal of the said equipment trust certificates when and as the same shall become payable. The said dividend warrants and equipment trust certificates shall be cancelled upon payment thereof.

The Trustee further covenants to execute a bill of sale of its interest in the equipment subject hereto and to said lease, when and as and in the manner provided for in Article Seventh of said lease. Until payment by the Railroad Company to the Trustee and to the holders of the equipment trust certificates, of all the installments and amounts as specified herein and in said lease, and until all the obligations of the Railroad Company hereunder and under said lease shall have been fully complied with and performed, the title to said cars shall not pass to or vest in the Railroad Company but shall remain in the Trustee, its successors and assigns, for the benefit of the holders of said certificates, notwithstanding the delivery to and possession and use of said cars by the Railroad Company. The Trustee also assumes the obligation of the Car Company to pay to the Railroad Company interest on any moneys deposited with it for cars worn out, lost or destroyed, as provided in Article Second of said lease. It is distinctly understood that neither the Trustee nor any successor in the trust shall be liable

or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. The Railroad Company assents to the assignment.

Sixth. It is further herein agreed and provided that in case the Railroad Company (a) shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition or to perform all other obligations and covenants in said Lease contained to be performed, on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Trustee, then and in each and every case of default as aforesaid, the Trustee shall have the right, as assignee of the Car Company, to enforce all the terms and stipulations of said lease subject to the right of the Railroad Company to exercise its option of purchase as therein set out, and in case the said Trustee shall retake possession of the said cars, it may either hold or lease, or dispose of said cars or so many thereof as it may deem necessary in such manner at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale, together with all moneys in the hands of the Trustee in lieu of lost, worn out or destroyed cars, and any unpaid interest thereon, shall be applied by the Trustee to the payment, after deducting all taxes which the Trustee may by law be required to pay in respect to the railroad cars covered by the said lease:

First, of the dividend warrants then due, and,

Second, of the principal of all of the said outstanding certificates whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata*.

And such retaking possession of the said railroad cars by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company of all instalments of rent due, or which may thereafter become due, until such sum is realized as, with the proceeds of the sale of said cars, may be sufficient for the payment in full of all taxes, expenses and charges aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates. (Then follows agreement by the railroad to waive any benefit of valuation, or appraisement, or redemption law; the Trustee assumes no liability except for gross neglect.)

Seventh. The Trustee may execute temporary receipts.

Eighth. The Trustee to receive reasonable compensation.

Ninth. The Car Company agrees to indemnify the Trustee from all claims for patents, etc.

Tenth. The Trustee may resign on serving notice thereof; successor may be appointed.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(13).

AGREEMENT, dated February 1, 1907, between American Car and Foundry Company and Erie Railroad Company, witnesseth:

The Car Company agrees to sell certain railroad equipment, to wit, 1,000 produce cars, to be delivered at Berwick, Pennsylvania, on or before February 28, 1907.

One. The Railroad Company to keep an inspector at the works.

Two. The purchase price of said cars to be paid by said Vendee as follows, to wit:

Exhibit Erie 15—(13).

Upon delivery of all cars, a cash payment of seventy-seven thousand five hundred dollars ($77,500); and in addition to said cash payment, said Vendee agrees to execute and deliver its negotiable promissory notes to said Vendor, payable to the order of bearer in gold coin of the United States of America, of or equivalent to the present standard of weight and fineness, bearing date of the average delivery of said cars and payable as follows: (Then follows provision for payment by a series of notes, 20 notes for $1,000 each being in the first series, payable six months after date, the second series in 12 months, etc., and the last series payable in 120 months from date; each note bearing interest at the rate of four and one-half per cent.)

Three. Title to the property to remain in the Car Company.

Four-Five. Provides for sale of equipment in case of default in payment of the notes.

Sixth. In the event of a sale made as herein provided, the proceeds thereof shall be applied as follows:

(a) First. To the payment of the costs and expenses of the recovery, transportation, custody and disposition of said cars, with all charges incident thereto;

(b) Second. To the payment of any balance that may be then due and owing upon said notes, or any of them, or other indebtedness from the Vendee to the Vendor arising hereunder; it being expressly agreed that in the event default is made in the payment of any one of said notes, or of any indebtedness from the Vendee to the Vendor arising hereunder, then and in such event, each and every of said notes shall thereupon become due and payable, whether due and payable on its face or not.

(c) Third. If the proceeds of such sale or sales shall be more than sufficient to fully pay each and every of said notes and interest thereon, and all other indebtedness due hereunder from said Vendee to said

Vendor, and all said costs and expenses, then the surplus shall be paid to said Vendee; but if there should be a deficit, then said Vendee shall pay such deficit upon the demand of the Vondor.

Seventh. Provides for insurance and for replacement of cars destroyed by fire or otherwise.

Eighth. The Railroad to keep the cars in repair.

Ninth. The Railroad to pay taxes, licenses, etc.

Tenth. Ownership plates to be fastened to each car.

Eleventh. Agreement to be recorded.

Twelfth. No modification of the agreement whereby the total sum due as purchase price is to be diminished. No modification to be made which changes or affects the title or ownership of the equipment.

Thirteenth. In the event of the assignment by the Car Company of this agreement, or of any notes, and default in the notes, the Car Company may elect to pay the notes.

Fourteenth. The Railroad Company agrees to pay the notes promptly.

Fifteenth. On performance of the conditions of the agreement the Car Company to have the equipment conveyed to the Railroad Company by bill of sale.

Sixteenth. The Car Company to have the power to sell, transfer, pledge or assign said notes.

Seventeenth. This agreement to innure to the benefit of the purchaser, assignee or pledgee.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(14).

EXHIBIT "ERIE 15."

(14)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated August 1, 1911.

AGREEMENT OF ASSIGNMENT OF LEASE.

Between EDWARD T. STOTESBURY and FIDELITY TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of $4,600,000. Equipment Trust Certificates Series "Q," dated August 2, 1911.

LEASE.

Agreement dated August 1, 1911, between Edward T. Stotesbury, called the Lessor, and Erie Railroad Company, Witnesseth:

The Lessor leases to the Railroad Company for the term of ten years from August 1, 1911, to August 1, 1921, unless sooner terminated certain railroad equipment as follows:

1,000 Steel Under and Upperframe box cars.
1,000 Triple-hopper Gondola cars.
1,000 Composite Gondola cars.
500 Fifty Ton Steel Underframe flat cars.
300 Automobile Cars.
100 Steel Underframe Refrigerator cars.
100 Steel Underframe Refrigerator cars.
25 Suburban Passenger Coaches.
10 Through line Passenger Coaches.
5 Combination Passenger and Baggage cars.
20 Mikado type freight locomotives.
15 Mikado type freight locomotives.
5 Switching locomotives.
5 Switching locomotives.
10 Type 0-6-0 Switching locomotives.

which said railroad equipment shall be delivered to the Railroad Company as it shall from time to time

be received by the Lessor from the Builders; at and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First: The Railroad Company shall and will pay to the Lessor or his assigns, at the office of Fidelity Trust Company in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment:

1. Upon demand after August 1st, 1911, cash payments aggregating Eight hundred twenty five thousand one hundred thirty four dollars ($825,134).

II. Half-yearly on the first days of February and August in each year, the first payment to be made on the first day of February, 1912, the following sums:

(a) A sum equal to two and one-fourth per cent on four million six hundred thousand dollars ($4,600,000) which sum thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of four million six hundred thousand dollars, as specified in paragraph III of this article;

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes on the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

III. Half yearly for ten years on the first day of February and the first day of August in each year, beginning with the first day of February, 1912, the following sums, respectively:

On February 1st, 1912.....$230,000
On August 1st, 1912..... 230,000

Exhibit Erie 15—(14).

(Then follows provision for further payments of $230,000 each on February 1st and August 1st of each year down to and including August 1st, 1921.)

Second. The Railroad Company covenants and agrees with the Lessor in addition to its agreement to pay the said rent on the days and in the manner above provided to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each car or locomotive with the words "E. T. Stotesbury, Lessor, Fidelity Trust Company, Trustee, Owner," and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein.

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third. The Railroad Company agrees to furnish an inventory.

Fourth. No assignment to be made without consent of the Lessor.

Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall

have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all instalments of rent, reserved herein whether said instalments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Sixth. In case of such retaking the Railroad Company agrees to draw the equipment to such point as may be designated by the Lessor and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, shall and will, upon the payment by the Railroad Company to the Lessor or his assigns, of the additional sum of one dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter, the absolute ownership in said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Eighth. It is hereby understood. that it is the intention of the Lessor forthwith upon the execution of this instrument, to assign, transfer and set over unto the Fidelity Trust Company, as Trustee, all his

right, title and interest in and to said railroad equipment hereby leased unto the railroad company as well as all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Fidelity Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that the said Trustee, or any successor to it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor.

Ninth. The Lessor assigns to the Railroad Company all rights and claims against the builder of the equipment under the contracts under which the equipment is built.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated August 2nd, 1911, between Edward T. Stotesbury, Fidelity Trust Company and Erie Railroad Company.

Recites the above lease; also that certain bankers have secured subscriptions to the amount of $4,600,000 to the Erie Railroad Equipment Trust, Series "Q"; further that the subscriptions are to be repaid in semi-annual instalments of $230,000 each, beginning February 1st, 1912, and ending August 1st, 1921, with interest at the rate of four and one-half per cent. This agreement Witnesseth:

First: That the said Edward T. Stotesbury hereby assigns and sets over unto the Fidelity Trust Com-

pany, as Trustee for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid unto the Railroad Company, and to said Lease and all claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved excepting only the cash payments aggregating Eight hundred twenty five thousand one hundred and thirty four dollars ($825,134) due on demand after August 1, 1911, which said cash payments are to be paid to him, the said Edward T. Stotesbury when and as collected by the Trustee and to be used by him in part payment for said railroad equipment.

Second: Trustee agrees to deliver five thousand certificates, &c.

(Then follows form of certificate, dividend warrant and guarantee.)

Third: Trustee agrees to keep a register.

Fourth: The Trustee, as assignee of the said Edward T. Stotesbury, Lessor under said Lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said Lease, and to acquire and distribute the rentals payable on and after February 1st, 1912, thereunder when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be

deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be canceled upon payment thereof.

It is distinctly understood and agreed that neither the Trustee or any successor in the Trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth: Railroad Company assents to the assignment by Stotesbury to the Trust Company.

Sixth: It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said Lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said Lease, that the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the lease terminated and to enforce all the terms and stipulations of said Lease, and in case the Trustee shall retake possession of the said railroad equipment it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may by law be required to pay in

respect to the trust property, or the certificates aforesaid, or the dividends thereon:

(1) To the dividend warrants then due;

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata.*

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company for the future accruing rent until such sum is realized, as with the proceeds of the sale of said railroad equipment is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates.

Seventh: No duty on the Trustee to insure or repair or take care of the trust property, &c.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(15)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated August 1, 1912.

AGREEMENT OF ASSIGNMENT OF LEASE.

Between EDWARD T. STOTESBURY and COMMERCIAL TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of $2,160,000 Gold Equipment Trust Certificates, dated August 1st, 1912, Series "R."

LEASE.

Agreement dated August 1st, 1912, between Edward T. Stotesbury, called the Lessor, and Erie Railroad Company, Witnesseth:

Exhibit Erie 15—(15).

The Lessor leases to the Railroad Company for the term of ten years from August 1st, 1912, and ending August 1st, 1922, unless sooner terminated, certain equipment, as follows:

25 Suburban Passenger Coaches.
11 Combination passenger and baggage cars.
300 Automobile cars.
500 Coke cars.
5 Mikado type freight locomotives.
15 Mikado type freight locomotives.
30 Mikado type freight locomotives.

Which said railroad equipment shall be delivered to the Railroad Company as it shall from time to time be received by the Lessor from the Builder and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First. The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment:

I. Upon demand after August 1st, 1912, cash payments aggregating four hundred and seventy-two thousand eight hundred and seventy ($472,870) dollars.

II. Half-yearly, on the first days of February and August in each year, the first payment to be made on the first day of February, 1913, the following sums:

(a) A sum equal to two and one-fourth per cent. on two million one hundred and sixty thousand ($2,160,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of two million one hundred and sixty thousand ($2,160,000) dollars, as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

III. Half-yearly, for ten years on the first day of February and the first day of August in each year, beginning with the first day of February, 1913, the following sums respectively:

On February 1st, 1913.....$108,000
On August 1st, 1913..... 108,000

(Then follows provision for further payments of $108,000 each on February 1st and August 1st of each year, down to and including August 1st, 1922.)

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each car or locomotive with the words: "E. T. Stotesbury, Lessor, Commercial Trust Company, Trustee, Owner."

And that it the said Railroad Company will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein.

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own

cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third. The Railroad Company agrees to furnish an inventory.

Fourth. No assignment to be made without consent of the Lessor.

Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated and thereupon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Sixth. In case of such retaking the Company agrees to draw the equipment to such point as designated by the Lessor and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent, which it has herein covenanted to pay, he, the said Lessor or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar ($1.00) sell, assign and transfer, or cause to be sold, assigned

and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence each sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the absolute ownership in said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Eighth. It is hereby understood that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Commercial Trust Company, as Trustee, all his right, title and interest in and to said railroad equipment hereby leased unto the Railroad Company as well as all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Commercial Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that said Trustee, or any successor to it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor.

Ninth. The Lessor assigns to the Railroad Company all rights and claims under contracts with the builders.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated August 2nd, 1912, between Edward T. Stotesbury, Commercial Trust Company and Erie Railroad Company.

Exhibit Erie 15—(15).

Recites the above lease; also that certain bankers have secured subscriptions to the amount of two million one hundred and sixty thousand dollars ($2,160,000) to a fund to be known as "Erie Railroad Equipment Trust, Series R"; further that the subscriptions are to be repaid in twenty semi-annual instalments, each for the sum of $108,000, beginning February 1st, 1913, and ending August 1st, 1922, with interest at the rate of four and one-half per cent. This Agrement witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company as Trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash payments aggregating four hundred and seventy-two thousand eight hundred and seventy ($472,870) dollars due on demand after August 1st, 1912, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

Second. Trustee agrees to deliver certificates.
(Then follows form of certificate and guarantee.)

Third. Trustee agrees to keep a register.

Fourth. The Trustee as assignee of the said Edward T. Stotesbury, Lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of said lease, and to apply and distribute the rentals payable on and after February 1st, 1913, thereunder, when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be canceled upon payment thereof.

It is distinctly understood and agreed that neither the Trustee nor any successor in the Trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. Erie Railroad Company assents to the assignment of the lease.

Sixth. It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said car trust certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said railroad

equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon,

(1) To the dividend warrants then due,

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata.*

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company of the future accruing rent until such sum is realized, as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates.

Seventh. No duty upon the Trustee to insure or repair or take care of the property.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(16).

EXHIBIT "ERIE 15."

(16)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated July 31, 1914.

AGREEMENT OF ASSIGNMENT OF LEASE.

Between EDWARD T. STOTESBURY and COMMERCIAL TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of $900,000 Gold Equipment Trust Certificates, dated August 1, 1914, Series "BB."

LEASE.

Agreement dated July 31, 1914, between Edward T. Stotesbury, called the Lessor, and the Erie Railroad Company, Witnesseth:

The Lessor leases to the Railroad Company for the term of ten years from August 1st, 1914, and ending August 1st, 1924, unless sooner terminated, certain equipment as follows:

1 Triple Articulated locomotive.
1 2-10-2 Type Locomotive.
4 K-4 Pacific type, freight locomotives.
7 All-steel suburban passenger coaches.
4 Steel underframe club cars.
200 46-foot composite, drop-end, gondola cars.
200 50-ton, side-dump, hopper cars.
200 50-ton, side-dump, hopper cars.
200 50-ton, side-dump, hopper cars.

Which railroad equipment shall be delivered to the Railroad Company as it shall from time to time be received by the Lessor from the Builders, and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First: The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia,

State of Pennsylvania, as rent or hire for the said railroad equipment:

I. Upon demand after August 1, 1914, cash payments aggregating two hundred and three thousand three hundred and twelve and 15/100 ($203,312.15) dollars.

II. Half-yearly, on the first days of February and August in each year, the first payment to be made on the first day of February, 1915, the following sums:

(a) A sum equal to two and one-fourth per cent. on nine hundred thousand ($900,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of nine hundred thousand ($900,000) dollars as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax (except any Federal Income Tax) which may by law be charged against the Lessor on account of the payment of rentals hereunder.

III. Half-yearly, for ten years on the first day of February and the first day of August in each year, beginning with the first day of February, 1915, the following sums respectively:

On February 1st, 1915.....$45,000
On August 1st, 1915..... 45,000

(Then follows provision for further payments of $45,000 each on February 1st and August 1st of each year down to and including August 1st, 1924.)

Second: The Railroad Company covenants and agrees, with the Lessor, in addition to its agreement

to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each locomotive or car with the words: "E. T. Stotesbury, Lessor, Commercial Trust Company, Trustee, Owner."

And that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein.

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third: The Railroad Company agrees to furnish an inventory.

Fourth: No assignment to be made without consent of Lessor.

Fifth: In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and there-

upon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Sixth: In case of such retaking the Railroad Company agrees to draw the equipment to such point as shall be designated by the Lessor and to deliver same.

Seventh: The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the absolute ownership of said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Eighth: It is hereby understood, that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Commercial Trust Company, as Trustee, all his right, title and interest in and to said railroad equipment hereby leased unto the Railroad Company as well as all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment of any part thereof at any

time hereafter executed by said Commercial Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that said Trustee, or any successor of it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor.

Ninth: Lessor assigns all rights and claims against the Builders.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated August 1st, 1914, between Edward T. Stotesbury, Commercial Trust Company and Erie Railroad Company, Witnesseth:

Recites the above lease; also that certain bankers have secured subscriptions to the amount of $900,000 to the Erie Railroad Equipment Trust, Series "BB"; further that the said sum is to be repaid in twenty semi-annual instalments beginning February 1st, 1915, and ending August 1st, 1924. This agreement Witnesseth:

First: That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company, as trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash

payments aggregating two hundred and three thousand three hundred and twelve and 15/100 ($203,312.15) dollars due on demand after August 1st, 1914, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

Second: Trustee agrees to deliver certificates.

(Then follows form of certificates, warrant and Guarantee.)

Third: Trustee agrees to keep a register.

Fourth: The Trustee, as assignee of the said Edward T. Stotesbury, lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals payable on and after February 1st, 1915, thereunder, when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes (except any Federal Income taxes) which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be canceled upon payment thereof.

Exhibit Erie 15—(16).

It is distinctly understood and agreed that neither the Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth: Erie Railroad assents to the assignment of lease.

Sixth: It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved, for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said equipment certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said railroad equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon.

(1) To the dividend warrants then due.

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata.*

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company of the future accruing rent until such sum is realized as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates.

Seventh: No duty on Trustee to insure or repair or take care of the property.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE-15."

(17)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated September 1, 1913.

AGREEMENT OF ASSIGNMENT OF LEASE.

Between EDWARD T. STOTESBURY and COMMERCIAL TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of $1,120,000 Gold Equipment Trust Certificates, dated September 2, 1913, Series "AA."

LEASE.

Agreement dated September 1st, 1913, between Edward T. Stotesbury, called the Lessor, and the Erie Railroad Company, Witnesseth:

The Lessor leases to the Railroad Company for the term of ten years from September 1st, 1913, and ending September 1st, 1923, unless sooner terminated, certain railroad equipment as follows:

40 Mikado type freight locomotives.

10 K-4 Pacific type freight locomotives.

Which said railroad equipment shall be delivered to the Railroad Company as it shall from time to time be received by the Lessor from the Builders, and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First. The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment:

I. Upon demand after September 1, 1913, cash payments aggregating two hundred and ten thousand eight hundred and ninety and 52-100 dollars. ($210,890.52.)

II. Half-yearly, on the first days of March and September in each year, the first payment to be made on the first day of March, 1914, the following sums:

(a) A sum equal to two and one-half per cent. on one million one hundred twenty thousand ($1,120,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-half per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of one million one hundred twenty thousand ($1,120,000) dollars as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the said lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

III. Half-yearly for ten years on the first day of March and the first day of September in each year,

beginning with the first day of March, 1914, the following sums respectively:

On March 1st, 1914.....$56,000
On September 1st, 1914..... 56,000

(Then follows provision for further payments of $56,000 each on March 1st, and September 1st of each year down to and including September 1st, 1923.)

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each locomotive with the words: "E. T. Stotesbury, Lessor, Commercial Trust Company, Trustee, Owner."

And that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim by ownership. PROVIDED, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie," for convenience of identification of its lessee interest therein.

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third. The Railroad Company agrees to furnish an inventory.

Fourth. No assignment to be made without consent of Lessor.

Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Sixth. In case of such retaking the Railroad Company agrees to draw the equipment to such point as shall be designated by the Lessor and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar ($1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the absolute ownership of said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Eighth. It is hereby understood that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Commercial Trust Company, as Trustee, all his right, title and interest in and to said railroad equipment hereby leased unto the Railroad Company as well all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Commercial Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that said Trustee, or any successor to it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor.

Ninth. Lessor assigns all rights and claims against the Builders.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated September 2nd, 1913, between Edward T. Stotesbury, Commercial Trust Company, Trustee, and Erie Railroad Company, Witnesseth:

Recites the above lease; also that certain bankers have secured subscriptions to the amount of $1,120,000 to the Erie Railroad Equipment Trust, Series "AA"; further that the said sum is to be repaid in twenty semi-annual instalments beginning March 1st, 1914, and ending September 1st, 1923. This agreement witnesseth:

That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company, as

trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Erie Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash payments aggregating two hundred and ten thousand eight hundred and ninety and 52/100 ($210,890.52) dollars due on demand after September 1st, 1913, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

Second. Trustee agrees to deliver certificates.

(Then follows form of certificates, warrants and guarantee.)

Third. Trustee agrees to keep a register.

Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals payable on and after March 1st, 1914, thereunder, when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be cancelled upon payment thereof.

It is distinctly understood and agreed that neither the Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. Erie Railroad assents to the assignment of lease.

Sixth. It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease, reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said equipment trust certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said railroad equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon,

(1) To the dividend warrants then due.

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata.*

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company of the future accruing rent until such sum is realized, as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses and the principal of all of the said certificates.

Seventh. No duty on Trustee to insure or repair or take care of the property.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE-15."

(18)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPAN, TRUSTEE. COLLATERAL INDENTURE, dated April 1, 1912, securing $10,000,000, three-year 5 per cent. Collateral Gold Notes. Interest payable April 1, and October 1.

Indenture dated April 1st, 1912, between Erie Railroad Company and Bankers Trust Company, called the Trustee.

Recites that the Railroad Company has resolved to issue and to dispose of its Three Year 5% Collateral Gold Notes, dated April 1, 1912, hereinafter described, for the aggregate principal sum of $10,000,000, and to secure the payment of such notes by pledging with the Trustee under this indenture the corporate bonds hereinafter specified; and further recites by what officers of the Railroad Company said notes are to be executed; and further that said notes are to be paid

on April 1, 1915, and are to bear interest at the rate of 5% per annum, payable in gold coin, semi-annually, on the first day of April and first day of October, until the principal shall have been paid; each of said notes to be for the principal sum of $1,000. or of $5,000, or of any multiple of $1,000 that shall be authorized by the Railroad Company, such notes to be in the form following:

(Then follows form of note and coupons.)

That on each of said notes is to be endorsed a certificate of the Trustee that it is one of the notes described in this indenture.

(Then follows form of Trustee's certificate.)

That each of said coupons attached to the notes is to be authenticated by the engraved signature of the Treasurer of the Railroad Company.

This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of said notes, and the performance of the covenants herein, and in consideration of the purchase and acceptance of such notes by the holders thereof; and of the sum of one dollar to be paid by the Trustee;

The Railroad Company hereby does sell, assign, transfer and set over, and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, the following described property—hereinafter sometimes termed, collectively, "pledged securities"—viz.:

I. All and singular the following described bonds of the several corporations, and of the aggregate principal sums, specified respectively, which bonds, with all unmatured coupons thereto appertaining, herewith are delivered to the Trustee, to wit:

	Principal Sum.
Erie Railroad Company General Mortgage 4% Convertible 50-Year Gold Bonds, Series C.	$10,000,000

Erie Railroad Company First Consolidated Mortgage General Lien 4% Gold Bonds	$1,000,000
Erie and Jersey Railroad Company First Mortgage 4% 50-Year Gold Bonds	3,000,000
Genesee River Railroad Company First Mortgage 4% 50-Year Gold Bonds	2,000,000

II. Also all property of ever name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of the bonds issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

That the lien and security of this indenture shall take effect from the date hereof, without regard to the date of the issue, sale and negotiation of said notes, that said notes are to be issued, sold and held, and the bonds pledged hereunder, as aforesaid, subject to the conditions of such pledge, are to be held by the Trustee upon and subject to the trusts, uses, conditions, covenants and agreements hereinafter set forth; and it is covenanted between the parties hereto and for the benefit of the holders from time to time of the notes intended to be secured hereby, as follows, viz.:

ARTICLE ONE.

Section 1. The amount of notes hereby secured, which may be executed by the Railroad Company, and which may be certified by the Trustee, is limited, so that never at any time shall there be outstanding notes hetreby secured, for an aggregate principal sum exceeding $10,000,000.

From time to time, the notes to be secured hereby shall be executed by the Railroad Company, and by it shall be delivered to the Trustee, and thereupon, as provided in this article, and not otherwise, the Trustee shall certify, and shall deliver the same.

The said notes and the coupons thereto attached respectively shall be substantially of the tenor and purport above recited. The said notes each shall be for the principal sum of $1,000. or of $5,000, or of any other multiple of $1,000 that shall have been authorized by the Railroad Company by resolution of its Board of Directors or of its Executive Committee.

Each note hereby secured of the denomination of $1,000 shall bear a distinctive serial number, the numbers to be from one upwards consecutively.

Likewise each note of a denomination greater than $1,000 shall be consecutively numbered from one upwards, and shall have prefixed to the number the Roman numeral or numerals designating the number of times the principal sum of the note is divisible by the sum of $1,000.

Each note hereby secured of a denomination greater than $1,000 shall bear thereon an endorsement in substantially the following form, viz.:

> "The within note was issued in lieu of or in exchange for notes for $1,000 each, bearing serial numbers and is exchangeable upon the conditions prescribed in the within mentioned indenture, for notes of the said denomination bearing such serial. The notes bearing the said serial numbers are not now outstanding."

Whenever any note shall be originally issued for a principal sum greater than $1,000, there shall be reserved by the Railroad Company unissued notes each for the principal sum of $1,000 of an aggregate principal sum equal to the principal sum of the note of greater denomination than $1,000 so issued, and the serial numbers of the $1,000 notes so reserved unis-

sued shall by the Railroad Company be endorsed on the note of greater denomination issued in lieu thereof.

Only such notes as shall bear thereon a certificate, substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture, or shall be entitled to any lien or benefit hereunder. Every such certificate of the Trustee upon any note executed by the Railroad Company, shall be conclusive evidence, and the only evidence that the note so certified was duly issued hereunder and is entitled to the benefit of the trust hereby created for the benefit of the holder of such note.

The Trustee shall not certify or deliver any note hereby secured, until all coupons thereof then matured shall have been detached and shall have been cancelled.

Section 2. In case any of the officers of the Railroad Company who shall have signed any of the notes shall die or cease to be officers before notes shall have been actually certified by the Trustee, or delivered or sold, upon the request of the Railroad Company such notes shall be certified and delivered as provided as though the persons who signed said notes had not died or ceased to be officers. The coupons attached to the notes to be authenticated by the engraved signature of the Treasurer.

Section 3. Notes authorized to be issued for sum of $10,000,000 to be executed by the Railroad Company and delivered to the Trustee as soon as possible after execution hereof.

Section 4. Railroad Company may issue temporary notes pending the preparation of the definite notes, which shall thereafter be exchanged.

Section 5. In case notes shall become mutilated or destroyed, Trustee shall certify and deliver a new note in place thereof.

Section 6. Two or more notes may be surrendered to the Trustee in exchange for a single note of higher denomination, and any note of $2,000 or over may be surrendered in exchange for notes of a lower denomination.

Section 7. Nothing herein is intended to give any person or corporation, other than the parties hereto and the holders of said notes, any rights in respect to this indenture.

ARTICLE TWO.

The Railroad Company covenants as follows:

Section 1. Duly and punctually the Railroad Company will pay the interest and the principal of the notes issued hereunder at the time and in the manner specified in said notes without deduction from either such principal or interest for any tax or taxes which the Railroad Company or the Trustee may be required to pay thereon or to retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein, and the Railroad Company hereby covenants and agree to pay all such tax or taxes.

Section 2. From time to time the Railroad Company promptly shall and will pay and discharge or cause to be paid and discharged, all taxes, rates, lawful levies or assessments and charges, special or generl, ordinary or extraordinary, levied or imposed upon or in respect of the pledged property, the lien whereof might or could be held to be prior or equal to the lien of these presents, so that the same shall not fall into arrears, and so that the priority of this indenture of pledge shall be duly preserved; provided, however, that the Railroad Company, in good faith and by appropriate legal proceedings, shall have the right to contest any such tax, assessment or charge, and pending such contest may delay or defer the payment thereof.

Section 3. Railroad Company at its own expense to keep in full repair all its properties.

Section 4. Railroad Company to keep a register.

ARTICLE THREE.

Section 1. From time to time upon the written request of the President or of any Vice-President of the Railroad Company, authorized by resolution of the Board of Directors, the Trustee shall release from the lien and operation of this indenture, and shall deliver to the Railroad Company, any of the pledged securities then subject thereto; provided, however, that none of such pledged securities shall be so released, unless contemporaneously there shall be deposited with the Trustee a sum of money equal to the withdrawal value of such pledged securities so released, such withdrawal value being hereby fixed at the percentage of the face value of the pledged bonds of each issue (exclusive of interest) respectively indicated, to wit:

Erie Railroad Company General Mortgage 4% convertible 50-Year Gold Bonds, Series C..	70%
Erie Railroad Company First Consolidated Mortgage General Lien 4% Gold Bonds....	80%
Erie and Jersey Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	75%
Genesee River Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	70%

Section 2. Any and all moneys received by the Trustee upon the release of pledged securities pursuant to the provisions of the foregoing Sections 1 of this Article, shall be held and applied by the Trustee upon and to the following trusts and purposes—to wit:

After the receipt of such moneys, the Trustee from time to time shall use and apply the same in the purchase of any of the notes hereby secured at such price

not in excess of their par value and accrued interest, and in such manner, as the Railroad Company shall deem best.

Any and all moneys which shall not be used and applied in the purchase of notes issued hereunder as aforesaid shall be held by the Trustee upon the trusts of this indenture as part of the trust estate.

Until so expended in the purchase of such notes, and no default hereunder existing, a reasonable allowance for interest on moneys held by the Trustee for such purpose shall be made to the Railroad Company by the Trustee.

All notes purchased as hereinbefore provided forthwith shall be cancelled by the Trustee and be delivered to the Railroad Company.

Section 3. The Trustee shall give consent to any merger or consolidation with any other company.

Section 4. Trustee shall detach from the bonds of the Railroad Company the interest coupons which shall have matured prior to the date of maturity of the interest paid on the notes issued hereunder and shall cancel and deliver same to Railroad Company. Unless there shall be default in the payment of interest on notes secured hereby or in the payment of the principal of any note when same shall become payable, or in the performance of any of the covenants or conditions herein required to be kept by the Railroad Company, and such default shall have continued for a period of sixty days after notice by the Trustee, the Railroad Company shall be entitled to receive all interest paid on any of the pledged securities, and the Trustee shall deliver to it any coupons for interest in order that the Railroad Company may receive payment thereof or cause same to be cancelled. (Then follows other provisions in reference to the payment of interest, &c.)

Section 5. In case Railroad Company shall make default in any covenants in the mortgages securing any bonds, the Trustee shall not surrender or cancel any coupons or interest obligations, and shall collect the amount payable thereon; and for all purposes the Trustee shall be considered the legal holder of the pledged bonds and coupons.

Section 6. Trustee authorized to register in its name, as Trustee, all coupon bonds pledged with it, or cause same to be exchanged for registered bonds without coupons of any denomination.

ARTICLE FOUR.

Section 1. In case (1) default shall be made in the payment of any interest on any of said notes, and any such default shall continue for a period of sixty days, or in case (2) default shall be made in the payment of the interest, or any part thereof, upon any bonds outstanding under the mortgage securing any of the aforesaid pledged Erie bonds at the time subject to this indenture, and such default shall continue for the period of sixty days; or in case (3) upon a default by the Railroad Company in any of the covenants of the mortgage securing any of such pledged Erie bonds, the Trustee under such mortgage shall have declared due the principal sum of the bonds secured thereby, then and in each and every such case the Trustee may, and, upon the written request of the holders of twenty-five per cent. in amount of the notes hereby secured at such time outstanding, the Trustee shall, declare the principal of all notes then outstanding hereunder to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this indenture or in said notes contained to the contrary notwithstanding.

Then provision, however, is subject to the condition that if, at any time after the principal of said notes shall have been so declared due and payable, and before any sale of the pledged property or any thereof shall have been made pursuant to the provisions of Section 2 of this Article, all arrears of interest upon all such notes shall be paid by the Railroad Company, and the Railroad Company also shall have remedied any and every default by it theretofore made under this indenture or in respect to any of such pledged Erie bonds, then and in every such case the holders of a majority in amount of the notes hereby secured then outstanding, by written notice to the Railroad Company and to the Trustee, may rescind and annul such declaration and its consequences; provided however, that in case the principal of any of such pledged Erie bonds shall have been declared due as aforesaid, no such rescission or annulment shall be made unless or until the declaration of the maturity of the principal of the pledged Erie bonds shall have been rescinded or annulled by the Trustee under the mortgage securing the same as provided therein; and provided, further, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railroad Company and the Trustee shall be restored respectively to their several positions and rights hereunder in respect of the pledged securities, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 2. In case (1) default shall be made in the payment of any interest on any of said notes, and any

such default shall continue for a period of sixty days; or in case (2) default shall be made in the due and punctual payment of the principal of any of said notes; or in case (3) default shall be made in the due observation and performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall have continued for a period of sixty days after written notice thereof from the Trustee to the Railroad Company, then, and in each and every such case of default (a) the Trustee, personally or by attorney, may sell either all, or from time to time any part, of the securities pledged hereunder as security for said notes, or which in any manner shall be subject to this indenture, and all right, title and interest, claim and demand therein, and right of redemption thereof, which sale or sales, if deemed best by the Trustee, or so directed by the holders of a majority in amount of said notes, may be made privately, but otherwise shall be made in the City of New York, either at the New York Stock Exchange, according to the rules and customs thereof, or publicly at such other place or places, and at such time or times, and upon such terms, as the Trustee may fix and briefly specify in the notice or notices of sale to be given by publication thereof in at least two newspapers published in the City of New York, for five days in the week next preceding such sale; or (b) the Trustee may proceed to protect and to enforce its rights and the rights of noteholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

Exhibit Erie 15—(18).

The Trustee may adjourn from time to time any sale by it to be made under the provisions of this indenture by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

Section 3. Upon written request of holders of 25% of the notes hereby secured, in case of default as aforesaid, the Trustee upon being indemnified, shall take steps for the protection of its rights and the rights of holders of the notes; but holders of a majority in amount of notes shall have the right to direct whether the Trustee shall proceed to sell any of the pledged securities, or shall proceed in equity or at law, and to direct and control the method and place of any sale, etc.

Section 4. Upon sale under this indenture the Trustee shall endorse or assign and deliver to the purchasers.

Section 5. The receipt of the Trustee for the purchase money shall be sufficient; but purchasers shall not be bound to see to the application of purchase money.

Section 6. In case of such sale the whole of the principal sum of the notes hereby secured shall at once become due and payable.

Section 7. States how proceeds of any such sale shall be applied.

Section 8. Upon sale by Trustee or otherwise, the Trustee or any noteholder or any other person may bid for and purchase the property offered for sale, and without accountability in respect thereof, except for payment of purchase price. (Then states how payments may be made.)

Section 9. The Railroad Company covenants that (1) in case default shall be made in the payment of any interest on any note at any time outstanding and secured by this indenture, and such default shall continue for a period of sixty days, or (2) in case default shall be made in the payment of the principal of any such note when the same shall become payable, whether at the maturity of said notes or by declaration as authorized by this indenture, or upon a sale as mentioned in Section 6 of this Article—then, upon demand of the Trustee the Railroad Company will pay to the Trustee, for the benefit of the holders of the notes hereby secured, then outstanding, the whole amount which then shall have become due and payable on all such notes then outstanding for interest or principal or both, as the case may be; and, in case the Railroad Company shall fail to pay the same forthwith upon such demand, the Trustee in its own name and as Trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture upon the pledged securities, and the right of the Trustee to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture; and in case of a sale as provided in this Article of the pledged securities, and of the application of the proceeds of sale to the payment of the notes secured hereby, the Trustee, in its own name and as trustee of an express trust, shall, for the benefit of the holders thereof, be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the said notes then outstanding, and shall be entitled to recover judgment for any

portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of execution upon any such judgment upon the pledged securities, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the pledged securities or any part thereof, or any rights, powers or remedies of the Trustee hereunder, but such lien, rights, powers and remedies of the Trustee and of the noteholders shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section (less expenses, Trustee's compensation and indemnification and other proper deductions), shall be applied by the Trustee toward payment of such amounts then due and payable upon such notes ratably and without any preference or priority of any kind, upon presentation of the respective notes and stamping such payments thereon, if partly paid, or upon cancellation thereof, if paid in full.

Section 10. Holder of any note shall not have right to institute suit for enforcement of this indent--ure, unless the holder shall give the Trustee written notice of default; nor unless the holders of twenty five percent of the notes secured hereby and outstanding shall have made written request upon Trustee and afforded it a reasonable opportunity to proceed, nor unless also they shall have offered Trustee security against costs, &c. All rights under this indenture may be enforced by the Trustee without possession of any of the notes or production thereof upon trial.

Section 11. No delay or omission of the Trustee or any note holder to exercise any right accruing upon default shall impair any such right or power.

ARTICLE FIVE.

No recourse under any agreement of this indenture or any note hereby secured, or the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company; it being understood that this indenture and the obligations thereby secured are solely corporate obligations, and all personal liability against any stockholder, officer or director is expressly waived.

ARTICLE SIX.

Section 1. Any request or other indenture required by this instrument to be signed and executed by noteholders maybe in any number of concurrent instruments of similar tenor.

Section 2. Railroad Company and Trustee may treat the bearer of any note not registered or of any coupon, as the absolute owner of such note or coupon, and shall also treat the registered holder of any such note as the absolute owner thereof for the purpose of receiving payment.

ARTICLE SEVEN.

Section 1. If, when all the notes hereby secured shall have become due and payable, the Railroad Company well and truly shall pay, or shall cause to be paid, the whole amount of the principal moneys and interest due upon all of such notes, or shall provide for such payment by depositing with the Trustee, for the payment of such notes and coupons, the entire amount then due thereon for principal and interest, and also shall pay, or shall cause to be paid all other sums payable hereunder by the Railroad Company, and well and truly shall keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this

indenture, then, and in that case, all the pledged securities subject to this indenture shall revert to the Railroad Company, and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and in such case the Trustee, on demand of the Railroad Company, and at its cost and expense, shall execute proper instruments, acknowledging satisfaction of and discharging this indenture and shall redeliver to the Railroad Company the pledged securities accompanied by proper instruments of assignments and transfer; otherwise this indenture shall be, continue and remain in full force and virtue.

Section 2. All covenants, &c., on behalf of the Railroad Company shall bind its successors or assigns.

Section 3. For the use of this indenture the words "Railroad Company" include the party of the first part and also any successor corporation.

ARTICLE EIGHTH.

Section 1. Trustee shall not be answerable for default or misconduct of any agent or attorney, if such agent or attorney shall have been selected with reasonable care; or for anything in connection with trust, except wilful neglect or misconduct. The Trustee shall not be under any obligation to take any action unless furnished with indemnity satisfactory to the Trustee, nor shall the Trustee take notice of any default unless notified in writing. Any action taken by the Trustee upon the request of any owner of any note shall be conclusive and binding upon all future owners of the same note.

The Trustee shall incur no liability in acting upon any notice or paper believed by it to be genuine. The recitals and statements herein and in said notes and coupons shall be considered as statements by the party of the first part. The Trustee may become the owner of

notes secured hereby. Trustee in its discretion may advise with legal counsel selected by it and at the expense of the Railroad Company. The Trustee shall be entitled to reasonable compensation, and for the payment thereof the Trustee shall have a lien on all the property. The trustee shall be under no obligation to see to the application of any note. The Trustee shall be protected in the giving of proxies to the Railroad Company.

Section 2. The Trustee may resign or be discharged of the trust by giving notice.

Section 3. In case Trustee shall resign or be removed, a successor may be appointed by the holders of a majority in amount of the notes. Such new trustee so appointed shall deliver to the Trustee last in office and to the Railroad Company an instrument accepting such appointment, and the Trustee ceasing to act shall make transfer to the new Trustee of all its right, powers and trusts.

(Then follows testimonium clause and ackowledgment.)

EXHIBIT "ERIE-15."

(19)

AMERICAN CAR AND FOUNDRY COMPANY, COLUMBIA TRUST COMPANY and ERIE RAILROAD COMPANY.

CONDITIONAL SALE AGREEMENT, dated October 1, 1907.

Agreement dated October 1st, 1907, between American Car and Foundry Company, called the Car Company, Columbia Trust Company as Trustee, called the Trustee, and the Erie Railroad Company, called the Railroad; Witnesseth:

Recites that the Railroad has requested the Trustee to secure for its use the cars hereinafter specified, which cars are herein called the "Trust Equipment," and the Trustee has agreed so to do and has applied

to the Car Company to construct and deliver such equipment, which the Car Company has agreed to do as hereinafter set forth;

First. The Car Company agrees to manufacture for and to deliver to the Trustee during the months of October, November and December, 1907 (all deliveries to be completed not later than January 31, 1908) and in the lots hereinafter specified, three thousand forty-ton, steel underframe box cars lettered "Erie" and numbered 109500 to 112499 inclusive (comprising the "trust equipment" in this instrument mentioned), which said cars are to be built in accordance with the Car Company's specifications No. 809 and subject to inspection and approval by the representatives of the Railroad. Two thousand of said cars shall be delivered on tracks at the Car Company's works at Berwick, Pa., and one thousand on tracks at its works at Detroit, Mich.

The Car Company agrees to accept as full payment for said cars the principal sum of Three million, four hundred and eighty thousand seven hundred dollars ($3,480,700), of which sum Four hundred and forty thousand, seven hundred Dollars ($440,700) shall be in cash or in materials for use in the construction of said trust equipment, and the remaining Three million and forty thousand Dollars ($3,040,000) of said principal sum shall be in the "equipment notes" (hereinafter described) of the Railroad to be issued and delivered as hereinafter provided for.

Second. The Trustee agrees to, and does hereby lease unto the Railroad, and the Railroad does hereby hire and lease from the Trustee, all and singular the said trust equipment constructed as aforesaid, from the dates of the respective deliveries thereof and until October 1, 1917 (or the earlier termination of this lease as hereinafter provided for), at the rental and upon and subject to the terms and conditions

hereinafter stated, which said cars shall be delivered to the Railroad as they shall from time to time be received by the Trustee from the Car Company.

Third. The Railroad agrees to receive and accept upon and subject to all the terms and conditions of this agreement, said trust equipment, built as herein provided, as and when the same shall be ready for delivery at the places and within the times herein specified; and to pay as rental therefor the amount in the manner and at the times as hereinafter set forth.

And it is distinctly and specially stipulated, covenanted and agreed that the delivery to and the acceptance of the trust equipment, or any part thereof, by the Railroad shall not vest any right or interest therein or title thereto in the Railroad other than as defined in this indenture; and that until payment by the Railroad of all the equipment notes by this agreement provided for and of the coupons belonging thereto, and until all the obligations of the Railroad hereunder shall have been fully complied with and performed, the title to the trust equipment or to any part thereof shall not pass to or vest in the Railroad, but shall remain in the Trustee on the Trust to perform and enforce this agreement for the equal benefit of the holders, of the equipment notes herein mentioned, notwithstanding the delivery of the trust equipment to and its possession and use by the Railroad.

And it is further covenanted and agreed by and between the parties:

I. The Railroad agrees, as a consideration for the leasing to it of the trust equipment, to faithfully observe and comply with all and every the terms, provisions and conditions of this agreement by it to be observed and complied with; and agrees to pay to the Trustee, to and for the account of the Car Company, as part payment for the trust equipment to be manufactured by the Car Company, the sum of Four hundred and forty thousand, seven hundred dollars ($440,-

700), in cash or in materials for use in the construction of said trust equipment. The Railroad agrees also to pay as rental for said trust equipment:

(a) The entire principal of the equipment notes issued in accordance with the provisions hereof, according to their tenor, as the same severally mature, together with interest at the rate of five per cent. per annum upon the principal of said notes, according to the tenor of the coupons thereto attached—all such payments both of principal and interest to be in gold coin of the United States of the present standard of weight and fineness, or its equivalent; and

(b) Any and all taxes which may be assessed or levied upon the trust equipment, or any part thereof, and any and all taxes which may be assessed or levied upon the equipment notes issued hereunder and the interest coupons thereon, and which the Railroad may be required to pay thereon or deduct therefrom.

II. The Railroad agrees to forthwith execute and deliver to the Trustee its notes (herein designated "equipment notes") aggregating in principal amount three million and forty thousand dollars ($3,040,000). Such notes shall be designated as "Erie Railroad Equipment Notes, Series N," shall be for the principal sum of One thousand dollars each; shall be dated and bear interest (to be evidenced by interest coupons attached) from October 1, 1907, at the rate of five per cent. per annum, payable semi-annually on the first days of April and October in each year; shall be numbered consecutively from one to three thousand and forty, both inclusive; shall have endorsed thereon a certificate of the Trustee as hereinafter specified; and shall mature at the rate of $152,000 face amount thereof on the first day of April and the first day of October in each year, beginning April 1, 1908, and ending October 1, 1917.

(Then follows form of note and coupon and Trustee's certificate.)

All equipment notes to be signed by such officers of the Railroad as from time to time shall be authorized; and if the officers who have so signed shall cease to be officers before the certification and delivery of the notes by the Trustee, such notes may be issued, certified and delivered by the Trustee as provided.

Coupons to be authenticated by the engraved signature of the Treasurer of the Railroad.

All interest on said notes shall cease after the principal shall become due, unless the Railroad shall fail to pay the principal and interest in full.

Equipment notes shall not be issued in excess of the sum of $3,040,000.

Only such notes as shall bear a certificate in the form hereinbefore recited and duly executed shall be entitled to any benefit.

Temporary notes, without coupons, to be executed and delivered in lieu of the permanent notes until same can be engraved.

If any of the temporary or permanent notes or receipts shall be mutilated or destroyed or lost, the Railroad may issue new notes or receipts or like tenor and date.

III. The Car Company agrees to make deliveries in lots of 100 cars each, beginning October, 1907, and continuing until all equipment shall have been delivered, which shall not be later than January 31, 1908.

The Car Company agrees to pay to the Railroad the interest on the equipment notes which represent the unpaid part of the purchase price of the equipment not theretofore delivered.

IV. The Railroad to keep an inspector at the works of the Car Company.

V. The Railroad agrees that upon delivery of each one hundred cars it will execute and deliver to the

Car Company a certificate showing the number of cars delivered and the road numbers.

Such certificate to be taken and acted on by the Trustee as evidence of its right to certify and issue the equipment notes.

Any balance of the equipment notes not theretofore paid or delivered shall be adjusted upon the delivery to the Trustee of the certificate of the Railroad respecting the last lot of cars delivered.

VI. The Railroad shall have and be entitled to the possession and use of the trust equipment. A metal plate bearing the words "Columbia Trust Company, Trustee, owner" in plain letters shall be placed on the side of each car comprising the trust equipment, and the Railroad shall do all things as shall be reasonably necessary for the protection of the Trustee as the owner of the trust equipment.

The Railroad shall not allow during the life of this agreement the name of any person, association or corporation to be placed upon any of the trust equipment; provided, however, that the Railroad may cause the cars comprising the trust equipment to be lettered "Erie."

VII. The Railroad agrees that it will keep all of said trust equipment in proper order and complete repair, to the satisfaction of the Trustee, and the Railroad will renew and replace from time to time such of the trust equipment as may be worn out, lost or destroyed—provided, however, that the Railroad may at its option pay to the Trustee the sum of $1,013.33 for each car so worn out, lost or destroyed. All new equipment to be subject to all the terms and conditions of this indenture. The Railroad if required by the Trustee to furnish once in each year a full and complete statement of the trust equipment.

If the Railroad shall receive money on account of the trust equipment damaged, lost or destroyed, it

shall be applied by the Railroad to the replacement or repair of the trust equipment.

VIII. The Railroad agrees not to assign or transfer this indenture, or transfer or sublet the trust equipment, without the consent of the Trustee. If Receiver should be appointed for the Railroad, such Receiver shall have the right to retain possession of the trust equipment so long as he shall comply with the terms and provision of this agreement.

The Railroad shall pay when due all taxes and charges of every kind against the trust equipment, except that the Railroad may contest any such tax assessments and charges. In case the Railroad shall neglect to pay such taxes and charges the Trustee may pay the same, and the Railroad will repay any such amounts so paid with interest.

The Railroad shall not sell, assign transfer, sublet or encumber, unless subject hereto, the trust equipment, but may dispose of its equity therein.

IX. The Railroad agrees with regard to the trust equipment to comply with all acts of Congress and with the laws of the United States and all States and Territories in which the trust equipment may be operated.

X. The Car Company agrees to protect the Trustee against all claims and demands incurred by or accruing upon the use of any patented invention employed in the Trust equipment. And the Railroad agrees to protect the Trustee against all claims in any way arising out of the use of any patented inventions.

XI. The Railroad agrees that the equipment notes and coupons shall be paid at maturity, and shall be cancelled, and that no notes or interest coupons in substitution thereof shall be issued; nor shall the Railroad consent to the extension of the time of payment of the principal of any equipment notes or coupons, and if such extension be made, the equipment

note or interest coupon so extended shall be subject to prior payment in full of the principal of the other notes and coupons the payment of which shall not have been extended.

XII. The Railroad to make, execute and deliver all further or supplemental agreements or other instruments as may be deemed advisable or necessary.

XIII. That upon the payment by the Railroad of all of the equipment notes in full, together with the interest thereon, in the manner and form herein and therein provided, and upon performance by the Railroad of all the covenants, obligations and agreements herein contained and by it to be performed, the title to the trust equipment shall pass to and vest in the Railroad; and the Trustee shall thereupon execute, at the expense of the Railroad, any bill of sale or other instrument which may be reasonably required by the Railroad, as evidence of its title to said equipment and of its compliance with the terms of this agreement and as evidence that the absolute ownership of said trust equipment is vested in the Railroad, its successors and assigns. Until payment in full, however, of all of said equipment notes and interest thereon, and the performance of all the obligations and covenants on the part of the Railroad hereunder, all and singular the trust equipment shall remain the absolute property of, and the title thereto shall continue to be vested in, the Trustee, as owner thereof, to all intents and purposes whatsoever, but subject to the Railroad's lessee interest therein under this agreement.

XIV. The Railroad shall be entitled to the possession of the trust equipment at all times during the life of this agreement, so long as it shall observe the conditions and obligations hereof; but (1) in case default shall be made by the Railroad in the payment of the principal of any of the equipment notes issued

hereunder, or of any interest coupons, as and when the same may be due and payable, and upon such default continuing for a period of thirty days; or (2) in case default shall be made in the due observance or performance of any other of the terms, provisions, covenants, conditions or obligations of this agreement, and upon such default continuing for thirty days after notice in writing by the Trustee requiring the Railroad to comply therewith (which notice the Trustee shall serve at the request of the holders of at least one-fourth in amount of the equipment notes outstanding), the Trustee shall be entitled to and may, at its option, retake the trust equipment and every part thereof, retaining all payments which up to that time may have been made on account of such equipment (principal and interest); and for the purpose of taking such possession, the Trustee shall be entitled to enter upon and take and remove all of said equipment (including all substitutions therein and additions thereto) from the premises of the Railroad or wherever the same may be found; and the Railroad will afford the Trustee every possible facility and means of assistance to such end. And the Railroad agrees that in the event of any default continuing as aforesaid, it will, upon written demand by the Trustee and as promptly as possible, deliver to the Trustee, without cost or charge, each and every piece of said trust equipment, at such place or places upon the lines of the Railroad as the Trustee shall require. The Trustee shall, upon application to any court of equity having jurisdiction in the premises, be entitled to a decree against the Railroad requiring specific performance hereof.

The Railroad shall have the right upon payment by it of all outstanding notes and of the accrued interest thereon to date of such payment, and all other sums that it is obligated to pay, to have redelivered to it such of the trust equipment as may have been retaken by the Trustee.

New Jersey State Library

Upon the election by the Trustee to take the trust equipment, and the failing such payment by the Railroad and the vesting in it full title to the trust equipment, the whole of the principal of the equipment notes may be declared by the Trustee due and payable, with all accrued interest.

Upon such election the Trustee may sell the trust equipment at public or private sale.

The Trustee may in its discretion resort to any proceedings in its judgment necessary or proper for the enforcement of this indenture.

The holders of seventy-five per cent in amount of the equipment notes at the time outstanding shall have the right to waive any default upon the part of the Railroad upon any of the equipment notes.

In the event of a sale under the decree of any court, or by the Trustee, the Trustee may become the purchaser.

In case of a sale hereunder the principal of the equipment notes, if not previously due, shall become immediately due and payable.

XV. States that the Trustee shall not be liable for any delay in the delivery of said equipment or for any failure or default on the part of the Railroad or for any defect in any of said equipment, &c.

The Trustee shall be under no obligation with reference to the recording or filing of this indenture, etc.

The Railroad shall pay to the Trustee all reasonable and proper expenses incurred by the Trustee in the performance of its duties hereunder. The Trustee shall be indemnified in all its acts hereunder.

XVI. Any notice or demand by the Trustee hereunder may be mailed by registered letter to the Railroad.

XVII. The Trustee may resign by giving the Railroad and the Car Company written notice, and to the stockholders notice by publication, etc.

Exhibit Erie 15—(20).

Every trustee appointed hereunder in place of its predecessor trustee shall execute and deliver to the Railroad an instrument accepting such appointment.

XVIII. The bearer of any note or coupon hereunder shall be treated as the absolute owner of such note or coupon.

XIX. Except when expressly indicated herein the words "Car Company" shall be held to mean and include the American Car and Foundry Company; and the words "Trustee" shall be held to mean and include the Columbia Trust Company, and the word "Railroad" shall be held to mean and include "Erie Railroad Company, their successors and assigns."

XX. Wherever mention is made of the life hereof it shall mean and include the whole time until all the notes hereunder and the coupons have been fully paid.

XXI. That this agreement may be simultaneously executed in several counterparts.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15.))

(20)

LEASE.

CENTRAL TRUST COMPANY OF NEW YORK, TRUSTEE, to ERIE RAILROAD COMPANY, dated August 31st, 1907.

AGREEMENT

Between CENTRAL TRUST COMPANY OF NEW YORK, TRUSTEE and ERIE RAILROAD COMPANY, for an issuance of $1,000,000 Gold Equipment Trust Certificates, dated August 31st, 1907, Series "O."

LEASE.

Agreement dated August 31st, 1907, between Central Trust Company, Trustee, called the Lessor, and Erie Railroad Company, called the Railroad Company, Witnesseth:

Exhibit Erie 15—(20).

The Lessor leases to the Railroad Company for the term of ten years from October 1st, 1907, unless sooner terminated, certain railroad equipment, to wit:

1,000 Steel Hopper Cars;

Which said cars shall be delivered to the Railroad Company as they shall from time to time be received from the builders at McKees Rocks or Allegheny, Penna; being the same cars purchased by the Lessor from the Pressed Steel Car Company by contract dated August 31st, 1907, said cars being manufactured by said Car Company in accordance with specifications furnished by the Erie Railroad Company for the rent hereinafter set forth, and upon the terms, conditions and covenants following, to wit:

First. The Railroad Company shall and will pay to the Lessor or its assigns, at its office in the City of New York, as rent and hire for said railroad equipment:

I. Half-yearly, on the first day of April and the first day of October, the first payment to be made on the first day of April, 1908:

(a) A sum equal to two and one-half per cent. (2½%) of one million dollars ($1,000,000), which sum shall be reduced from time to time by an amount equal to two and one-half per cent. (2½%) on such portions as the Railroad Company shall pay to the Lessor on said one million dollars ($1,000,000) as specified in paragraph III of this Article.

(b) A sum equal to the reasonable expenses incurred by the Lessor in enforcing the covenants and terms of this lease.

(c) A sum equal to the tax upon the income or property of the trust which the Lessor or its assigns may be liable to pay, and any tax which it, the Lessor, or its assigns, may by law be required to deduct from the principal of the certificates hereinafter referred to or the dividends thereon.

Exhibit Erie 15—(20).

II. On demand after October 1st, 1907, the sum of two hundred and twenty-eight thousand eight hundred and seventy-six dollars ($228,876).

III. Semi-annually, on the first day of April and October in each year, beginning with the first day of April, 1908, the following sums respectively:

On the 1st day of April, 1908.....$50,000
On the 1st day of October, 1908..... 50,000

(Then follows provision for further payments of $50,000 each on April 1st and October 1st of each year down to and including October 1st, 1917.)

The payments of rentals above recited to be evidenced by car trust notes executed by the Trust Company.

Second: The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair and to cause said railroad equipment to be marked on both sides of each car by permanently and securing, placing and fastening upon each side of each car composing the said equipment a metal plate bearing the words in plain letters "Central Trust Company of New York, Trustee, Owner and Lessor"; said metal plate to be placed so as to be plainly visible and to indicate plainly the ownership of said equipment. In case any of such plates shall be at any time removed, defaced or destroyed, the Railroad Company shall and will immediately restore the same, so that every piece of the original equipment and every piece of equipment replacing any of the same shall always bear the plate above described on each side of each car, with the name of the Lessor, its successor or assigns, as the owner of said equipment. The Railroad Company may cause the said cars and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein.

Exhibit Erie 15—(20).

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of said railroad equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as that destroyed, and of substantially as good material, character and construction.

Provided, however, that the Railroad Company may at its option instead of replacing any of said cars which may be worn out, lost or destroyed, pay to the lessor the sum of $1000, for each car so worn out, lost or destroyed, all such money to be held by the lessor until the termination of this lease, and in the event that the Railroad Company exercise the option of purchase herein provided, after default or otherwise, to be turned over to the Railroad Company at the time of such purchase, and the lessor agrees to pay the Railroad Company interest thereon at a reasonable rate, not less than the highest rate paid general depositors of the Central Trust Company of New York, said interest to be retained by the Lessor, its successors or assigns, until all payments have been made, in accordance with Article First, Paragraphs I, II, and III.

Third: The Railroad Company agrees to furnish an inventory.

Fourth: The Railroad Company covenants and agrees that in case the Railroad Company shall make default in the payment of any part of said rental for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or its assigns may declare this lease terminated, and thereupon all installments of rent reserved hereunder, whether said installments shall have then fallen due or not, shall

at once become forthwith due and payable, and the Lessor or its assigns may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

But in any such case of default the Railroad Company shall have the right within thirty days after the lessor shall have declared the lease terminated to pay all outstanding certificates and interest thereon to the date of such payment. Thereupon, upon receipt of evidence of such payment and of the cancellation of all such certificates and interest coupons thereon, the lessor, its successors or assigns, will make and deliver to the Railroad Company a bill of sale of all of its right, title and interest in and to the cars covered by this lease and return to the Railroad Company all sums desposited by the Railroad Company with the lessor, its successors or assigns, on account of cars worn out or destroyed, with accrued and unpaid interest.

Fifth: In case of such retaking the Railroad Company agrees to draw the equipment to such point as shall be designated by the Lessor and to deliver same.

Sixth. The said Lessor hereby covenants and agrees with the said Railroad Company that upon the due and proper payment of the last installment of fifty thousand dollars ($50,000) hereinbefore referred to, and upon the due and proper payment of the rentals, interest, prior installments and moneys which the Railroad Company has herein covenanted to pay, it, the said Lessor, shall and will upon the payment to it of ten dollars, sell, assign and transfer, or cause to be sold, assigned or transferred to the Railroad Company, its successors and assigns, as its absolute property, all of the railroad equipment held under this lease, and evidence such sale and transfer by a proper bill of

sale, so that thereupon and thereafter the absolute ownership in said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Until payment by the Railroad Company to the said Trustees, its successors or assigns, and to the holders of the certificates referred to in that certain agreement of even date herewith between the Trustee and the Railroad Company, to which reference is hereby made, of the entire purchase price of said equipment, and all of the installments and amounts as herein specified, and until all the obligations of the Railroad Company hereunder shall have been fully complied with and performed, the title to the equipment aforesaid shall not pass to or vest in the Railroad Company, but shall remain in said Trustee, its successors and assigns, for the benefit of the holders of said certificates, notwithstanding the delivery to and possession and use of said equipment by the said Railroad Company.

Trustee, holders of certificates or subscribers mentioned in agreement shall not be liable for delay in the delivery to the Railroad Company of any of the cars composing the equipment; and nothing herein contained shall be construed as a warranty in respect to the value of the equipment.

The Trustee agrees to assign to the Lessee all rights, claims and demands against the manufacturer of the cars by reason of delay, default or defect in the delivery and construction of the cars.

The Railroad Company agrees to protect the Lessor from all claims and demands which may accrue from the use of any patented invention used or employed on the said equipment.

Seventh. This instrument to be simultaneously executed in several counterparts.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(20).

AGREEMENT.

Agreement dated August 31st, 1907, between CENTRAL TRUST COMPANY OF NEW YORK, called the Trustee, and the Erie Railroad Company, called the Railroad Company, Witnesseth:

Recites the above lease; also that subscriptions have been secured for a fund to be known as the Erie Railroad Equipment Trust, Series O. This Agreement Witnesseth:

First. The Trustee covenants and agrees as soon as it shall have contracted for the manufacture and delivery of said equipment and the amount of moneys necessary to pay for said equipment according to the terms of the contracts therefor shall have been deposited with it, to pay to certain of the subscribers two hundred and twenty-eight thousand eight hundred and seventy-six dollars ($228,876) in cash and to deliver to others of the subscribers one thousand (1,000) Certificates in the following form to wit:

(Then follows form of certificate and dividend warrant.)

(Statement as to how the certificates shall be numbered and when payable and in reference to the dividends.)

Second. The Trustee agrees to keep a register.

Third. The Trustee further covenants to perform and as far as possible to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals payable on and after April 1, 1908, thereunder when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment which are usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it, the lessor or its assigns, may be liable to pay and any tax which it, the Lessor, or its assigns, may by law be required to deduct from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said trust certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said warrants and certificates shall be cancelled upon payment thereof.

It is distinctly understood and agreed that neither the trustee nor any successor in the trust shall be liable or responsible for any failure to record said Indenture of Lease, or for any other matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fourth. Railroad Company agrees to pay all reasonable expenses of the Trustee and all taxes for which the Trustee may be liable.

Fifth. It is further covenanted and agreed that, in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall have become payable, or shall fail to keep and perform all the terms and covenants of the said lease, the Trustee shall have the right to declare the principal of all of the said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and thereupon to enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of said railroad equipment it may either hold or lease or dispose of said railroad equipment, or so much

thereof as it may deem necessary, in such manner, at such public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of such lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust, and all taxes which the Trustee may by law be required to pay in respect to the trust property or the certificates aforesaid, or the dividends thereon:

(1) To the dividend warrants then due, and

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata*.

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company for the future accruing rent until such sum is realized as with the proceeds of the sale of said railroad equipment is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all the said certificates.

Sixth. This instrument to be simultaneously executed in several counterparts.

(Then follows testimonium clause and acknowledgment.)

Exhibit Erie 15—(21).

EXHIBIT "ERIE-15."

(21)

(20 Notes as below)

UNITED STATES OF AMERICA
STATE OF NEW YORK.

Series C
Number $4,500.00

ERIE RAILROAD COMPANY
SERIAL FIVE PER CENT. GOLD NOTE.

On or before June 1, 1915, for value received, ERIE RAILROAD COMPANY promises to pay to the N. Y. P. & O. Dock Company, or order, Four Thousand Five Hundred Dollars ($4,500.00)) in gold coin of the United States of the present standard of weight and fineness, or its equivalent, and to pay interest thereon from the first day of June, 1912, in like gold coin at the rate of five per centum (5%) per annum, payable semi-annually on the first day of December, 1912, and the first day of June and December in each year thereafter, upon presentation and surrender of the annexed coupons as they severally mature; principal and interest payable at the office of said Erie Railroad Company in the City of New York, N. Y.

This note is one of a series of twenty (20) notes, of like tenor, date and amount, and numbered consecutively from one to twenty, both inclusive, which together with four other series, each of the same number and amount, are issued under and in accordance with a conditional bill of sale of even date herewith, executed and delivered by said the N. Y. P. & O. Dock Company to said Erie Railroad Company, and duly filed and recorded in the office of the Recorder of Cuyahoga County, State of Ohio, and in the office of the Secretary of State of the State of Ohio, to which bill of sale reference is hereby made for the terms and conditions thereof. Said series are lettered A, B, C, D,

and E and mature, said Series A on the first day of June, 1913, said Series B on the first day of June, 1914, said Series C on the first day of June, 1915, said Series D on the first day of June, 1916, and said Series E on the first day of June, 1917; and all of said notes, of whatever series, are equally secured by said conditional bill of sale, to all the terms and conditions of which this note and the rights of the holder thereof are subject.

If default shall be made in payment of the principal of any of said notes or of any semi-annual instalments of interest on any of said notes, when the same shall become due, and any part of the amount so due shall remain unpaid for sixty days thereafter, the principal of this note and all other of said notes then issued and outstanding shall immediately become due and payable at the option of the holders of a majority in amount of said notes then outstanding and unpaid.

IN WITNESS WHEREOF, said Erie Railroad Company has caused its corporate seal to be hereto affixed and this note to be signed by its President or Vice-President and attested by its Secretary, as of the first day of June, 1912.

ERIE RAILROAD COMPANY,

By

Attest President.

Secretary.

(Coupons attached.)

Exhibit Erie 15—(21).

(20 Notes as per below)

UNITED STATES OF AMERICA
STATE OF NEW YORK.

Series D $4,500.00
Number.....

ERIE RAILROAD COMPANY
SERIAL FIVE PER CENT. GOLD NOTE.

On or before June 1, 1916, for value received, Erie Railroad Company promises to pay to the N. Y. P. & O. Dock Company, or order, Four Thousand Five Hundred Dollars ($4,500) in gold coin of the United States of the present standard of weight and fineness, or its equivalent, and to pay interest thereon from the first day of June, 1912, in like gold coin at the rate of five per centum (5%) per annum, payable semi-annually on the first day of December, 1912, and the first day of June and December in each year thereafter, upon presentation and surrender of the annexed coupons as they severally mature; principal and interest payable at the office of said Erie Railroad Company in the City of New York, N. Y.

This note is one of a series of twenty (20) notes, of like tenor, date and amount, and numbered consecutively from one to twenty, both inclusive, which together with four other series, each of the same number and amount, are issued under and in accordance with a conditional bill of sale of even date herewith, executed and delivered by the said The N. Y. P. & O. Dock Company to said Erie Railroad Company, and duly filed and recorded in the office of the Recorder of Cuyahoga County, State of Ohio, and in the office of the Secretary of State of the State of Ohio, to which bill of sale reference is hereby made for the terms and conditions thereof. Said Series are lettered A, B, C, D and E and mature, said Series A on the first day of June, 1913, said Series B on the first day of June,

1914, said Series C on the first day of June, 1915, said Series D on the first day of June, 1916 and said Series E on the first day of June, 1917; and all of said notes, of whatever series are equally secured by said conditional bill of sale, to all the terms and conditions of which this note and the rights of the holder thereof are subject.

If default shall be made in payment of the principal of any of said notes or of any semi-annual instalment of interest on any of said notes, when the same shall become due, and any part of the amount so due shall remain unpaid for sixty days thereafter, the principal of this note and all other of said notes then issued and outstanding shall immediately become due and payable at the option of the holders of a majority in amount of said notes then outstanding and unpaid.

IN WITNESS WHEREOF, said Erie Railroad Company has caused its corporate seal to be hereto affixed and this note to be signed by its President or Vice President and attested by its Secretary, as of the first day of June, 1912.

ERIE RAILROAD COMPANY

By.....

President.

Attest.....

Secretary.

(Coupons attached.)

Exhibit Erie 15—(21).

(20 Notes as per below.)

UNITED STATES OF AMERICA
STATE OF NEW YORK.

Series E. $4,500.00
Number.....

ERIE RAILROAD COMPANY
SERIAL, FIVE PER CENT. GOLD NOTE

On or before June 1, 1917, for value received, ERIE RAILROAD COMPANY, promises to pay to the N. Y. P. & O. Dock Company, or order, Four Thousand Five Hundred Dollars ($4,500) in gold coin of the United States of the present standard of weight and fineness, or its equivalent, and to pay interest thereon from the first day of June, 1912, in like gold coin at the rate of five per centum (5%) per annum, payable semi-annually on the first day of December, 1912, and the first day of June and December in each year thereafter, upon presentation and surrender of the annexed coupons as they severally mature; principal and interest payable at the office of said Erie Railroad Company in the City of New York, N. Y.

This note is one of a series of twenty (20) notes, of like tenor, date and amount, and numbered consecutively from one to twenty, both inclusive, which, together with four other series, each of the same number and amount, are issued under and in accordance with a conditional bill of sale of even date herewith, executed and delivered by said The N. Y. P. & O. Dock Company to said Erie Railroad Company, and duly filed and recorded in the office of the Recorder of Cuyahoga County, State of Ohio, and in the office of the Secretary of State of the State of Ohio, to which bill of sale reference is hereby made for the terms and conditions thereof. Said series are lettered A, B, C, D, and E and mature, said Series A on the first day of June, 1913, said Series B on the first day of June,

1914, said Series C on the first day of June, 1915, said Series D on the first day of June, 1916, and said Series E on the first day of June, 1917; and all of said notes, of whatever series are equally secured by said conditional bill of sale, to all the terms and conditions of which this note and the rights of the holder thereof are subject.

If default shall be made in payment of the principal of any of said notes or of any semi-annual instalment of interest on any of said notes, when the same shall become due, and any part of the amount so due shall remain unpaid for sixty days thereafter, the principal of this note and all other of said notes then issued and outstanding shall immediately become due and payable at the option of the holders of a majority in amount of said notes then outstanding and unpaid.

IN WITNESS WHEREOF, said Erie Railroad Company has caused its corporate seal to be hereto affixed and this note to be signed by its President or Vice President and attested by its Secretary, as of the first day of June, 1912.

ERIE RAILROAD COMPANY

By.....

Attest President.

.....

Secretary.

(Coupons attached.)

EXHIBIT "ERIE 15."

(22)

EQUIPMENT AGREEMENT.

SERIES "V."

Between PRESSED STEEL CAR COMPANY, ERIE RAILROAD COMPANY and THE NEW YORK TRUST COMPANY, Trustee, dated June 16, 1913.

Agreement dated June 16, 1913, between Pressed Steel Car Company, called the Car Company, Erie Railroad Company, called the Railroad, and The New York Trust Company, called Trustee. Witnesseth:

Recites that the Railroad is desirous of securing the use upon and in connection with its railway of the equipment hereinafter mentioned, and the Car Company is willing to construct and deliver said equipment to the Railroad upon the terms and conditions hereinafter set forth;

First. The Car Company agrees to construct and deliver to the Railroad the equipment herein described as follows:

1000 fifty-ton steel self-clearing hopper cars, numbered 31,500 to 32,499, inclusive, as follows,—125 during the month of October, 1913; 420 during the month of November, 1913, and 455 during the month of December, 1913, unless delayed by strikes, &c.

Second. Railroad will purchase and accept said equipment upon the terms and conditions of this agreement.

Third. Until payment by the Railroad as hereinafter specified the title to said equipment to remain in the Trustee.

Fourth. The Railroad as a consideration for the sale will pay the amounts of principal and interest as follows:

The principal sum of $1,186,436.67, of which amount $186,436.67 to be paid in cash to the Trustee for account of Car Company, and the balance to be paid to the holders of the notes hereinafter mentioned, according to the terms thereof, in ten annual instalments of $100,000 each, payable June 15th of each year, commencing on June 15, 1914, and ending on June 15, 1923; each of said instalments shall be evidenced by 100 notes of the Railroad of $1,000 each.

(Then follows statement as to how said notes are to be numbered and how the coupons thereon shall be paid; also copy of note and coupon.)

Fifth. Notes to be executed and delivered by the Railroad to the Trustee simultaneously with the execution of this agreement, or as soon thereafter as possible; and said Trustee shall certify and deliver same to or on order of the Car Company. Temporary notes to be executed in lieu of the engraved notes, until said notes can be engraved.

The Railroad to keep a register of said notes.

No recourse to be had on said notes against any incorporator, stockholder, office or director of said Railroad.

Sixth. The Car Company assigns to the Trustee all its right, title and interest in the equipment.

Seventh. The Railroad to keep an inspector at the works of the Car Company for the purpose of inspecting the construction of said equipment.

Eighth. (a) The Railroad agrees that upon delivery of each twenty-five (25) cars of the trust equipment, and from time to time as the same are delivered, it will execute and deliver in duplicates, to the Car Company and to the Trustee a certificate or certificates executed by its President or by one of its Vice-Presidents, and by either its Secretary, or one of its Assistant Secretaries, showing the number (in every case twenty-five (25) or a multiple thereof) of the

cars so delivered and the road numbers thereof—which certificate shall be taken and acted on by the Trustee as conclusive evidence of its right to pay to the Car Company the cash or the equipment notes, as hereinafter specified, for the cars so delivered.

(b) The Railroad agrees to pay the Trustee the sum of $186,436.67 specified in Article Fourth of this agreement and to pay said sum to the Trustee at such times and in such amounts as will enable the Trustee forthwith to make to the Car Company the payments hereinafter specified for the cars as delivered.

(c) Upon or at any time after the Trustee shall have received from the Railroad the equipment notes (whether permanent or temporary) above mentioned, it shall upon the written request of the President or Treasurer of the Car Company, authenticate and deliver all of said notes; provided, however, that such authentication and delivery shall not be made unless the Trustee shall receive for the notes so authenticated and delivered an amount in cash equal to the face value of the notes so authenticated and delivered with the accrued interest thereon to the date of such authentication and delivery. In the event of such authentication and delivery of the equipment notes, the cash so received by the Trustee shall be held by it in trust for the benefit of the holders of the Equipment Notes but subject to the obligation to pay the same to the Car Company upon the delivery of the cars as hereinafter provided for, viz: Whenever there shall be delivered to the Trustee a certificate executed as specified in the foregoing subdivision (a) hereof, together with a duly executed certificate of inspection as specified in Article Seventh of this agreement, the Trustee shall pay over in cash to the car company from the moneys paid to it pursuant to the provisions of this Subdivision (c), an amount equal to $25,000.00 for each 25 cars covered by said certificates, and shall also pay over in cash to the Car Company

from the moneys paid to it by the Railroad for the account of the Car Company, pursuant to the provisions of Article Fourth of this agreement, an amount equal to $4,650.00 for each twenty five (25) cars covered by said certificates, retaining the balance of the moneys so received by it in trust for the benefit of the holders of the equipment notes, but subject to its prior obligation to pay the same to the Car Company for cars forming part of the trust equipment that shall thereafter be delivered by the Car Company in conformity with the provisions hereof.

In no event shall the Trustee be liable to the holders of the outstanding equipment notes, nor to the Car Company for an amount in excess of the cash which it shall receive under the provisions of this Article and of Article Fourth of this agreement.

(d) If there shall be no authentication and delivery of the equipment notes as provided for in the preceding subdivision (c) hereof, then the Trustee, upon the presentation to it of certificate or certificates executed as specified in preceding subdivision (a) hereof, together with a duly executed certificate of inspection as specified in Article Seventh of this agreement; and upon payment to it of the moneys specified in Article Fourth of this agreement, in accordance with the provisions of subdivision (b) of this Article Eighth, shall pay to the Car Company, with respect to each lot of twenty-five (25) cars, the sum of $4,650.00 out of the moneys to be paid to it by the Railroad for the account of the Car Company, as specified in Article Fourth of this agreement; and shall also certify and deliver to the Car Company, or in its order, with respect to each lot of twenty-five (25) cars, the equipment notes of the Railroad of the face value of $25,000.00—in each case of the earliest maturities then remaining undelivered by the Trustee.

Any balance of the cash or of the equipment notes not theretofore paid or delivered by the Trustee to the

Car Company shall be adjusted upon the delivery to the Trustee of the certificate of the Railroad respecting the last lot of cars to be delivered hereunder. And as soon as may be after the delivery of the last lot of cars, the Railroad and the Car Company shall account together respecting such allowance of interest as may be due from the Car Company to the Railroad.

As the cars comprising the trust equipment are paid for, as hereinbefore specified, title thereto shall vest in the Trustee, and the Trustee shall be entitled to have from the Car Company a bill or bills of sale, or other instrument or instruments evidencing that fact.

Anything herein contained to the contrary notwithstanding, in the event that any of the cars deliverable by the Car Company hereinunder shall remain undelivered on April 1, 1914, all moneys theretofore deposited with the Trustee by the Car Company or the Railroad as hereinbefore provided and then remaining on deposit unapplied to cars delivered, shall be applied by the Trustee under the direction of the Railroad to the purchase of steel hopper cars of the same general design as the cars hereinbefore described and bearing the same lettering as to interest or ownership, and the cars so purchased shall be and become subject to this agreement as fully and in all respects as though said cars had been cars manufactured and delivered by the Car Company to the Railroad hereunder; and the title to all equipment so purchased shall be vested in the Trustee for the protection of the holders of the notes issued hereunder in like manner as the title to the other equipment herein described.

Ninth. Railroad entitled to the possession and use of said equipment, subject to the terms and conditions hereof.

The words "The New York Trust Company, Trustee, Owner," shall upon the delivery of said equipment to the Railroad, be permanently and distinctly marked upon each side of the cars composing said equipment

in such manner as to render such marks readily visible and so as to indicate plainly the ownership of said equipment. In case any such marks shall at any time be removed, defaced or destroyed, the Railroad shall and will immediately restore and replace the same. The Railroad will not allow the name of any person, association or corporation to be placed on any of said equipment, as a designation which might be interpreted as a claim of ownership by the Railroad thereof; provide, however, that the Railroad may cause the said cars composing said equipment, and each of them, to be lettered "Erie Railroad Company," "E. R. R. Co.," "Erie," or in some other substantially similar manner, for convenience of identification of its interest therein. The Railroad shall not change the numbers upon any of the cars composing said equipment during the life hereof, without the written consent thereto of the Trustee, its successors or assigns, and in that event only as hereinafter provided in Paragraph Fourteenth.

Tenth. Railroad to keep all of said equipment in proper order and repair, and to renew such part of the equipment as may be worn out, lost or destroyed, such new equipment to be subject to the terms of this agreement. The Railroad to furnish from time to time a full statement of the equipment covered hereby. The Trustee to make inspection of same.

Eleventh. The Railroad to pay all taxes, assessments, &c., levied against said equipment.

Twelfth. Right, title and interest of Trustee not to be prejudiced or impaired by failure of the Railroad to comply with any laws.

Thirteenth. The Railroad to protect the Trustee from all claims resulting from the use of any patented invention.

Fourteenth. Railroad to execute and deliver to Trustee all further or supplemental agreements, &c., as may be deemed necessary by the Trustee.

Fifteenth. Railroad agrees that when said notes and interest coupons mature, said notes and interest coupons shall be paid and cancelled, and no notes or interest coupons in substitution thereof shall be issued, and nothing shall operate to keep the said notes or coupons alive.

Sixteenth. Upon the payment by the Railroad of all the aforesaid notes in full, together with the interest thereon, in the manner and form herein and in said notes provided, and upon the performance by the Railroad of all the covenants, obligations and agreements herein contained, the title to the said cars shall pass to and vest in said Railroad; and the Trustee will thereupon execute at the expense of the Railroad any bill of sale or other instrument which may be reasonably required by the Railroad as evidence of its title to said equipment and of its compliance with the terms of this Agreement. The Railroad shall not have any power during the life of this Agreement to assign, sell or otherwise dispose of any interest in said equipment or to lease, pledge, mortgage or otherwise encumber the same, save and subject to this Agreement.

Seventeenth. Railroad to be entitled to the possession of the equipment during the life of this agreement, so long as it observes the conditions and obligations hereof; but in case shall be made by the Railroad in the payment of the principal of any of the notes issued hereunder, or of any of the interest coupons, as and when the same may be due and payable, whether or not demand be made for the payment thereof, and upon such default continuing for a period of sixty (60) days, or in case default shall be made in the due observance or performance of any other of the terms, provisions, covenants, conditions or obligations of this agreement, and upon such last mentioned default continuing for a period of sixty (60) days after notice in writing from the Trustee

requiring the Railroad to make good such default, the Trustee shall be entitled to, and at its option may, repossess itself of the cars composing said equipment and of every one thereof, retaining all payments which up to that time may have been made on account of such equipment notes and interest, and shall be entitled to collect, receive and retain any unpaid mileage and per diem and all other charges earned by said equipment, and for the purpose of taking such possession the Trustee shall be entitled to enter upon and take and remove said equipment from the premises of the Railroad, or wherever it shall find said equipment, and the Railroad will afford the Trustee every possible facility and means of assistance to such end; and the Railroad agrees that in event of any default continuing as aforesaid it will as promptly as possible upon demand in writing by the Trustee, deliver to the Trustee each and every piece of the equipment at such place or places upon the tracks of the Railroad as the Trustee shall require, and will relinquish all claims or rights in or to the same. The Trustee shall be entitled to a decree requiring specific performance hereof.

As soon as the right to repossess itself of the equipment shall accrue to the Trustee it may declare the principal of all of said outstanding notes due and payable, and may sell the said equipment and apply the proceeds to the payment *pro rata* of the outstanding notes.

In case of a sale as above provided, any equipment not sold and any surplus of the proceeds of sale remaining after the payments above provided for shall be transferred and paid to the Railroad. In case the proceeds of sale shall not be sufficient, the Railroad shall be liable for such deficiency.

The Trustee, if it so elects, may become a purchaser at such sale.

Eighteenth: The Trustee shall have the right to resign, upon written notice, and a successor Trustee shall be appointed by an instrument in writing executed by the majority of the then outstanding notes.

Every Trustee appointed hereunder shall execute an instrument accepting the appointment.

Nineteenth: The Trustee shall not be liable for delay in the delivery of the cars nor for any default on the part of the manufacturers.

The Trustee may perform its duties through such attorneys, agents, &c., as it may appoint. Trustee shall not be liable for anything in connection with the trust, unless same shall happen through the bad faith of the Trustee.

Trustee to have the right to act upon any certificate, order or paper purporting to be executed by the proper person or boards.

Trustee to receive payment of all its expenses hereunder and a reasonable compensation for services. The Trustee not to be liable for any tax, assessment or other charge upon the property.

Twentieth: Persons in whose names notes are registered shall be considered the owners.

Twenty-First: The words "Car Company" used herein shall be held to mean and include Pressed Steel Car Company its successors, &c., the word "Trustee" to mean and include The New York Trust Company, and the word "Railroad" to mean and include "Erie Railroad Company."

Twenty-Second: This agreement to be executed in several counterparts.

The Railroad agrees to pay the expense of engraving, execution and certification of its notes, &c.

Twenty-Third: The parties hereto appoint attorneys to execute this instrument.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(23).

EXHIBIT "ERIE 15."

(23)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, Trustee.

COLLATERAL INDENTURE, dated April 1, 1914, securing $5,000,000 Notes due October 1, 1914.

Indenture dated April 1st, 1914, between Erie Railroad Company, termed the "Railroad Company" and "Bankers Trust Company, termed the "Trustee."

Recites that under date of March 2, 1914, the Railroad Company executed sixteen promissory notes for the principal sum of $5,000,000, two of such notes being for the sum of $1,000,000, four being for the sum of $500,000, and ten being for the sum of $100,000, each; and all of said notes being in the following form, viz:

(Then follows form of note.)

And for the purpose of obtaining moneys to discharge liabilities due and payable by the Railroad Company the Railroad Company endorsed such notes in blank and thereupon sold and delivered the same, and the Railroad Company agreed to secure said notes by the execution of a collateral indenture, wherein the Railroad Company would assign, transfer and set over to a trustee all its right, title and interest in certain stocks, bonds and other securities, subject to the several and respective liens thereon herein specified.

Now this Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said notes according to the tenor, purport and effect thereof, and to secure the performance and observance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such notes by the holders thereof, and of the sum of

one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged:

The Railroad Company has sold, assigned, transferred and set over and by these presents does sell, assign, transfer and set over unto the Trustee, all the right, title and interest of the Railroad Company in and to the following, viz:

1. All and singular the following bonds and notes of the several corporations and of the aggregate principal sums specified respectively, and all and singular the following shares of stock of the several corporations and of the aggregate par value specified respectively—which bonds and notes and the certificates of which shares of stock, have been or are to be delivered to and pledged with Bankers Trust Company as Trustee under a Collateral Indenture dated April 1, 1914, between the Railroad Company and said Trust Company—to wit:

	Principal Sum.
Erie Railroad Company First Consolidated Mortgage General Lien 4% Gold Bonds.	14,839,000
Erie Railroad Company General Mortgage 4% Convertible 50-Year Gold Bonds, Series B.	985,000
Elmira Corning & Waverly Railway Company First Mortgage 5% Bonds	600,000
Mutual Terminal Company of Buffalo 4% Note payable July 1st, 1924	95,000
Shares.	**Par Value.**
63,060 New York, Susquehanna & Western Railroad Company Preferred Stock.	6,306,000
1,631 Lehigh & Hudson River Railway Company	163,100
1,457 Temple Iron Company	145,700
7,500 New Jersey & New York Railway Company Preferred Stock	750,000

Exhibit Erie 15—(23).

Par Value.

10,000 New Jersey & New York Railroad Company Common Stock 1,000,000

Subject, however, to the lien created by said Collateral Indenture dated April 1, 1914, as security for the payment of the notes issued and to be issued thereunder for the aggregate principal sum of $13,500,000, and to all the terms and provisions of said Collateral Indenture, including the right, without any action by the Trustee hereunder, to withdraw any of said bonds, notes and stock either by the payment of money or the substitution of other security as provided in said Collateral Indenture dated April 1, 1914, and to dispose of the same free from the lien of this indenture; and also subject to the prior lien and all the provisions of any other indenture or indentures which may hereafter be made for the purpose of extending or refunding said $13,500,000 of notes or any part thereof.

It being understood that the Railroad Company has and reserves the right from time to time to extend, renew or refund said $13,500,000 of notes, or any part thereof, for such period and at such rate of interest as it may deem advisable, and in connection therewith to execute a new collateral indenture or indentures which shall be a first lien upon the property and securities held as collateral for said $13,500,000 of notes, or for any notes issued for the renewal or refunding thereof, and to exercise the right of withdrawal and substitution as provided in said Collateral Indenture of April 1, 1914, or in any similar indenture securing notes issued for the renewing or refunding of said $13,500,000 of indebtedness or any part thereof, and to dispose of the securities so withdrawn, as if this indenture had not been made.

II. All and singular the following described bonds of the several corporations, and of the aggregate principal sums specified respectively, which bonds now are held by Bankers Trust Company as Trustee under a

Exhibit Erie 15—(23).

Collateral Indenture dated April 1, 1912, between the Railroad Company and said Trust Company, to wit:

	Principal Sum.
Erie Railroad Company General Mortgage 4% Convertible 50-Year Gold Bonds, Series C	$10,000,000
Erie Railroad Company First Consolidated Mortgage General Lien 4% Gold Bonds.	1,000,000
Erie and Jersey Railroad Company First Mortgage 4% 50-Year Gold Bonds....	3,000,000
Genesee River Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	2,000,000

Subject, however, to the lien created by said Collateral Indenture dated April 1, 1912, as security for the payment of notes issued and to be issued thereunder for the aggregate principal sum of $10,000,000 and to all the terms and provisions of said Collateral Indenture, including the right, without any action by the Trustee hereunder, to withdraw any of said bonds either by the payment of money or the substitution of other securities as provided in said Collateral Indenture dated April 1, 1912, and to dispose of the same free from the lien of this indenture; and also subject to the prior lien and all the provisions of any other indenture or indentures which may hereafter be made for the purpose of extending, renewing or refunding said $10,000,000 of notes or any part thereof.

It being understood that the Railroad Company has and reserves the right from time to time to extend, renew or refund said $10,000,000 of notes, or any part thereof, for such period and at such rate of interest as it may deem advisable, and in connection therewith to execute a new collateral indenture or indentures which shall be a first lien upon the property and securities held as collateral for said $10,000,000 of notes, or for any notes issued for the renewal or refunding thereof, and to exercise the right of withdrawal and substitution as provided in said Collateral Indenture of

April 1, 1912, or in any similar indenture securing notes issued for the refunding of said $10,000,000 of indebtedness or any part thereof, and to dispose of the securities so withdrawn, as if this indenture has not been made.

III. All and singular the following described bonds of the several corporations, and of the aggregate principal sums specified respectively, which bonds now are held by Bankers Trust Company as Trustee under a Collateral Indenture dated October 2, 1911, between the Railroad Company and said Trust Company, to wit:

	Principal Sum.
Erie and Jersey Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	$4,000,000
Genesee River Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	$3,000,000

Subject, however, to the lien created by said Collateral Indenture dated October 2, 1911 as security for the payment of notes issued and to be issued thereunder for the aggregate principal sum of $4,550,000. and to all the terms and provisions of said Collateral Indenture, including the right, without any action by the Trustee hereunder, to withdraw any of said bonds either by the paymnet of money or the substitution of other securities as provided in said Collateral Indenture dated October 2, 1911, and to dispose of the same free from the lien of this indenture; and also subject to the prior lien and all the provisions of any other indenture or indentures which may hereafter be made for the purpose of extending, renewing or refunding said $4,550,000 of notes or any part thereof.

It being understood that the Railroad Company has and reserves the right from time to time to extend, renew or refund said $4,550,000 of notes, or any part thereof, for such period and at such rate of interest as it may deem advisable, and in connection therewith to

execute a new collateral indenture or indentures which shall be a first lien upon the property and securities held as collateral for said $4,550,000 of notes or for any notes issued for the renewing or refunding thereof, and to exercise the right of withdrawal and substitution as provided in said Collateral Indenture of October 2, 1911, or in any similar indenture securing notes issued for the refunding of said $4,550,000 of indebtedness, or any part thereof, and to dispose of the securities so withdrawn as if this indenture had not been made.

IV. All and singular the following described bonds of the several corporations, and of the aggregate principal sums specified respectively, which bonds have been or are to be pledged with and delivered as collateral security for the payment of a certain note for the principal sum of $1,000,000 dated April 8, 1914, and payable October 1, 1914, made by the Railroad Company to Bankers Trust Company, to wit:

	Principal Sum.
Erie and Jersey Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	$400,000
Genesee River Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	1,000,000
Elmira, Corning & Waverly Railway Company First Mortgage 5% Bonds.....	200,000

Subject, however, to the lien created by said pledge of such bonds as security for the payment of said notes for the principal sum of $1,000,000 and subject also to any pledge of said bonds hereafter made as security for any note or notes of the Railroad Company for an aggregate principal sum not exceeding $1,000,000 and from time to time made in renewal or successive renewals of said $1,000,000 note or any part thereof, or from time to time made for the purpose of refunding or taking up said note or any renewal thereof.

It being understood that the Railroad Company has the right to extend, renew or refund said $1,000,000 note, or any part thereof, and to pledge said bonds as collateral security for such renewal or refunding note or notes as if this indenture had not been made.

V. Also all the right, title and interest of the Railroad Company in and to any and all stocks, bonds, securities or money from time to time hereafter pledged or held as security for any of the obligations specified in the foregoing clauses I, II, III or IV as additional security or as substituted security as provided in the instruments securing such obligations or any obligations issued for renewing or refunding the same, respectively; subject, however, to the lien of the instrument pursuant to which such property or securities are so pledged and held and to all the terms and provisions thereof.

VI. Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purpose hereof, pledged, assigned, or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and to hold and apply any and all such property according to the terms hereof.

To Have and To Hold the same, etc.

In Trust, Nevertheless, for the equal use and benefit of all present and future holders of the notes, etc.

That the date of payment of notes may be extended from time to time or new notes may be issued by the Railroad Company from time to time as it may determine, which shall be secured by this indenture.

That the property assigned and transferred to the Trustee hereunder is to be held by the Trustee upon and subject to the further trusts, conditions, covenants and agreements hereinafter set forth; and it is

covenanted between the parties hereto and for the benefit of the respective holders from time to time of the notes intended to be secured hereby, as follows, viz.:

ARTICLE ONE.

Section 1. So long as property subject to the lien of this indenture shall be subject to the prior lien of any other indenture or of any pledge whether now existing, or hereafter created, such prior lien and all provisions of such other indenture shall be respected and observed, and such property shall remain subject to such prior lien.

Sec. 2. All stocks, bonds, coupons, and other property subject to such prior lien, may be used and disposed of in accordance with the provisions of the instrument creating such lien.

Sec. 3. When such prior liens shall have been satisfied the Trustee shall be entitled to receive all bonds, shares of stock and other property in the possession of the holder of such prior lien, and the Railroad Company to execute assignments, &c.

ARTICLE TWO.

Section 1. In case default shall be made in the payment of the notes hereby secured, the Trustee may sell the property subject to this indenture, etc. (stating method of sale).

Section 2. Upon written request of the holders of twenty-five per cent. of notes hereby secured, in case of default it shall be the duty of the Trustee to take all steps needful for the protection of its rights and the rights of the holders of the notes, etc.

Sec. 3. Upon sale the Trustee shall assign to the purchasers.

Sec. 4. The receipt of the Trustee for the purchase money shall be sufficient discharge to any purchaser of the property.

Sec. 5. The purchase money of said sale to be applied as follows:

First. To the payment of costs and expenses of sale, including compensation to Trustee, &c.

Second. To the payment of the amount owing upon the notes.

Third. To the payment of the surplus, if any, to the Railroad Company.

Sec. 6. Upon sale as aforesaid the Trustee or any noteholder may bid for and purchase the property offered.

Sec. 7. No holder of any note shall have the right to institute any suit without giving the Trustee written notice of default nor unless the holders of twenty five per cent of the notes outstanding shall have made written request upon the Trustee and given it an opportunity to proceed.

All rights and actions may be enforced without the possession by the Trustee of the notes.

Section 8. No delay by the Trustee or any noteholder shall impair any right or power or shall be a waiver of any default.

ARTICLE THREE.

Section 1. (Refers to any request or other instrument required by this indenture to be signed and executed by noteholders.)

Sec. 2. Railroad Company and Trustee may deem and treat the bearer of any note endorsed in blank as the owner of such note.

ARTICLE FOUR.

Section 1. When notes shall become due and payable the Railroad Company will pay or cause to be paid the whole amount due upon such notes.

Exhibit Erie 15—(23).

ARTICLE FIVE.

Section 1. Trustee not to be answerable for default or misconduct of any agent, &c., and shall incur no liability in acting upon any notice; and the statements herein shall not be considered as imposing any obligation or liability upon the Trustee.

The Trustee may advise with counsel.

The Trustee shall be entitled to reasonable compensation and the Railroad Company agrees to pay same.

The Trustee shall be protected in the giving of any proxy.

The Trustee may become the owner of notes hereby secured.

Sec. 2. The Trustee may resign by giving notice.

Sec. 3. In case Trustee shall resign or shall be removed successor may be appointed by the noteholders.

The new Trustee shall execute and deliver an instrument accepting such appointment.

ARTICLE SIX.

Section 1. All covenants, stipulations, &c., on behalf of the Railroad Company shall binds its successors and assigns.

Sec. 2. For the purposes of this indenture the terms "Railroad Company" and "Erie Railroad Company" mean not only the party of the first part, but also any successor, &c.

Sec. 3. The words "the Trustee" or "said Trustee" shall be held to mean Trustee or Trustees.

Bankers' Trust Company, party of the second part, accepts trusts in this indenture.

(Then follows testimonium clause and acknowledgments.)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, TRUSTEE. SUPPLEMENT of October 1, 1914, to

Exhibit Erie 15—(23).

COLLATERAL INDENTURE, dated April 1, 1914, securing $5,000,000 Notes due March 1, 1915.

Supplemental Indenture dated October 1, 1914, between Erie Railroad Company, termed the "Railroad Company," and Bankers Trust Company, as Trustee under the Collateral Indenture dated April 1, 1914, termed the "Trustee."

Recites Collateral Indenture dated April 1, 1914; and further that the Railroad Company purposes to issue note notes, hereinafter termed "notez" or "renewel" "notes," payable March 1, 1915, for the principal sum of $5,000,000, and for that purpose the Railroad Company purposes to assign and transfer to the Trustee the property hereinafter described, in addition to the property assigned in the Collateral Indenture dated April 1, 1914; and further such renewal notes of the Railroad Company are to be negotiable notes of the principal sum of $5,000,000 and in the form following,—

(Then follows form of note.)

That on each of said renewal notes is to be endorsed a certificate of the Trustee.

(Then follows form of certificate.)

That the purpose of this indenture is to supplement Collateral Indenture dated April 1, 1914, and to provide further security for the payment of said renewal notes; and that all things necessary to make such renewal notes valid and binding have been done.

This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said renewal notes at any time issued and outstanding under this indenture, according to the tenor, purpose and effect thereof, and to secure the performance and observance of all the covenants and conditions herein and in said Collateral Indenture dated April 1, 1914, contained, and in consideration of the premises and of the purchase and

acceptance of such notes by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged: The Railroad Company hereby does sell, assign, transfer and set over and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, as aforesaid, the following described property, hereinafter sometimes termed, collectively, "pledged securities," viz:

I. All and singular the following shares of stock and the certificates therefor, to wit:

55,000 shares of the common capital stock of the New York, Susquehanna & Western Railroad Company, of the aggregate par value of $5,500,000.

II. Also any and all obligations, for an aggregate principal amount not exceeding $7,000,000, which the Railroad Company hereafter shall be authorized to issue to reimburse it for capital expenditures heretofore and hereafter made by the Railroad Company, in respect of which capital obligations have not heretofore been issued, and which the Railroad Company is or shall be authorized to pledge hereunder.

III. Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also when and as hereinafter provided, as substituted security, for the payment of the said renewal notes, and to hold and apply any and all of such property according to the terms hereof.

The Railroad Company does hereby confirm the sale made by said Collateral Indenture dated April 1, 1914.

To Have and To Hold the same, etc.

In trust for the equal use and benefit of all present and future holders of the said renewal notes, etc.

That the payment of said renewal notes may be extended from time to time.

The Railroad Company expressly covenants and declares that said renewal notes are to be held by the Trustee subject to the trusts expressed in said Collateral Indenture dated April 1, 1914, and the further trusts hereinafter set forth; and it is further covenanted and agreed as follows:

ARTICLE ONE.

Section 1. The amount of said renewal notes is limited to the aggregate principal sum of $5,000,000.

All such notes to be executed by the Railroad Company and delivered to the Trustee for certification.

On such notes as shall bear a certificate of the Trustee shall be secured by this indenture.

Sec. 2. (States how said notes are to be drawn as to amount and serial number, &c.)

Each note of $1,000 or more shall bear an endorsement in form following.

(Then follows form of endorsement.)

Sec. 3. Two or more notes may be surendered to the Trustee in exchange for a single note.

Sec. 4. (Refers to the officers signing notes dying or ceasing to be such officers.)

Sec. 5. Temporary notes to be delivered in lieu of the definite notes.

Sec. 6. (Refers to notes becoming lost or destroyed.)

ARTICLE TWO.

Section 1. The Railroad Company to have the right to vote upon or give any consent in respect to all shares of stock pledged under this indenture.

The Trustee shall be protected in the giving of any proxy.

Sec. 2. Unless default be made in the payment of the principal and interest of said renewal notes, the Trustee shall not collect the principal or interest of any of the obligations pledged under this indenture, etc.

Sec. 3. The Trustee to be considered and held to be the legal owner and holder of the pledged securities.

Sec. 4. The Trustee may transfer into its name as Trustee all or any shares of stock pledged with it hereunder.

Sec. 5. Trustee authorized to register in its name coupon bonds.

ARTICLE THREE.

Section 1. Notes subject to redemption by the Railroad Company.

Sec. 2. In case the Trustee shall receive from the Railroad Company a sum in cash sufficient to redeem the notes, the Railroad Company may publish notice that said notes will be redeemed.

Sec. 3. In case the Trustee shall hold or receive from the Railroad Company a sum less than the amount required to redeem and pay all of the notes, the Railroad Company shall draw by lot notes issued hereunder.

Sec. 4. Notice of redemption to be mailed by the Railroad Company to the holders of the notes, etc.

ARTICLE FOUR.

Section 1. Each of the provisions of the Collateral Indenture dated April 1, 1914, shall be applicable in respect of the renewal notes, &c.

Sec. 2. Nothing in this indenture is intended to give any person, firm or corporation, other than the parties hereto, any right, remedy or claim.

Exhibit Erie 15—(24).

ARTICLE FIVE.

Section 1. If the Railroad Company shall keep and perform all the things herein required to be kept, then all stocks, bonds, securities and other property subject to this indenture to revert to the Railroad Company.

Bankers Trust Company accepts the trusts in this indenture contained.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(24)

$1,000,000.00 New York, October 1, 1914.

On March 1st, 1915, for value received, the undersigned promise to pay to the Bankers Trust Company, or order, at its office in the City of New York, in funds at the New York Clearing House, with interest from the date hereof, at the rate of six per cent. per annum, payable on the first days of January, April, July and October, One Million and 00/100 Dollars, and the following is hereby deposited with said Trust Company, as collateral security, for the payment of this and any other liability or liabilities of the undersigned, or of the grantors hereof, or which may hereafter be contracted or existing, due or to become due to, or held or to be paid by said Trust Company, viz:

$1,000,000 Genesee River R. R. Co. 1st Mtge. 4s, 1957.
400,000 Erie & Jersey R. R. Co. 4s, 1955.
200,000 Elmira, Corning & Waverly Ry. 1st Mtge. 5s, 1957.

of an estimated market value of Dollars, and said Trust Company is also given a lien for the amount of all of said liabilities upon all property or securities now or hereafter given unto, or left in the possession or custody of said Trust Company by or for account of the undersigned, or in which the under-

signed may have an interest (all remittances and property to be deemed left with said Trust Company, as soon as put in transit to it, by mail or carrier) and also upon the balance of the deposit account of the undersigned with said Trust Company existing from time to time.

The undersigned shall deliver to said Trust Company additional collateral satisfactory to it whenever called for by it, so that there will, at all times be with said Trust Company a margin of security satisfactory to it; and in case of failure so to do forthwith, this note (and at the option of said Trust Company, all other said liabilities) shall become at once due and payable without demand of payment hereof, and upon non-payment or non-fulfillment of any term, of this note or of any of said liabilities, then this note or any of said liabilities or any designated part thereof shall become immediately due and payable at the option of said Trust Company on presentation hereof or thereof, or of said part, for payment, and should this note or any of said liabilities become immediately due and payable as herein provided, said Trust Company may immediately sell and apply said property or securities in the manner and with the effect hereinafter provided.

Said Trust Company is hereby authorized and empowered at its option at any time to appropriate and apply to the payment and extinguishment hereof and/or of any other of said obligation or liabilities, whether now existing or hereafter contracted, any and all moneys, or other property or proceeds thereof, now or hereafter in the hands of said Trust Company on deposit or otherwise for account of, to the credit of, or belonging to, the undersigned, whether this note, said obligations or liabilities are then due or not due. In the event of the insolvency of, or the appointment of a receiver of the property of, or an assignment for the benefit of creditors of the undersigned, this note

and all said obligations and liabilities shall become and be immediately due and payable without demand of payment.

Said Trust Company is hereby authorized, upon the non-payment of any of said liabilities when due, to sell, assign and deliver the whole of said securities or from time to time any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property at any time given unto or left in the possession or custody of said Trust Company by or for the undersigned, or in which the undersigned may have any interest, at any Brokers' Board, or at public or private sale, for cash, upon credit, or for future delivery, all at the option of said Trust Company, or of any of its officers, without either advertisement or notice, which are hereby expressly waived.

Upon any sale or sales at public auction or Brokers' Board of Exchange above provided for, said Trust Company, or the holder hereof, may bid for and/or purchase the whole or any part of such securities or property, free from any right of redemption, which is hereby waived and released.

In case of any sale by said Trust Company, of any of said securities or property on credit or for future delivery, the securities and property sold may be retained by said Trust Company until the selling price is paid by the purchaser, but said Trust Company shall incur no liability in case of failure of the purchaser to take up and pay for the securities or property so sold. In case of any such failure the securities and/or property may be again sold.

In case of sale for any cause, after deducting all costs or expenses of every kind for collection, sale or delivery, said Trust Company may apply the residue of the proceeds of the sale or sales to pay either one or more or all of said liabilities to said Trust Company, including this note, whether then due or not, as it shall deem proper; making proper rebate

for interest on liabilities not then due and returning the overplus, if any, to the undersigned, who agree to pay and to be and remain liable to said Trust Company for any deficiency, with legal interest, arising upon such sale or sales.

Upon any transfer of this note, said Trust Company may deliver the property held as security, or any part thereof, to the transferee, who shall thereupon become vested with all the powers and rights given to said Trust Company in respect thereof, and said Trust Company herein shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter.

Calls for collateral or any notices to the undersigned may be made or given by said Trust Company by leaving same at the address given below or the last known address of the undersigned or by mailing same to such address, with same effect as if delivered to the undersigned in person.

ERIE RAILROAD COMPANY,
By D. W. Bigoney,
Treasurer.

David Bosman,
Vice-President.

EXHIBIT "ERIE 15."

(25)

New York, July 1st, 1914.

$100,000.00.

For value received, one year after date, THE LONG DOCK COMPANY promises to pay to the order of the ERIE RAILROAD COMPANY, at its office in the City of New York,

ONE HUNDRED THOUSAND DOLLARS

with interest at the rate of six per cent per annum, payable semi-annually

THE LONG DOCK COMPANY,
(Signed) D. W. BIGONEY,
Treasurer.

(Signed) DAVID BOSMAN,
Vice-President.

(There were seven notes similar to the above for $100,000.)

(Endorsement)

ERIE RAILROAD COMPANY,
(Signed) D. W. BIGONEY,
Treasurer.

EXHIBIT "ERIE-15."

(26)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, Trustee. COLLATERAL INDENTURE, dated October 1, 1914, Securing $4,550,000. One-Year 5% Collateral Gold Notes. Interest payable April 1 and October 1.

Indenture dated October 1, 1914, between Erie Railroad Company, termed the "Railroad Company" and Bankers Trust Company, termed the "Trustee."

Recites that on October 2, 1911, the Railroad Company and Bankers Trust Company entered into a collateral Indenture whereunder the Railroad Company

did pledge with said Trust Company, as Trustee, Erie and Jersey Railroad Company First Mortgage 4% Fifty Year Gold Bonds for the aggregate principal amount of $4,000,000, and Genesee River Railroad Company First Mortgage 4% Fifty-Year Gold Bonds for the aggregate principal amount of $3,000,000, as security for the payment of the Three-Year Five Per Cent, Collateral Gold Notes of the Railroad Company dated October 2, 1911, and payable October 1, 1914, for the aggregate principal amount of $4,550,000; and for the purpose of refunding said notes payable October 1, 1914, the Railroad Company has resolved to issue and to dispose of its One-Year 5% Collateral Gold Notes, dated October 1, 1914, hereinafter described, for the aggregate principal sum of $4,550,000, and to secure the payment of such notes by pledging with the Trustee under this indenture, as hereinafter specified, the said bonds pledged under said indenture dated October 2, 1911; that such notes shall be executed by its Treasurer and countersigned by its President or a Vice President, and authenticated by certificate of the Trustee; that such notes are to be negotiable notes for the aggregate principal sum of $4,550,000, payable to bearer, or if registered in Gold Coin of the United States, or its equivalent, and are to bear interest at the rate of five per cent per annum, on the first day of April and the first day of October, 1915, and such notes to be for the principal sum of $1,000 or of $5,000, or of any multiple of $1,000, and shall be in the form following:

(Then follows form of note, coupon and Trustee's certificate.)

That each of the coupons attached to the notes is to be authenticated by the engraved signature of the Treasurer of the Railroad Company; and that all things necessary to make such notes when certified by the Trustee valid and binding obligations of the Railroad Company have been done and performed.

Exhibit Erie 15—(26).

Now, therefore, This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said notes at any time issued and outstanding under this indenture, according to the tenor, purport and effect thereof, and to secure the performance and observance of all the covenants and conditions herein contained, and to declare the terms and conditions on which said notes are issued, received and held, and in consideration of the premises and of the purchase and acceptance of such notes by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged:

The Railroad Company hereby does sell, assign, transfer and set over and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, the following described property, hereinafter sometimes termed, collectively, "pledged securities"—viz.:

I. All and singular the following bonds of the corporations, and for the aggregate principal sums, specified respectively, with all unmatured coupons thereto appertaining, to wit:

	Principal Sum.
Erie and Jersey Railroad Company First Mortgage 4% Fifty-Year Gold Bonds..	$4,000,000
Genesee River Railroad Company First Mortgage 4% Fifty-Year Gold Bonds..	3,000,000

II. Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also when and as hereinafter provided, as substituted security, for the payment of the notes issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

To Have and to Hold the same, &c.

In trust for the equal use and benefit of all present and future holders of the notes to be issued and secured under this indenture, without preference or priority as to lien or otherwise of one note over any other note, and that the corporate bonds pledged hereunder are to be held by the Trustee upon and subject to the further trusts, uses, conditions, covenants, and agreements hereinafter set forth; and it is covenanted between the parties hereto as follows, viz.:

ARTICLE ONE.

Section 1. The amount of notes limited so that never at any time shall there be outstanding notes hereby secured for an aggregate principal sum exceeding $4,550,000.

From time to time notes secured hereby shall be executed by the Railroad Company and the Trustee shall certify and deliver the same.

The said notes and coupons shall be substantially of the tenor and purport above recited and shall be for the principal sum of $1,000 or of $5,000, or any multiple of $1,000 that shall be authorized by the Railroad Company; each note secured hereby of the denomination of $1,000 shall bear a distinctive serial number, the number to be from 1 upwards, and each note of a denomination greater than $1,000 shall be numbered from 1 upwards and shall have prefixed to the number a letter or Roman numeral to distinguish such denomination; each note secured of a denomination greater than $1,000 shall bear thereon the following endorsement:

(Then follows form of endorsement.)

Whenever any note shall be originally issued for a principal sum greater than $1,000, there shall be reserved by the Railroad Company, unissued, notes each of the principal sum of $1,000 equal to the sum of the note issued.

Only such notes as shall bear thereon a certificate in the form hereinbefore recited shall be secured by this indenture.

Sec. 2. In case any officers of the Railroad Company who shall have signed any of the notes shall die or cease to be such officers, before the notes shall have been certified or delivered by the Trustee, such notes shall be certified and delivered as herein provided, &c.

Sec. 3. All notes hereunder shall be certified and delivered by the Trustee upon the written order of the Railroad Company, signed, &c.

Sec. 4. Pending the preparation of definite notes temporary notes may be issued.

Sec. 5. In case notes shall become mutilated or destroyed the Railroad Company may execute and the Trustee certify and deliver new notes of like tenor and date.

Sec. 6. Any two or more notes secured hereby may be surrendered to the Trustee in exchange for a single note of a higher denomination.

Sec. 7. Nothing in this indenture shall give to any person, firm or corporation, other than the parties hereto and the holders of the notes any right or claim under this indenture.

ARTICLE TWO.

The Railroad Company Covenants as follows:

Section 1. The Railroad Company will pay the principal and interest of the notes issued hereunder, at the times and in the manner specified in said notes, etc.

Section 2. The Railroad Company will pay and discharge all taxes, &c., levied or imposed or in respect to the pledged securities.

Sec. 3. The Railroad Company at its own expense will do all things necessary to preserve and keep in full repair all its premises and property, &c.

Sec. 4. The Railroad Company will keep a register for the registration of notes secured hereby.

ARTICLE THREE.

Section 1. The Trustee may give consent to any merger or consolidation with any other company, etc.

Sec. 2. Unless there be default, the Trustee shall not collect or be entitled to collect the principal or interest of the pledged bonds, and shall deliver to the Railroad Company any coupons for interest in the possession of the Trustee, except as in this indenture otherwise expressly provided.

Sec. 3. The Trustee to be the legal holder and owner of the pledged securities.

Sec. 4. The Trustee authorized to have registered in its name as Trustee all coupon bonds pledged hereunder or to cause same to be exchanged for registered bonds, and the Trustee shall cause to be transferred into its name as Trustee hereunder all registered bonds which shall have been assigned to it hereunder.

ARTICLE FOUR.

Section 1. In case default shall be made in the payment of interest on any of the notes, Trustee may declare the principal of all notes then outstanding hereunder to be due.

Sec. 2. (Contains provisions in reference to defaults in payment of interest and principal.)

Sec. 3. Upon written request of twenty-five per cent. in amount of the notes, in case of default, it shall be the duty of the Trustee to take all steps needful for the protection of its rights and the rights of the holders of the notes.

Sec. 4. Upon any sale under this indenture the Trustee shall assign, transfer and deliver to the purchaser such of the pledged securities as shall be sold.

Sec. 5. Receipt of Trustee for purchase money to be sufficient.

Sec. 6. In case of any sale the whole of the principal sums of the notes to become due and payable.

Sec. 7. The purchase money, proceeds of any sale, together with any other money held by the Trustee under this indenture shall be applied as follows:

First. To the costs and expenses of sale, including compensation to the Trustee, and payment of taxes, &c.

Second. To the payment of the amount then owing on the notes.

Third. Surplus, if any, to be paid to the Railroad Company.

Sec. 8. In case default shall be made in the payment of any interest, or in case default shall be made in the payment of the principal of any such note when the same shall become payable, then the Railroad Company will pay to the Trustee the whole amount which then shall have become due and payable on all notes then outstanding, and in case the Railroad Company shall fail to pay the same forthwith upon demand, the Trustee shall be entitled to recover judgment for the whole amount so due and unpaid.

(Then follows further clause in reference to the recovery of judgment.)

Any moneys thus collected by Trustee, less Trustee's expenses, &c., shall be applied by the Trustee towards the amounts then due and payable on the notes.

Sec. 10. Holders of notes shall not have right to institute suit for the enforcement of this indenture, unless holder shall first give Trustee written notice.

All rights under this indenture may be enforced by the Trustee without the possession of the notes.

Exhibit Erie 15—(26).

Sec. 11. No delay by the Trustee or note holders to exercise any right accruing upon any default shall be a waiver of any such default.

ARTICLE FIVE.

No recourse under any obligation or agreement of this indenture shall be had against any incorporators, stockholder or officer of the Railroad Company.

ARTICLE SIX.

Section 1. Any other instrument required by this indenture to be signed and executed by noteholders may be in any number of concurrent instruments of similar tenor. (Then follows further statements in reference to execution, &c., of requests or other instruments.)

Sec. 2. The Railroad Company and the Trustee to treat the bearer of any note not registered or of any coupon as the absolute owner of such note or coupon.

ARTICLE SEVEN.

Section 1. When the Railroad Company shall pay the entire amount due for principal and interest on the notes and shall perform all the things herein required to be performed, all the bonds and other property subject to this indenture shall revert to the Railroad Company.

ARTICLE EIGHTH.

Section 1. Trustee not to be answerable for default or misconduct of any agent or attorney, and shall not be under obligation to do anything which will be likely to involve it in expense or liability, unless indemnified by holders of notes.

(Then follows further clauses in reference to actions by the Trustee and liability of the Trustee.)

The Trustee may become the holder and owners of notes hereunder, or of any stocks, bonds or other securities sold hereunder.

The Trustee may employ counsel at the expense of the Railroad Company.

The Trustee shall be entitled to reasonable compensation for all services rendered by it.

The Trustee shall be under no duty to see to the application of the proceeds of any note hereunder.

The Trustee shall be under no duty to record or file this indenture.

Any moneys received by the Trustee hereunder shall be treated by it as a deposit.

Sec. 2. Trustee may resign by giving notice. (Then follows further statement in reference to resignation or removal of Trustee.)

Sec. 3. A successor may be appointed to the Trustee by the holders of a majority in amount of the notes outstanding.

(Then follows further clause in reference to the appointment of a new trustee.)

ARTICLE NINE.

Section 1. All covenants, &c., by the Railroad Company to bind its successors and assigns.

Sec. 2. In case Railroad Company shall be consolidated or merged with any other corporation, such successor shall be substituted for the Railroad Company, etc.

Sec. 3. For the purposes of this indenture "Railroad Company" and "Erie Railroad Company," mean not only the party of the first part, but any successor corporation.

Sec. 4. (Contains further reference to successor.)

Sec. 5. Before exercise of any of the powers conferred by this Article, the Railroad Company by in-

strument in writing and delivered to the Trustee, may surrender any of the powers reserved to it or any successor.

Sec. 6. The words "the Trustee" or "said Trustee" to mean the Trustee or Trustees for the time being.

Bankers Trust Company accepts the trusts in this indenture.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(27)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, TRUSTEE. COLLATERAL INDENTURE, Dated Aprli 1, 1914, Securing $13,500,000 Three-Year 5½% Collateral Gold Notes. Interest payable April 1 and October 1.

Indenture dated April 1, 1914, between Erie Railroad Company, termed the "Railroad Company," and Bankers Trust Company, termed the "Trustee."

Recites that the Railroad Company has resolved to issue and dispose of its Three-Year 5½% Collateral Gold Notes, dated April 1, 1914, hereinafter described, for the aggregate principal sum of $13,500,000, and to secure the payment of such notes by pledging with the Trustee the bonds, notes and stocks hereinafter specified; and further what officers of the Railroad Company shall execute such notes; that such notes are to be negotiable notes of the principal sum of $13,500,000, payable to bearer or registered holder in gold coin of the United States at the office of the Railroad Company on or before April 1, 1917, and to bear interest at 5½% per annum, payable semi-annually on April 1st and October 1st; such notes to be each of the principal sum of $1,000 or of $5,000 or any multiple of $1,000 that shall be authorized by the Railroad Company, and to be substantially in the form following:

Exhibit Erie 15—(27).

(Then follows form of note and coupon.)

That on each of said notes is to be endorsed a certificate of the Trustee.

(Then follows form of certificate.)

That each of the coupons is to be authenticated by the fac-simile signature of the Treasurer of the Railroad Company; and that all things necessary to be done and performed by the Railroad Company have been done and performed and the issue of said notes have been duly authorized:

Now, Therefore, This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said notes at any time issued and outstanding under this indenture, according to the tenor, purport and effect thereof, and to secure the performance and observance of all the covenants and conditions herein contained, and to declare the terms and conditions on which said notes are issued, received and held, and in consideration of the premises and of the purchase and acceptance of such notes by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged:

The Railroad Company hereby does sell, assign, transfer and set over, and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, the following described property, hereinafter sometimes termed, collectively, "pledged securities"—viz:

1. All and singular the following bonds and notes of the several corporations, and of the aggregate principal sums, specified respectively, with all unmatured coupons thereto appertaining, to wit:

	Principal Sum.
Erie Railroad Company First Consolidated Mortgage General Lien 4% Gold Bonds	$14,839,000

Exhibit Erie 15—(27).

	Principal Sum.
Erie Railroad Company General Mortgage 4% Convertible 50-Year Gold Bonds, Series B.....	$985,000
Elmira, Corning and Waverly Railway Company, First Mortgage 5% Bonds	600,000
Mutual Terminal Company of Buffalo 4% notes payable July 1, 1924.....	95,000

II. Also all and singular the following shares of stock of the several corporations, and of the aggregate par values, specified respectively, and the certificates therefor, to wit:

Shares.		Par Value.
63,060	New York, Susquehanna and Western Railroad Company, preferred stock	$6,306,000
1,631	Lehigh and Hudson River Railway Company	163,100
1,457	Temple Iron Company	145,700
7,500	New Jersey and New York Railroad Company preferred stock..	750,000
10,000	New Jersey and New York Railroad Company common stock...	1,000,000

III. Also all property of every name and nature, from time to time, hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of the notes issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

To Have and to Hold the same, etc.

In Trust, Nevertheless, for the equal use and benefit of all present and future holders of the notes, etc.,

with preference, priority or distinction as to lien or otherwise of one note over any other note; it being intended that the lien and security of this indenture shall take effect from the day of the date hereof; and it being expressly covenanted and declared by the Railroad Company that all such notes to be issued, and the said corporate stocks and corporate bonds and notes pledged hereunder, and any and all other stocks, bonds or obligations and other securities hereafter pledged hereunder, as aforesaid, subject to the conditions of such pledge, are to be held by the Trustee upon and subject to the further trusts, uses, conditions, covenants and agreements hereinafter set forth; and it is covenanted between the parties hereto and for the benefit of the respective holders from time to time of the notes intended to be secured hereby, as follows, viz:

ARTICLE ONE.

Section 1. The amount of the notes hereby secured is limited so that never at any time shall there be outstanding notes for an aggregate principal sum exceeding $13,500,000.

From time to time the notes secured hereby shall be executed by the Railroad Company and the Trustee shall certify and deliver the same.

The notes and coupons thereto attached shall be of the tenor and purport above recited. The said notes each shall be for the principal sum of $1,000 or of $5,000, or of any other multiple of $1,000 that shall have been authorized by the Railroad Company.

Each note of the denomination of $1,000 shall bear a distinctive serial number, the numbers to be from one upwards. Likewise each note of a denomination greater than $1,000 shall be numbered from one upwards and shall have prefixed to the number the Roman numeral designating the number of times the principal sum of each note is dividable by the sum of $1,000.

Each note of a denomination of $1,000 shall bear thereon an endorsement in the following form:

(Then follows form of endorsement.)

Whenever any note shall be issued for a principal sum greater than $1,000, there shall be reserved by the Railroad Company unissued, notes each for the principal sum of $1,000 of an aggregate principal sum equal to the principal sum of the note of greater denomination than $1,000.

Only such notes as shall bear a certificate in the form hereinbefore recited by the Trustee shall be secured by this indenture.

The Trustee shall not certify or deliver any note hereby secured, until all coupons then matured shall have been detached and canceled.

Sec. 2. If any officer of the Railroad Company who shall have signed any of the notes issued under this indenture shall die, or cease to be such officer, before the notes shall have been delivered by the Trustee, may be sold and disposed of by the Railroad Company as though the persons who signed such notes had not died.

Sec. 3. All notes authorized to be issued hereunder shall be executed by the Railroad Company and certified and delivered by the Railroad Company.

The Trustee shall certify and deliver all the notes prior to the delivery to it of the pledged securities, provided, however, that there shall be deposited with the Trustee an amount in cash equal to the value of the notes. Such money shall be held by the Trustee upon the trusts of this indenture.

Sec. 4. Pending the preparation of definite notes temporary notes may be issued, which shall be duly authenticated and delivered by the Trustee, and such temporary notes shall be exchanged for definite notes.

The Railroad Company will furnish without delay engraved definite notes.

Sec. 5. In case any of the notes secured hereby or the coupons shall become mutilated or destroyed, the Railroad Company may execute and the Trustee certify and deliver new notes of like tenor and date.

Sec. 6. Any two or more notes secured hereby may be surrendered to the Trustee in exchange for a single note of a higher denomination.

Sec. 7. Nothing in this indenture or in the notes shall give to any person, firm or corporation other than the parties hereto and the holders of the notes, any legal right or remedy or claim in respect to this indenture.

ARTICLE TWO.

The Railroad Company covenants as Follows:

Section 1. The Railroad Company will pay the interest and the principal of the notes at the times and in the manner specified, without deduction.

Sec. 2. The Railroad Company will pay and discharge all taxes, &c. levied or imposed upon the pledged securities.

Sec. 3. The Railroad Company will do all things necessary to preserve and keep in full repair and efficiency all its premises, properties, &c.

Sec. 4. The Railroad Company will keep a register for the registration of notes.

Upon presentation at its office of any note so registered, such note shall be transferred.

(Then follows further clauses as to registration and transfer of notes.)

ARTICLE THREE.

Section 1. Upon request by the Railroad Company the Trustee shall release from the lien of this indenture and deliver to the Railroad Company any of the pledged securities then subject thereto; provided that

none of said pledged securities shall be released unless there shall be deposited with the Trustee a sum equal to the withdrawal value of such securities, such withdrawal value being hereby fixed at the percentage of the par or face value thereof (exclusive of accrued interest or dividends) respectively indicated, to wit:

	Percentage of Par Value.
Erie Railroad Company First Consol. Mortgage General Lien 4% Gold Bonds.....	80%
Erie Railroad Company General Mortgage 4% Convertible 50-Year Gold Bonds, Series B..	75%
Elmira Corning & Waverly Railway Company First Mortgage 5% Bonds	80%
Mutual Terminal Company of Buffalo 4% Notes	100%
New York, Susquehanna & Western Railroad Company preferred stock	50%
Lehigh & Hudson River Railway Company stock	76%
Temple Iron Company stock	150%
New Jersey & New York Railroad Company preferred stock	50%
New Jersey & New York Railroad Company common stock	25%

Any moneys received by the Trustee shall be held by the Trustee as part of the trust estate.

Sec. 2. Upon the written request of the Railroad Company, the Trustee shall release from the lien of this indenture and deliver to the Railroad Company any of the pledged securties below specified, provided that there shall be deposited with the Trustee and substituted therefor other stocks, bonds, &c. of equal or greater value.

The pledged securities subject to release by the Trustee shall be any or all of the following:

Mutual Terminal Company of Buffalo 4% Notes.

New York, Susquehanna & Western Railroad Company preferred stock.

Lehigh & Hudson River Railway Company stock.

Temple Iron Company stock.

New Jersey & New York Railroad Company preferred stock.

New Jersey & New York Railroad Company common stock.

Sec. 3. In case the Railroad Company shall not be in default in the payment of principal and interest of any of the notes, the Trustee shall give consent to any merger with any other company.

Sec. 4. Unless there shall be some default, the Railroad Company to have the right to vote upon or give any consent in respect of all shares of stock subject to this indenture, for all purposes not inconsistent with the provisions hereof.

The Trustee shall be protected in the giving of any proxies, &c.

Sec. 5. Unless there be default in the performance of any of the covenants or conditions herein, the Trustee shall not collect the principal and interest of any of the obligations pledged hereunder, and shall not enforce any of the provisions of the mortgages or other instruments under which such obligations were issued or secured.

(Then follows further provisions in reference to the bonds and obligations pledged hereunder.)

Sec. 6. The Trustee shall be considered and held to be the legal owner of the pledged securities.

Sec. 7. The Trustee may transfer into its name as Trustee all or any shares of stock pledged with it hereunder.

ARTICLE FOUR.

Section 1. As soon as may be after the receipt of moneys by the Trustee under this indenture, the Trustee shall apply such moneys to the payment of notes.

Sec. 2. To the extent that said moneys applicable to the purchase or redemption of notes shall not be used in the purchase of notes as aforesaid, such moneys together with other moneys paid to the Trustee by the Railroad Company for such purpose, to the redemption of notes hereby secured in the manner hereinafter provided:

All notes hereby secured shall be subject to redemption at the option of the Railroad Company on April 1st, 1915, or thereafter on any semi-annual interest day prior to maturity, upon advertisement, etc.

Unless default shall be made in the payment of any notes mentioned in any notice of redemption, all interest after the date of redemption designated in the said notice shall cease to accrue upon said notes and the coupons shall become void.

Sec. 3. (Refers to publication of notice of redemption.)

Sec. 4. (Refers to redemption of notes and drawing by lot.)

Sec. 5. (Refers to the presentation for redemption of any note with which there shall be all unpaid coupons maturing on and prior to the date designated for such redemption.)

Sec. 6. Copy of notice of redemption or payment shall be mailed by the Railroad Company to the registered holder of each note; and the Railroad Company shall furnish the Trustee with evidence of such mailing of notice. All notes purchased, redeemed or paid shall be cancelled by the Trustee and delivered to the Railroad Company.

Exhibit Erie 15—(27).

ARTICLE FIVE.

Section 1. In case default shall be made in the payment of interest on the notes or bonds or default by the Railroad Company in any of the covenants of the mortgage securing bonds, the Trustee shall declare due the principal sum of the bonds.

(Then follows further clause in reference to the power of Trustee in case of defaults.)

Sec. 2. In case of default the Trustee may sell either all or any part of the pledged securities.

Sec. 3. Upon written request of twenty-five per cent of the notes hereby secured in case of default as aforesaid, the Trustee, upon being indemnified, shall take all steps needful for the protection of its rights and the rights of the holders of the notes.

Sec. 4. Upon any sale under this indenture the Trustee shall assign and transfer and deliver to the purchasers such of the pledged securities as shall have been sold.

Sec. 5. The receipt of the Trustee for the purchase money shall be sufficient discharge to any purchaser.

Sec. 6. In case of sale the whole of the principal sums of the notes hereby secured shall at once become due and payable.

Sec. 7. The purchase money or proceeds of any sale shall be applied as follows:

First. To the payment of the costs and expenses of sale, including a reasonable compensation to the Trustee, its agents, &c.

Second. To the payment of the whole amount then owing upon the notes, with interest.

Third. The surplus, if any, to be paid to the Railroad Company.

Sec. 8. Upon sale of the Trustee or under judicial proceedings, the Trustee or any noteholder may bid.

Sec. 9. In the case of default of the payment of principal or interest the Trustee shall be entitled to recover judgment for the amount due and unpaid, and any moneys thus collected shall be applied by the Trustee towards the payment of the amounts then due.

Sec. 10. Holders of notes shall not have right to institute suit for the enforcement of this indenture, unless notice is previously given to the Trustee.

All rights under this indenture shall or may be enforced by the Trustee without the possession of any of such notes.

Sec. 11. No delay or omission of the Trustee or of any note holder shall impair any right or power.

ARTICLE SIX.

No recourse under this obligation shall be had against any incorporator, stockholder, officer or director of the Railroad Company.

ARTICLE SEVEN.

Section 1. Any request or other instrument required by this indenture to be signed or executed by noteholders, may be in any number of concurrent instruments of similar tenor, etc.

Sec. 2. The Railroad Company and Trustee may deem and treat the bearer of any note not registered or any coupon hereby secured, as the absolute owner of such note or coupon, and shall also treat the registered holder of any such note as the absolute owner.

ARTICLE EIGHT.

Section 1. If, when all the notes hereby secured shall have become due and payable, the Railroad Company well and truly shall pay the whole amount of the principal and the interest due upon all of such notes, or shall provide for such payment, and shall cause to

be paid all other sums hereunder, then and in that case all stocks, bonds and other securities subject to this indenture shall revert to the Railroad Company, and the right of the Trustee shall thereupon cease.

ARTICLE NINE.

Section 1. Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it, and shall incur no liability hereunder; and the Trustee shall be entitled to receive reasonable compensation for all services rendered.

The Trustee shall be under no duty or obligation to see to the application of the proceeds of any note under this indenture.

The Trustee shall be under no duty to record or file this indenture.

Any moneys received by the Trustee hereunder may be treated by it as a deposit.

Sec. 2. The Trustee may resign and be discharged of the trusts created by this indenture by giving notice to the Railroad Company, and to the noteholders, by publication. Such resignation to take effect on the day specified in such notice.

Sec. 3. In case the Trustee or any trustee hereafter appointed shall resign or become incapable of acting, a successor may be appointed by the holders of a majority in amount of the notes hereby secured.

Any new Trustee appointed hereunder shall execute and deliver to the Trustee last in office and to the Railroad Company, an instrument accepting such appointment.

ARTICLE TEN.

Section 1. All covenants, stipulations, promises and agreements in this indenture by or in behalf of the Railroad Company shall bind its successors and assigns.

Sec. 2. In case Railroad Company shall be consolidated or merged with any other corporation, such successor corporation shall execute an instrument assuming the payment of the notes hereby secured and the performance of all the covenants and conditions of this instrument.

Sec. 3. For the purposes of this indenture the terms "Railroad Company" and "Erie Railroad Company" include and mean not only the party of the first part, but also any successor corporation.

Sec. 4. Any act to be done or performed by any board or officer of the Railroad Company shall be done and performed by the board, committee or officer of any successor of the Railroad Company.

Sec. 5. The Railroad Company may surrender any of the powers reserved to the Railroad Company.

Sec. 6. The words "the Trustee" or "said Trustee" shall be held to mean the Trustee or Trustees; and the words "Trustee," "note," "noteholder" shall signify the plural as well as the singular number, and the term "majority" shall signify "majority in amount."

Bankers Trust Company hereby accepts the trusts in this indenture.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(28)

INDENTURE, dated April 24th, 1852, between THE TIOGA RAILROAD COMPANY and THEODORE DEHON, ALFRED S. FRASER and WATTS SHERMAN, WITNESSETH:

Recites that the Tioga Railroad Company have authorized their President and Secretary to execute in the corporate name of said Company Two Hundred and Fifty Bonds of One Thousand dollars each and Two Hundred Bonds of Five Hundred Dollars each,

bearing date the first day of May, 1852, payable on the first day of May, 1872, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of May and the first day of November in each year, which bonds are convertible into the stock of the said company at par at any period prior to the first day of May, 1869, of the effect following, that is to say:

(Then follows copy of bond.)

That the said President and Secretary to secure the payment of the said bonds with interest as aforesaid were also duly authorized to execute a mortgage to the party of the second part of the whole of the Railroad property from the coal beds at and near Blossburg to the northern boundary line of the State of Pennsylvania near Lawrenceville and all the corporate rights, tolls, franchises and privileges thereto belonging, together with lands, depots and depot grounds, locomotives, engines, cars and all other real and personal property which said Company has acquired or may hereafter acquire and the income thereof, and in pursuance of the powers, rights and privileges aforesaid and authority of said Company the Preident and Secretary in the corporate name of said Company have executed two hundred and fifty bonds of one thousand dollars each, numbered consecutively from 1 to 250, two hundred bonds of five hundred dollars each numbered from 1 to 2,500, payable to the party of the second part or bearer on the first day of May, 1872, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of May and the first day of November in each year:

Now, this indenture witnesseth that the said Tioga Railroad Company to secure the payment of the said bonds and interest and in consideration of the sum of one dollar paid by the party of the second part, have granted, bargained, sold, etc., unto the party of the second part and their successors the whole of the said Railroad (describing same as above) and the income

thereof in trust for the holders of the bonds hereby secured, provided, however, if the said party of the first part shall and do well and truly pay and discharge or cause to be paid and discharged at maturity all the aforesaid bonds and the interest thereon as aforesaid, without any fraud, default or delay, and without any deduction or defalcation, then and from thenceforth as well the said Bonds as this Mortgage and the estate, property and rights hereby granted shall cease, determine and become void, and provided further that in case the said party of the first part shall fail to pay the principal or any part thereof or the interest on said bonds as the same may become due and payable when demanded, according to the tenor thereof, then after sixty days from such default upon the request of the holders of any such Bonds it shall and may be lawful at the discretion of the party of the second part their successor or successors in the trust to enter into and upon and take possession of all or any part of said premises hereby granted and as the attorney in fact or agent of the said party of the first part by himself or agents or substitute or substitutes duly constituted have use and employ the same making from time to time all such repairs as they may deem necessary and receiving the tools, rents, issues and profits of said Railroad and appurtenances and after defraying out of the same the counsel fees and other legal charges and expenses of the Railroad and machinery thereof and such repairs as aforesaid, apply the proceeds thereof to the payment of the principal and interest of all such bonds due and unpaid or the interest which may be due and unpaid.

The said party of the second part, at the request of the holders of any of the bonds due and unpaid, shall cause the said premises, or so much thereof as they may deem necessary, to be sold, at auction (giving method of publication and notice), and the proceeds of such sale, after deducting the costs and expenses

thereof and the expenses of this trust, to be applied to the payment of the principal and interest due and unpaid on said bonds, and any balance or residue not required for that purpose shall be restored to the party of the first part; and the said party of the first part agrees to execute any further reasonable conveyance of the property hereby conveyed to the party of the second part.

The party of the second part shall only be liable and accountable for reasonable diligence in the management thereof; and the party of the second part shall be entitled to receive reasonable compensation.

In case of death, incapacity or resignation of the said party of the second part, the bondholders may apply to court to appoint a new trustee or trustees.

(Then follows testimonium clause.)

EXHIBIT "ERIE 15."

(29)

MORTGAGE to secure $2,380,000 FIRST MORTGAGE RENEWAL BONDS of the BUFFALO, NEW YORK AND ERIE RAILROAD COMPANY, dated June 1st, 1876.

Indenture dated June 1st, 1876, between Buffalo, New York and Erie Railroad Company, party of the first part, and John A. C. Gray, party of the second part.

WITNESSETH: Recites that the party of the first part is a corporation of the State of New York, and did on or about October 29th, 1857 make to George C. Satterlee, as Trustee, a certain indenture of mortgage, wherein it mortgaged its entire line of railroad, &c. to secure the payment on the first day of December, 1877, of the bonds therein mentioned, amounting in the aggregate to $2,000,000; and that the party of the first part on October 29th, 1857 made and executed to John Gamson, as Trustee, a certain other indenture of mortgage, wherein it further mortgaged all

said line of railroad, etc. to secure the payment on the first day of November, 1872, of bonds therein mentioned amounting to the aggregate sum of $380,000; and the party of the first part desiring to secure an extension of its bonded debt under date of May 1st, 1874, did execute and deliver to William Butler Duncan and Charles F. Hunter, as Trustees, a new mortgage on all said line of railroad, etc., known as its consolidated mortgage to secure the bonds therein mentioned, known as its consolidated mortgage bonds, said bonds being of the denomination of $1,000 each, and bearing even date with said mortgage, and did issue seventy-eight of said consolidated mortgage bonds in exchange for said party's first mortgage bonds of the nominal value of $78,000, and did issue one hundred and twenty four of said consolidated mortgage bonds in exchange for said party's second mortgage bonds of the nominal value of $124,000, and did thereupon determine to retire its said consolidated mortgage and the bonds issued as aforesaid, and did cancel all of said consolidated mortgage bonds, except the one hundred and two bonds issued as aforesaid; that the amount of indebtedness secured by said mortgages and actually outstanding is in the aggregate $2,380,000, with interest payable semi-annually, at the rate of seven per centum per annum, on said first and second mortgage bonds, and at the rate of seven per centum per annum on said consolidated mortgage bonds.

That on the 27th of February, 1863, the party of the first part did make and execute and deliver a certain indenture of lease wherein it did lease and rent unto the Erie Railway Company, a corporation of the State of New York, and to its successors and assigns, for the term of four hundred and ninety nine years from the first day of May, 1863, the said entire line of railroad and the said lands, &c. theretofore acquired, with the appurtenances, and all tolls, profits

and income from sub-letting or otherwise, which might be received for or from said demised premises and also so much of its franchises and privileges as might be necessary or are actually exercised in or about the operation of the said railroad, &c., at an annual rental of $233,100.

And Whereas in and by said indenture of lease, it was also and further provided that the rights taken, and acquired thereunder by said Erie Railway Company should be subject to the mortgages existing at the date of said lease and securing the said indebtedness of $2,380,000 and that the said party of the first part hereto might procure an extension of its bonded debt or any part thereof, secured by its trust mortgages, and might execute a new and further mortgage or mortgages for the securing of its bonds and coupons, to be used solely in taking up said original bonds and such mortgage or mortgages; and that the bonds secured by said new mortgage or mortgages should be entitled to and have preference, and that the rights of the said Erie Railway Company under said lease should be subject to the said new bonds and mortgages in respect to the same property and to the same extent that the aforesaid then existing mortgages had priority.

That for the purpose of taking up and retiring its outstanding first and second mortgage bonds and its outstanding consolidated mortgage bonds, and of satisfying the aforesaid mortgages, and of extending the payment of said mortgage debt, and for the purpose of borrowing money for that purpose, the said party of the first part resolved to issue its First Mortgage Renewal Bonds, bearing even date herewith, to the aggregate amount of $2,380,000, and each for the sum of $1,000, payable forty years after date, and bearing interest at seven per centum per annum, payable semi-annually on the first days of June and December, and in the form following:

Exhibit Erie 15—(29).

(Then follows form of bond, certificate of Secretary and certificate of registration.)

Now therefore this indenture witnesseth that the better to secure the payment of said bonds and the interest to accrue thereon after issue thereof, according to the true intent and meaning thereof, and in consideration of the premises and of the loan of said money and of the sum of one dollar to said party of the first part in hand paid by said party of the second part, at and before the receipt, ensealing and delivery of these presents, the receipt whereof is herby confessed and acknowledged, hath granted, bargained, sold conveyed, &c., unto the party of the second part, his successors and assigns, in trust, &c. All the real and personal property and franchises of every kind and description now belonging to the said party of the first part, or that may thereafter be acquired by the same, and including among other all and singular—(then follows description of property).

Together with all and singular the tenements, hereditaments and appurtenances, &c.

To have and to hold to the said party of the second part, his successors and assigns; in trust for the payment of the said sum of $2,380,000 of bonds, and the interest thereon, and for the uses and purposes herein expressed, and not otherwise, and upon the following conditions, to wit:

Article First: The said party of the first part agrees that the 2,380 bonds secured by this indenture or the proceeds thereof shall be used solely to take up and satisfy and retire the hereinabove mentioned prior bonds heretofore issued.

Article Second. Until default shall be made in the payment of the principal or interest of the bonds, or any of them, or until default shall be made in respect to something herein contained and required to be done or kept by the party of the first part, the said party of the first part shall possess, manage, operate and en-

joy the said railroads with their equipments and appurtenances and all other of the premises and property, etc. herein described.

Article Third. In case default shall be made in the payment of any interest, or any coupons, or default shall be made in the performance of any other thing by these presents required to be done, and such default shall continue for a period of six months after written demand, then the principal sum of all the bonds hereby secured and all interest thereon accrued shall become due and payable.

Article Fourth. In case default shall continue as aforesaid, then it shall be lawful for the said Trustee, his agents or attorneys, to enter upon the railroads, premises and property hereby conveyed and to have, hold and use the same and conduct the business thereof, and as soon as possible sell and dispose of said railroads and all other premises and property, &c. (Then follows statement as to how said sale shall be advertised, &c. and how the proceeds shall be applied.)

Article Fifth. The party of the first part shall keep at the office of the Erie Railway Company a register to be designated "Registry of First Mortgage Renewal Bondholders."

Article Sixth. The party of the first part, its successors or assigns, will well and truly pay or cause to be paid to the holders of the bonds and coupons the sums of money therein mentioned.

Article Seventh. The word "trustee used in these presents shall be construed to mean the trustee for the time being, and to refer to said party of the second part. In case of default and continuance thereof it shall be the duty of the Trustee to exercise the power of entry hereby granted. The Trustee shall be entitled to just compensation.

Article Eighth. The party of the first part covenants that it is lawfully seized in fee simple of the

premises and property hereby conveyed, and that they are free and clear of all encumbrances, except the aforesaid mortgages.

Article Ninth. These presents and the conveyance hereby are made upon the express condition that the party of the first part shall pay, without default, to the holders of the bonds and coupons the principal sums and interest therein mentioned.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT ERIE 16.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF WIDENING ESSEX STREET UNDERGRADE CROSSING ACCORDING TO ORDER OF BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, NEW JERSEY.

942,400 lbs. steel	@	.04c	$37,696.00
6,500 sq. ft. waterproofing		.30c	1,950.00
2 track falsework		$1,800.00	3,600.00
Dismantling old bridges			2,000.00
2 driveway bridges, 2,280 sq. ft.		3.00	6,840.00
400 cu. yds. grading		.75	300.00
1,745 cu. yds. old masonry removed		3.50	6,107.00
1,280 cu. yds. concrete		7.50	9,600.00
2,000 cu. yds. foundation excavation		.75	1,500.00
84 cu. yds. stone backfilling		2.00	168.00
			$69,761.50
	+15%		10,464.23
			$80,225.73

EXHIBIT ERIE 17.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF RELOCATION OF MARKET STREET STATION AS ORDERED BY BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, NEW JERSEY.

Station			$ 95,200.00
Waiting Shed			6,000.00
Pedestrian Subway			5,000.00
5,000 sq yds. paving	@	$2.00	10,000.00
4,000 sq. ft. sidewalk		.12	480.00
			$116,680.00

EXHIBIT ERIE 18.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF NEW BUILDING FOR MORRIS AND COMPANY AND FULLER'S EXPRESS COMPANY, AS ORDERED BY THE BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, N. J.

Morris & Company	$40,000.00
Fuller's Express Company	12,000.00

EXHIBIT ERIE 19.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF RELOCATION AND REBUILDING OF RIVER STREET PASSENGER STATION AS ORDERED BY BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, NEW JERSEY.

Station		$ 9,500.00
Pedestrian Subway		5,000.00
Waiting Shed		3,500.00
Stairways		500.00
Platform		2,000.00
Intertrack fence		600.00
		$21,100.00
	+15%	3,165.00
		$24,265.00

EXHIBIT ERIE 20.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 23rd, 1915.

ESTIMATE OF COST OF PROPOSED ELIMINATION OF GRADE CROSSINGS AT CLAY AND STRAIGHT STREETS, PATERSON, BY COMBINING INTO ONE UNDERGRADE CROSSING. TRACK RAISED TO ELEVATION ORDERED BY BOARD OF PUBLIC UTILITY COMMISSIONERS, STATE OF NEW JERSEY.

False work, 3 tracks		@ $1,800.00	$ 5,400.00
380,000	lbs. bridge metal	.04	15,200.00
2,380	sq. ft. waterproofing on bridge	.30	714.00
130	cu. yds. stone backfilling	2.00	260.00
250	lin. ft. drain tile	.30	75.00
12,000	cu. yds. grading	.50	6,000.00
500	cu. yds. foundation excavation	.75	375.00
1,050	lin. ft. concrete	7.50	7,875.00

Exhibit Erie 20.

1,570	cu. yds. curb	$ .70	$1,099.00
2,560	sq. yds. stone block pavement	3.20	8,192.00
19,200	sq. ft. cement sidewalk	.12	2,304.00
100	lin. ft. street Railway Track lowered	8.00	800.00
1,200	cu. yds. backfilling	.50	600.00
Drainage			3,000.00
Underpinning buildings			500.00
			$ 52,344.00
	+15%		7,859.10
			$ 60,253.10
	Land and Damages		45,000.00
			$105,253.10

NOTE:

Estimate of plan ordered by B. P. U. C	$164,204.23
Estimate of Erie Railroad Plan	105,253.10
In favor of Railroad Plan	$ 58,951.13

NOTE: No track work included in estimate, as the track changes are the same on both plans.

ERIE RAILROAD COMPANY.
OFFICE OF ASSISTANT ENGINEER

New York, September 23rd, 1915.

ESTIMATED COST OF ELIMINATION OF GRADE CROSSING AT STRAIGHT STREET AND CLAY STREET, PATERSON, N. J., AS ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION, STATE OF NEW JERSEY.

STRAIGHT STREET:			
False work, 3 tracks		@ $1,800.00	$ 5,400.00
500,000	lbs. bridge metal	.4c	22,400.00
4,284	sq. ft. Waterproofing—bridge	.30	1,285.20
1,515	cu. yds. Concrete	7.50	11,362.50
700	cu. yds. foundation excavation	.75	525.00
138	cu. yds. stone backfilling	2.00	276.00
240	lin. ft. drain tile	.30	72.00
STREET WORK:			
7,200	cu. yds. grading	.50	3,600.00
310	cu. yds. foundation	.75	232.50
463	cu. yds. concrete	7.50	3,472.50
1,980	lin. ft. curb	.70	1,386.00
3,445	sq. yds. granite block pavement	3.20	11,024.00
19,800	sq. ft. sidewalk	.12	2,376.00
380	lin. ft. handrail on wall	1.25	475.00
800	lin. ft. 6″ gas pipe	.80	640.00
800	lin. ft. 6′ gas pipe	.80	640.00
300	lin. ft. 18″ sewer pipe	1.50	450.00
600	lin. ft. electric Railroad Track	5.00	3,000.00
			$68,616.70
		+15%	10,292.51
			$78,909.21
		Damages	14,500.00
		TOTAL	$93,409.21

Exhibit Erie 20.

BETWEEN STRAIGHT & CLAY STS. AND AT CLAY ST.:			
417 cu. yds. foundation excavation		$ .75	$ 312.75
1,088 cu. yds. concrete		7.50	8,160.00
152 cu. yds. stone backfilling		2.00	304.00
310 lin. ft. drain tile		.30	93.00
180 lin. ft. handrail on wall		1.25	225.00
False work, 3 tracks		1,800.00	5,400.00
406,500 lbs. bridge metal		.04	16,260.00
3,150 sq. ft. waterproofing—bridge		.30	945.00
STREET WORK, CLAY STREET:			
4,800 cu. yds. grading		.50	2,400.00
183 cu. yds. foundation excavation		.75	137.25
205 cu. yds. concrete		7.50	1,537.50
205 lin. ft. railing on wall		1.25	256.25
865 lin. ft. curb		.70	605.50
2,340 sq. yds. stone block pavement		3.20	7,488.00
10,380 sq. ft. sidewalk		.12	1,245.60
400 lin. ft. 40″ brick sewer		12.00	4,800.00
425 lin. ft. 15″ sewer		1.25	531.25
425 lin. ft. 12″ water pipe		1.00	425.00
			$51,126.10
	+15%		7,668.92
			$58,795.02
	Damages		12,000.00
	TOTAL		$70,795.02
STRAIGHT STREET		$93,409.21	
BETWEEN STRAIGHT & CLAY STS. & AT CLAY ST.		70,795.02	
		$164,204.23	

NOTE: No track work included in estimate, as the track changes are the same as in Plan of Railroad Company combining Clay and Straight Streets into one undergrade crossing.

EXHIBIT ERIE 20 (Continued).

Map entitled "Erie R. R. New York Division. Prop. Separation of Grades at Straight and Clay Streets, Paterson, N. J. By Combining to Single Undergrading. Sept. 20, 1915. Office of Assistant Engineer."

EXHIBIT ERIE 21.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 28th, 1915.

ESTIMATED COST OF PROPOSED UNDERGRADE CROSSING AT TAYLOR STREET, PATERSON, NEW JERSEY, AS ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION, STATE OF NEW JERSEY.

False work, 3 tracks		@ $1,800.00	$ 5,400.00
543,400 lbs. bridge metal		.04	21,736.00
4,360 sq. ft. waterproofing		.30	1,308.00
457 cu. yds. foundation excavation		.75	342.75
1,088 cu. yds. concrete		7.50	8,160.00
160 cu. yds. stone backing behind abuts		2.00	320.00
350 lin. ft. drain tile		.30	105.00
5,033 cu. yds. grading		.50	2,516.50
Underpinning buildings			3,000.00
60 lin. ft. handrail on wall		1.25	75.00
1,570 lin. ft. curb		.70	1,099.00
3,000 sq. yds. granite block pavement		3.20	9,600.00
15,700 sq. ft. sidewalk		.12	1,884.00
			$55,546.25
	+15%		8,331.95
			63,878.20
	Damages		8,000.00
			$71,878.20

EXHIBIT ERIE 22.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 28th, 1915.

ESTIMATED COST OF PROPOSED UNDERGRADE CROSSING AT NEW MONTGOMERY STREET, PATERSON, NEW JERSEY, AS ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION OF NEW JERSEY.

False work, 2 tracks		@ $1,800.00	$ 3,600.00
456,000 lbs. bridge metal		.04	18,240.00
3,360 sq. ft. waterproofing		.30	1,008.00
955 cu. yds. concrete		7.50	7,162.50
320 cu. yds. foundation excavation		.75	240.00
110 cu. yds. stone backing		2.00	220.00
140 lin. ft drain tile		.30	42.00
2,000 cu. yds. grading		.50	1,000.00
400 lin. ft. curb		.75	300.00
4,000 sq. ft. sidewalk		.12	480.00
670 sq. yds. stone block pavement		3.20	2,144.00
			$33,436.50
	+15%		5,015.47
			$38,451.97

EXHIBIT ERIE 23.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 28th, 1915.

ESTIMATED COST OF CHANGING UNDERGRADE CROSSINGS AT GOVERNOR STREET AND FULTON STREET, PATERSON, NEW JERSEY, AS ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION, STATE OF NEW JERSEY.

GOVERNOR STREET:			
False work, 2 tracks		@ $1,800.00	$ 3,600.00
400 cu. yds. old masonry removed		6.00	2,400.00
200 cu. yds. foundation excavation		.75	150.00
1,300 cu. yds. concrete		7.50	9,750.00
Raising present bridge			2,500.00
136,800 lbs. bridge metal new track		.4	5,472.00
2,520 sq. ft. waterproofing		.30	756.00
			$24,628.00
	+15%		3,694.20
			$28,322.20
FULTON STREET:			
False work, 2 tracks		@ $1,800	$ 3,600.00
400 cu. yds. old masonry removed		6.00	2,400.00
600 cu. yds. foundation excavation		.75	450.00
1,100 cu. yds. concrete		7.50	8,250.00
Raising Present Bridge			2,500.00
114,000 lbs. bridge metal—new track		.04	4,560.00
2,310 sq. ft. waterproofing		.30	693.00
			$22,453.00
	+15%		3,367.95
			$25,820.95

EXHIBIT ERIE 24.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 28th, 1915.

MEMO: PRESENT VALUE OF WORK DESTROYED

ESSEX STREET:			
300,000 lbs steel		@ .03¼	$ 9,750.00
950 lin. ft. bridge floor		2.50	2,375.00
2,400 sq. ft. waterproofing		.40	960.00
1,700 cu. yds. masonry		8.50	14,450.00
			$27,535.00
GOVERNOR STREET:			
500 cu. yds. masonry		8.50	4,250.00
FULTON STREET:			
400 cu. yds. masonry		8.50	3,400.00

Exhibit Erie 25.

EXHIBIT ERIE 25.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

ESTIMATED COST OF ELIMINATION OF GRADE CROSSINGS AT STRAIGHT STREET, CLAY STREET AND CEDAR STREET, PATERSON, N. J. STRAIGHT STREET AND CLAY STREET COMBINED, TRACK RAISED FOUR FEET AND UNDERGRADE CROSSING AT CEDAR STREET, TRACK RAISED ABOUT 1.5 FEET.

UNDERGRADE CROSSING, STRAIGHT STREET AND CLAY STREET, COMBINED:

17,200	cu. yds. grading—excavation	@ $ .50	$ 8,600.00
900	" " concrete mono. abuts. piers	7.50	6,750.00
3	tracks, false work	1,800.00	5,400.00
370	cu. yds. foundation excavation	.75	277.50
110	cu. yds. backfill—stone	2.00	220.00
465,000	lbs. bridge steel	.04	18,600.00
180	bridge ties	1.25	225.00
3,900	sq. ft. waterproofing on bridge	.30	1,170.00
180	lin. ft. tile drain back abutments	.30	54.00
220	cu. yds. stone ballast on bridge	1.00	220.00
600	lin. ft. 12" V. T. sewer	3.00	1,800.00
9	receivers	45.00	405.00
4	manholes	50.00	200.00
3,760	sq. yds. paving	3.20	12,032.00
1,900	lin. ft. curb	.70	1,330.00
Underpinning buildings and rearranging			7,000.00
21,300	sq. ft. sidewalks	.12	2,556.00
150	lin. ft. trolley tracks lowered	8.00	1,200.00
			$68,039.50
	Engineering & Contingencies 15%		10,205.92
			$78,245.42
	Land and damages		59,000.00
			$137,245.42

UNDERGRADE CROSSING, CEDAR STREET:

17,600	cu. yds. grading—excavation	$ .50	$17,600.00
3,490	" " concrete mono. abuts. walls, steps	7.50	26,175.00
8	tracks—false work	1,800.00	14,400.00
1,730	cu. yds. foundation excavation	.75	1,297.50
370	" " backfill—stone	2.00	740.00
703,500	lbs. bridge steel	.04	28,140.00
260	bridge ties	1.25	325.00
5,000	sq. ft. waterproofing on bridge	.30	1,500.00
270	cu. yds. stone ballast on bridge		270.00
880	lin. ft. 12" V. T. sewer	3.00	2,640.00
4	Receivers	45.00	180.00
7	Manholes	50.00	350.00
1,840	sq. yds. paving	3.20	5,888.00
2,300	sq. ft. sidewalks	.12	276.00
450	lin. ft. curb	.70	315.00
720	lin. ft. railing on wall	1.25	900.00

Exhibit Erie 26.

Bridge over subway to team tracks		$2,000.00	
220 lin. ft. moving sewer	$ 2.00	440.00	
		$103,796.50	
Engineering & Contingencies 15%		15,569.48	
		$119,365.98	
Damages		12,000.00	
			131,365.98
TRACK WORK:			
14,600 cu. yds. fill (borrow)	.50	7,300.00	
24,300 lin. ft. track raised and surfaced	.10	2,430.00	
2,700 cu. yds. rock ballast	1.00	2,700.00	
5,200 " " gravel ballast	.50	2,600.00	
1,090 main track ties	.90	981.00	
580 side track ties	.75	435.00	
454 cu. yds. concrete in retaining wall	7.50	3,405.00	
400 cu. yds. foundation excavation	1.00	400.00	
3 taking up & relaying No. 8 turnouts	40.00	120.00	
3 sets No. 8 switch timber	61.00	183.00	
200 lin. ft. track thrown	.10	20.00	
92 ft. rock fill back of ret. wall	2.00	184.00	
30 kegs spikes	3.20	96.00	
		$20,854.00	
Engineering & Contingencies 15%		3,133.10	
			23,987.10
			$292,598.50

NOTE: The plan covers elimination in Section "C," under order of Board of Public Utility Commission of New Jersey.

Section "C" as ordered by B. P. U. C	$652,979.70
Railroad Company's plan	292,598.50
Saving in favor of Railroad Plan	$360,381.20

EXHIBIT ERIE 25 (Continued).

Map entitled "Erie R. R. New York Division. Proposed Separation of Grades at Straight, Clay and Cedar Streets, Paterson, N. J. Sept. 27, 1915. Office of Assistant Engineer."

EXHIBIT ERIE 26.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

MEMO: VALUE OF SIDINGS DESTROYED

Passaic Steel Company,	No. 3	$1,900.00
R. H. McDonald,	No. 4	830.00
Paterson Vehicle Company,	No. 19	375.00
Paterson Beef Company,	No. 20	375.00
David S. Rodges,	No. 24	500.00

EXHIBIT ERIE 27.

Blue print of plan of Board of Public Utility Commissioners, with notations thereon in red by Mr. Brameld.

EXHIBIT ERIE 28.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 23rd, 1915.

ESTIMATED COST OF CHANGES TO MAINTAIN SWITCHING FACILITIES ON AND OFF THE PROPERTY OF THE ERIE RAILROAD COMPANY, AS ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION OF THE STATE OF NEW JERSEY IN CONNECTION WITH THE ELIMINATION GRADE CROSSINGS, PATERSON, N. J.

		On RR. Co.'s Property	Off RR. Co.'s Property	Total
72 (b)				
G. A. Zabriskie,	No. 5	$ 1,938.52		$ 1,938.52
Commercial Lumber & Mill Works Co.,	No. 6	1,584.22	$ 350.00	1,934.22
Christopher Kelley,	No. 7	1,850.69		1,850.69
M. Gobel,	No. 8	1,729.99		1,729.99
National Wood Co.,	No. 9	1,458.91		1,458.91
Standard Oil Co.,	No. 10	7,225.16	56.42	7,281.58
72 (c)				
John Agnew,	No. 11	6,919.26	30,101.25	37,020.51
72 (d)				
McNab & Harlin,	No. 15			
Graham Brewing Co.,	No. 16			
National Biscuit Co.,	No. 17	815.07	4,821.38	5,636.45
Hygeia Ice Co.,	No. 47			
Paterson Consolidated Ice Co.,	No. 50			
Bon Arbor Chemical Co.,	No. 55			
72 (e)				
Morris & Co.,	No. 18	40,023.58		40,023.58
Fullers Express Co.,	No. 60	13,172.41		13,172.41
72 (f)				
Herman Co.,	No. 22	4,720.88	8,045.09	12,765.97
Sulzberger & Sons' Co.,	No. 23	41.55	6,473.15	6,514.60
72 (g)				
Armour & Co.,	No. 25	32,650.89		32,650.89
72 (h)				
Hinchliffe Brewery Co.,	No. 26	448.50	3,200.00	3,648.50
72 (i)				
Katz Brewery Co.,	No. 27	10,609.99		10,609.99

Exhibit Erie 28.

		On RR. Co.'s Property	Off RR. Co.'s Property	Total
72 (j)				
P. S. Van Kirk Co.,	No. 28	$ 6,354.99	$ 414.00	$ 6,768.99
Diamond Coal Co.,	No. 53	6,833.39	1,352.40	8,185.79
Olive Oil Soap Co.,	No. 61	6,354.99	414.00	6,768.99
72 (k)				
A. H. Smith,	No. 29	1,758.96	298.57	2,057.53
72 (l)				
Meyer & DeVogel,	No. 30	2,004.77	600.00	2,604.77
72 (m)				
Armstrong Sons' Co.,	No. 31	8,883.75		8,883.75
72 (n)				
A. H. Smith,	No. 32	42.32		42.32
D. Fullerton & Co.,	No. 33	78.19	8,622.00	8,700.19
72 (o)				
Atherton Grain Co.,	No. 34	3,684.87	8,000.00	11,684.87
J. A. Lydecker,	No. 35	3,800.44	7,000.00	10,800.44
72 (p)				
Public Service Gas Co.,	No. 36	30.47	3,574.68	3,605.15
72 (q)				
J. Van Der Hendel	No. 37			
Swift & Company,	No. 38	50.02		50.02
H. M. Post,	No. 39	287.50		287.50
Ashley & Bailey,	No. 40	11.50		11.50
National Silk Dyeing Co.,	No. 41	24.15	166.75	190.90
Grasselli Chemical Co.,	No. 42	54.63	166.75	221.38
Auger & Simon Company,	No. 49	40.25	109.25	149.50
Center Paper Box Co.,	No. 56	31.51	40.25	71.76
Waldo Silk Ribbon Co.,	No. 57	31.51	40.25	71.76
		$165,547.63	$83,846.29	$249,393.92

New Jersey State Library

Opinion of Supreme Court.

Filed June 23, 1916.

New Jersey Supreme Court.

November Term, 1915.

ERIE RAILROAD COMPANY,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON,
Defendants.

Argued December 23 and 24, 1915.

Decided June 23, 1916.

SYLLABUS.

1. The act of 1913, P. L. 1913, p. 91, known as the Fielder Grade Crossing Act, is not confined in its operation, to a single crossing, but in a proper case may include one or more crossings in the same petition.

2. The Supreme Court, upon *certiorari,* or under section 38 of the act of 1911, page 374, can review the action of the Board of Public Utility Commissioners, in ordering an alteration of the grade of a highway with a steam railroad, for the purpose of ascertaining whether or not such order is purely arbitrary; whether or not it has a reasonable basis to rest upon; whether or not it is supported to any extent by the facts submitted to the board for its consideration.

3. The evidence in the record is sufficient to support the findings of the Board, that such crossings

are dangerous to public safety or the public travel is impeded, being the jurisdictional facts.

4. Where, upon the review of such an order, can additional testimony be taken under the provisions of the *certiorari* act?

5. The word "impede" in this statute means to place obstructions in the way of; obstruct; hinder; as, to impede progress. It is synonymous with check, hinder, delay.

6. The Erie Railroad Company, as the lessees of the Paterson and Hudson River Railroad Co. and the Paterson and Ramapo R. R. Co. is "the company operating such railroad" within the meaning of the statute. The order of the Board of Public Utility Commissioners was properly directed against the prosecutor, the Erie Railroad Company. The dangerous conditions, to the elimination of which the act is directed, are the result of the operation of the railroad by the Erie R. R. Co.

7. The statute provides, the Board of Public Utility Commissioners "may" order the company operating, etc., to alter the crossing. As to the prosecutor, the statute is mandatory. The prosecutor is not concerned with what might happen to some one else. When in a statute the word "may" means must or shall.

8. Where the work is in itself a reasonable, proper and fair exaction, when considered with reference to the object to be obtained, the expense is not a reason against its legality, when the order for such work is based upon, and made in an exercise of the police power, which is a part of the reserved power of the state.

9. The Fielder Act (Chap. 57, P. L. 1913, p. 91) authorizes the Public Utility Board, in a proper case, to order a railroad company to alter grade crossings according to plans to be approved by the board, by substituting therefor crossings not at grade, either

by carrying the highway under or over the railroad, or by reconstructing the railroad under or over the highway, or by vacating, relocating or changing the lines, width, direction or location of the highway and the opening of a new highway in the place of the one vacated, and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings.

10. An order of the Public Utility Board made pursuant to the Fielder Act (Chap. 57, P. L. 1913, p. 91) which is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad, and by performing such work as is required thereby, does not require the company to make changes in private sidings, and the like, not its property, and not within the limits of the right of way.

11. Where an order of the Public Utility Board for the elimination of grade crossings under the Fielder Act (Chap. 57, P. L. 1913, p. 91) is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad and by performing such work as is required thereby, a change in the location of a station building not fairly incidental to, nor rendered necessary by, the changing of the highways or the reconstruction of the railroad, is not required by such order.

12. An order of the Public Utility Board for the elimination of grade crossings under the Fielder Act (Chap. 57, P. L. 1913, p. 91) which is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad and by performing such work as is required thereby, does not require the construction by the railroad company of structures upon its lands for the use of private parties in substitution

for structures now occupied by them as lessees, and which will be rendered useless by the elimination work.

13. Where the order of the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) for the elimination of grade crossings directs the street railway company to pay ten per centum of the expense of the changes required by the order directly chargeable to the crossings used by it, that being the maximum amount allowed by the statute, the steam railroad company cannot complain that the street railway company was not ordered to pay more.

14. An order made by the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) requiring the railroad company to make changes in the existing and remaining streets in respect to grade, width and structure, and to make other changes by the abolition of existing crossings and the substitution of other crossings therefor on new highways, is not invalid by reason of such requirements, it appearing that such changes are all fairly incidental to, and were rendered necessary by, the separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroad.

15. Section 13 of the General Railroad Act as amended by P. L. 1914, p. 490, confers upon a railroad company power to take by condemnation any land or property required for the purpose of complying with an order made by the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) and the owners of property to be taken have no right to be made parties to, or to demand a hearing in, the proceedings under the Fielder Act.

16. The provisions of the Fielder Act (Chap. 57, P. L. 1913, p. 91) are applicable alike to highways existing at the time of the construction of the railroad and to highways subsequently laid out.

17. An order made by the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) requiring the railroad company to make changes in the highways outside of its right of way at its own expense, is valid in respect to such requirement, it appearing that such changes are fairly incidental to the changes ordered in the crossings at the railroad.

18. The Supreme Court, upon review by *certiorari* of an order of the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) will not disturb the action of the board in adopting plans of its own, rather than those suggested by the railroad company unless such action was unreasonable, or based upon some illegal principle, or lacks evidential support.

19. The fact that an order made by the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) makes no provision for such modification of the details of the plans as may become necessary during the progress of the work, is no reason for setting aside the order. There is a reasonable presumption in favor of the plans adopted and the board may at any time, for good reason, properly modify its order.

20. Statutory requirements enacted by the legislature for public safety under the police power of the state are not a taking of private property for public use without just compensation, although conformity to such rquirements involves expense.

21. Railroad corporations may in the exercise of the police power by the legislature be required at their own expense not only to abolish grade crossings that existed when the railroad was constructed, but also to carry their tracks over highways laid out since the construction of the railroad or to carry such highways over their tracks; and the expense of such permanent improvement of the railroad property may be imposed by the legislature upon the railroad corporation oper-

ating such railroad without violating any constitutional provision.

22. A statutory requirement for the abolition of grade crossings is neither unconstitutional or unreasonable because it does not affirmatively authorize the railroad company to lessen or eliminate the danger at such crossing by decreasing the number of its train movements.

23. The object of a law must, by force of the constitution, be single and be expressed in its title; but the methods of attaining such object and the matters relating thereto, which may be as various as such object requires, need be expressed in the terms of the enactment only.

24. Any contract that a railroad corporation is empowered by the state to enter into is made subject to the future exercise by the state of its police power, and hence, the obligations of such contracts are not in a constitutional sense impaired by such future legislation.

25. A state statute requiring the elimination of dangerous grade crossings is an exercise of the police power that is within the scope of the local law, and is not an interference with interstate commerce in the present state of federal legislation upon that subject.

26. The supplement to "An Act concerning public utilities," approved March 12, 1913 (Fielder Act) is not an invasion of the exclusive jurisdiction of the Court of Chancery to regulate conflicting public easements.

27. The Fielder Act does not impair the mandamus power of the Supreme Court.

ON CERTIORARI, &c.

There are two writs of *certiorari* in this case. The first was allowed on June 16, 1915, for the purpose of reviewing an order of the Board of Public Utility Commissioners, dated April 20, 1915. The second

writ was allowed on July 22, 1915, for the purpose of reviewing an order of the said board dated July 9, 1915, denying the petition for a rehearing of the previous order. The order under review was made, by virtue of the alleged power and authority vested in the said board by the statute P. L. 1913, p. 91, known as the Fielder Grade Crossing Act, which is a supplement to the act creating a Board of Public Utility Commissioners and prescribing its duties and powers. The records of both writs, with the writs allowed seven other prosecutors, for convenience, have been included in the record of the proceedings under the first writ allowed. The prosecutor, the Erie Railroad Company, is ordered to alter fifteen grade crossings in the City of Paterson, by changing the grade of the streets and reconstructing the steam railroad according to the plan and profile annexed thereto; by substituting therefor, crossings not at the grade of the public highways known as Madison avenue, Straight street, Clay street, Market street, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Franklin street, Keen street, Warren street, Putnam street and River street. The order further directs any telegraph, telephone company, etc., whose property or construction it may be necessary to change or remove in order to carry said plan and order into effect, to change or remove the same according to said plan. The Erie Railroad Company, the City of Paterson and all other parties are ordered to proceed with due diligence, to the execution of the order and comply with all the requirements thereof. It was ordered that the work shall be begun on or before August 1st, 1916, and be completed within eight years from April 20th, 1915; that it be prosecuted in accordance with a single plan, but in four separate divisions, marked A, B, C and D. Section A provides for the elimination of the crossings at Market street, Ellison street, Van Houten

street, Broadway, Fair street, Hamilton avenue, Lafayette street and Franklin street. Section B provides for the elimination of the crossings at Keen street, Warren street and River street. Section C provides for the elimination of the crossings at Straight street and Clay street. Section D provides for the elimination of the crossings at Madison avenue, according to a plan submitted by the Erie Railroad Company, known as Exhibit R. 105, at an estimated cost of $192,133.92 less than the plan prepared by the city and which carries Madison avenue over the tracks of the railroad. River street and Madison avenue are at the two extreme points. Measured along the railroad, the distance is about 10,800 feet or substantially two miles. Market street, in Section A, is practically in the center of the City of Paterson, and is the most traveled of all the streets mentioned in the order. From Market street to Madison avenue, at the southerly end of the work, is about six thousand feet, and to River street, at the other or northern end, it is about four thousand eight hundred feet From Market to Clay and Straight streets in Section C, it is about three thousand feet From Market street to Ellison street in the same section, it is six hundred feet, to Van Houten street, three hundred and fifty feet further on, to Broadway, three hundred feet more, Fair street, two hundred and fifty feet and Hamilton avenue, two hundred and fifty feet, all in the same section, and from Market street to Keen street in Section B about four thousand feet and to River street about four thousand eight hundred feet, the most northerly end of the work, thus considering all the crossings mentioned in the petition in one comprehensive plan or scheme.

The order states the time in which each section is to be completed, commencing with Section A, in which Market street is included. The Public Service Railway Company, operating trolley lines over three

of the crossings, viz: Park avenue and Market street, one crossing, Broadway, and River street, is charged with ten per centum of the cost of the alterations, including damages to adjacent property, directly chargeable to the alteration of those crossings used by the trolley company.

The statute provides, the Board may order the company operating the railroad to alter the crossing, and the entire expenses of such alterations, including damage to adjacent property, shall be paid by such railroad, unless a street railway uses such crossing, in which event, an amount of such cost, not exceeding ten per centum of such expenses directly chargeable to the crossing used by the street railway company, is to be paid by such company. The estimated cost of the alteration of the crossings is $2,948,218, for what is called Plan No. 2, the one adopted by the Board. This does not include damage to adjacent property. The amount of such damage due to changing grades of streets, estimated at $168,500; the amount due to revision of buildings and sidings off the railroad right of way, estimated at $131,922.

The jurisdiction of the Board is derived from the provisions of the statute, which provides, that "whenever a public highway and a railroad cross each other at the same level and it shall appear to the Board that such crossing is dangerous to public safety or that public travel on such highway is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad" to alter such crossing according to plans to be approved by said Board. The order was based upon proceedings initiated by the Board of Finance of the City of Paterson, being the board directed in the statute, to file a petition in writing for that purpose, in which the facts are stated, upon which the relief under the act is sought. In the petition, it is recited, that the Erie Railroad Company operates said railroad by virtue

of a lease from two separate railroad companies, viz: The Paterson and Hudson River Railroad Company and The Paterson and Ramapo Railroad Company. Certain facts relating to each of the fifteen crossings are alleged, and prays, that the said railroad should be elevated to pass over said highways. A time and place were fixed for hearings, notice of which was given to the corporations therein named. Answers were filed. Testimony was taken before the Board commencing on the seventeenth day of October, 1912, and lasting until February 5th, 1915, eighteen hearings in all.

From the testimony it appeared, that some of the streets mentioned in the petition were laid out after the railroad was built. The charters of the lessor companies, P. L. 1831, p. 24, sec. 9; P. L. 1941, p. 97, sec. 11, provide and impose a duty upon the said railroads to construct and keep in repair good and sufficient bridges or passages over and under said railroads or roads, where every public or other road shall cross the same, so that the passage of carriages, horses and cattle on said road shall not be "prevented" thereby.

The findings of the Board were made in a report dated January 11, 1915, which recites the facts on which the order was made, dated April 20, 1915. The Board found and determined the crossing of each of the streets involved in the proceeding to be dangerous to public safety and that public travel on such highways is impeded thereby. The Board also found that the consideration of the entire subject is simplified by the acquiescence of all parties to the proceeding, and that all the crossings mentioned in the petition must be considered in any plan of elimination. It was not questioned but that a general plan for the separation of grades at the crossings was practicable. There was a difference of opinion between the engi-

neers, as to details but the chief objection raised was to the expense.

Then on February 5, 1915, a petition for a further hearing was filed by the Erie Railroad Company, and on April 20, 1915, the same date as the order, a report by the Board was made denying a further hearing, in which it is stated, as to the reduction of train movements, that the company was afforded every opportunity to furnish such proof, if it had any, and did not avail itself of such opportunity; in addition, the offer on this score was so indefinite, that it did not appear reasonable to delay the proceedings for that purpose. Then writs of *certiorari* were obtained by the Erie Railroad Company, Public Service Railway Company, Passaic Water Company, Western Union Telegraph Company, D. Fullerton & Co., Meyer & De Vogel, Fuller's Express Company, and Morris & Company.

On June 15, 1915, a petition for a rehearing was filed by the Erie Railroad Company, and testimony thereunder was taken June 28, 1915, by the Board. On July 9, 1915, a report was made by the Board, denying the application for a rehearing. On July 22, 1915, a *certiorari* was obtained by the Erie Railroad Company to review this report, determination, or order, and on the 27th of September, 1915, an order was obtained from a Justice of the Supreme Court, granting leave to take affidavits on two days' notice. Such affidavits or depositions were taken on the part of the Erie Railroad Company, before a Supreme Court Examiner on September 30, 1915. Many reasons have been filed by each of the prosecutors, why the order of April 20, 1915, should not be set aside. The reasons of all the prosecutors are substantially included within the seventy-eight reasons filed by the Erie Railroad Company and their amendments, except when the facts specially apply to a particular prosecutor. Under the *certiorari* obtained by the Erie

Railroad Company to review the order denying a rehearing, the Erie Railroad Company has filed six separate reasons, why that order should be set aside. Under Section 38 of the Public Utility Act of 1911, page 374, the Supreme Court is given jurisdiction by petition to review the order of the Board and to set aside such order when it clearly appears that there was no evidence before the Board to support reasonably such order, or that the same was without the jurisdiction of the Board, or the order of the Board may be reviewed by *certiorari* in appropriate cases.

All the points made by the counsel for the prosecutor are covered in the opinion of the Court. To facilitate reference thereto, the numbering employed by the counsel for the prosecutor, the Erie Railroad Company, will be adopted in the opinion and adhered to throughout.

The writs of *certiorari* other than those prosecuted by the Erie Railroad Company will be disposed of in separate memoranda or opinions.

Before Justices Garrison, Trenchard and Black.

Gilbert Collins, Esq., George S. Hobart, Esq., Duane E. Minard, Esq., and Herbert A. Taylor, Esq. (of the New York Bar), for the Prosecutor.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward F. Merrey, Esq., for City of Paterson and Board of Finance of said city.

The opinion of the Court was delivered as follows:

I. The first ground of attack made by the prosecutor, the Erie Railroad Company, is on the construction of the statute. It is contended, that the words, "such crossing," "a crossing," "the crossing," in the statute, indicate, that it was the intention of the legislature to have only one crossing considered in any one proceeding. The petition of the City of Paterson prays for, and the order of the Board of Public Utility Commissioners provides for, the separation or

alteration of fifteen separate crossings. The Board in its report determined, that, at each of the crossings involved, a condition exists, such as was designed to be remedied by the statute. The question then arises, as to whether it is practicable and feasible to alter such crossings.

The Board further found, that the entire subject is simplified by the acquiescence of all parties, to the proceedings, that all of the crossings mentioned in the petition must be considered in any plan of elimination. There was no intimation from anyone, that a change of a particular crossing only, should be considered. It was not questioned, but that, a general plan for the alteration of grades at the crossings was practicable. The question then is: what was the legislative intent? The Board having found the jurisdictional facts, which will be considered hereafter, does the statute limit the Board, to the alteration of a single crossing in a separate proceeding, or can two or more crossings, or a group of crossings, that are dangerous to public safety, or that impede public travel on such highways, and which are connected or related to one another, so that an alteration in the one necessarily makes an alteration in the other, be considered by the Board under the statute, in a single proceeding, and a single plan be made for their alteration? It may be observed, in the first place, the statute does not expressly or inferentially prohibit such a proceeding, and second, if a restricted construction be placed upon the statute, the effect will be, as shown by this record, to leave those crossings in the cities of the state where the greatest use is made of the highways, at the railroad crossings, and presumptively, where the greatest danger is, intact and not subject to alteration. No substantial reason is stated for limiting the construction of the statute, to a single crossing, in a separate proceeding, excluding a group of crossings, where the record shows, that

much of the testimony applicable to one, is applicable to all. The plan of alteration applicable to one, as a practical and engineering problem, is so intimately connected with all, that it involves all the crossings, except, perhaps, Madison avenue in Section D, which will be considered hereafter. The record discloses no valid reason for so construing and limiting the operation of the statute. True, we are not concerned with the reasonableness or unreasonableness of the statute. Our duty is to find the intention expressed by the legislature and to give it effect. If a separate plan of alteration of each crossing and a separate proceeding is requisite, it would make it wholly impossible to alter any of the crossings, from a practical point of view, since, the alteration of the several crossings must, as is conceded, proceed under a general plan. Such a purpose should not be attributable to the legislature, when the statute will reasonably admit of a different construction. In determining the meaning of a statute, the courts will keep in mind the circumstances surrounding its enactment and the objects, sought to be obtained by the statute. *Alton &c. R. R. Co.* vs. *Vandalia & C. R. R. Co.,* 268 Ill., 75; *Warner* vs. *King,* 267 *ib.,* 87. This being a remedial statute, it should receive a liberal, rather than a narrow construction. As was said, by Mr. Justice Dixon, speaking for the Court of Errors and Appeals, in reference to the first grade crossing statute, passed by the legislature, P. L. 1874, p. 45; "The avowed object of these statutes is highly beneficent, and therefore, its provisions tending towards the accomplishment of that object should be liberally construed." *Read* vs. *City of Camden,* 54 N. J. L., 373. Subsequently this language was cited with approval, by that Court, in the case of *Morris Dredging Co.* vs. *Jersey City,* 64 N. J. L., 590.

The prosecutor does not point out, or even attempt to show, how or in what way, fifteen separate peti-

tions, with fifteen separate hearings, would be more advantageous to it, but on the contrary, rather acquiesces in the idea, that all the crossings mentioned in the petition must be considered in one plan of alteration, if alteration is to be made at all, and that, a general plan of the alteration of the grade at the several crossings is practical, as an engineering problem.

Mr. Brameld, the engineer of the prosecutor, the Erie Railroad Company, at page 509 of the record, testified, "there are various changes which I think will have to be made." At page 526, "Of course, I haven't worked up the detailed solution of every one of them, but from my general knowledge of the situation, I think they could be taken care of"; *i. e.,* the details. The testimony further shows, that Section D provides for the elimination of the crossing at Madison avenue, according to a plan submitted by the prosecutor, the Erie Railroad Company, known as Exhibit R-105, which is an estimated cost of $192,133.92 less than the plan prepared by the city, and which carries Madison avenue over the tracks of the railroad, instead of under the tracks. We think the construction of the statute cannot be limited to a single crossing in a separate proceeding, but in a proper case, where the jurisdictional facts appear, several crossings may be considered in one proceeding, when so related to one another, that the consideration of the one, necessarily involves the consideration of the other, as a practical engineering problem.

The next ground of attack is that the evidence taken before the Board of Public Utility Commissioners does not justify, nor reasonably support the Board's conclusions or findings. To that end, the insistence is, that this Court has power and should review the Board's findings of fact. We understand such to be the power of this Court. The rule on this point is stated thus, by Chief Justice Gummere, speaking for

the Court of Errors and Appeals, in the case of *West Jersey &c. R. R. Co.* vs. *Board of Public Utility Commissioners,* 88 N. J. L., 94 Atl., 60, "That Court (*i. e.,* the Supreme Court) can, upon *certiorari,* or under the statutory procedure provided by section 38 of the act 1911, p. 374, review such action for the purpose of ascertaining whether or not it is purely arbitrary, whether or not it has a reasonable basis to rest upon, whether or not, it is supported to any extent by the facts submitted to the Board for its consideration; and, if it shall be made to appear to the Court that such action is purely arbitrary, or that it has no reasonable basis upon which to rest; or is unsupported by the facts laid before the Board, the court may declare it null and void, and order it to be set aside. So, too, if the Board refuses to consider the matter at all, the Court by mandamus can compel it to do so." *Public Service Gas Co.* vs. *Board of Public Utility Commissioners,* 84 N. J. L., 463, N. J. L., 96 Atl., 127; *Erie R. R. Co.* vs. *Board of Public Utility,* 83 N. J. L., 95 Atl., 177.

Our reading of the record shows that a mass of testimony was presented to the Board, particularly with reference to the various elements of danger and the impediments to travel, at all of the level crossings of the highways, such as a list of accidents, at some of the crossings; obstructions to the view of persons traveling along the highways in both directions; a series of photographs, made and produced by the railroad company, showing the obstructions to the view at each crossing; delays to travel in general; the fact that at the crossings where there are trolley tracks, every street car is stopped, near the railroad crossing, until the conductor goes over it on foot, and releases a derail switch; schedules made at different times, as to the number of persons, vehicles drawn by horses, automobiles, bicycles and trolley cars passing over such crossings, in a given period; testimony, that the

crossings were protected by gates and automatic bells; the number of trains and drill locomotives passing over the crossings within a given time; operation of gates, etc., from which the Board found the facts in its report, that each of the crossings was dangerous to public safety, and we think after reading the evidence, the conclusion of the Board is supported by the facts that were before it. The question is one of fact, to be determined according to the circumstances of each case. *Mayor &c. of Newark* vs. *Erie Railroad Co.*, 75 N. J. Eq., 29. This applies to both conditions called for in the statute, viz.: that such crossings are dangerous to public safety, or the public travel on such highways is impeded. This, at the same time disposes of the prosecutor's contention that the evidence, as to one crossing cannot be extended to include other crossings, or that non-dangerous crossings cannot be ordered to be eliminated at the expense of the prosecutor, the Erie Railroad Company. This also was considered under Point I.

In this connection, may be considered point 22 of the brief of the prosecutor, the Erie Railroad Company. It is there urged, that the prosecutor had the right to take additional testimony under the provisions of the *certiorari* act. Such testimony was taken before a Supreme Court examiner and returned with the record, but as the prosecutor says, to use the words of the brief, the point is perhaps of comparatively small importance in the present case, for the reason, that the affidavits and exhibits served but to explain the evidence and exhibits that were already in evidence. This renders it unnecessary to further consider this point. See *Dubelheiss* vs. *Town of West Hoboken*, 82 N. J. L., 683.

But it is further urged, that the word "impede" has a well recognized meaning, having been used in many of the earlier charters of the railroad companies. The argument is that the obvious purpose of those statutes

was to make the surface of the railroad ties and rails conform to the surface of the highway, at a railroad crossing; that the rails and ties, as they passed the highway would impede travel, and if the railroad happened to be constructed in a cut or on an embankment, the impediment to travel would thereby be increased; that the word "impede" refers to permanent physical obstructions, due to the grade and construction of the railroad tracks, citing North Manheim Twp., 14 Atl., 137, Sp. Court, Pa.; and that the highway crossings are to be so constructed and maintained, as not to unreasonably obstruct the use of the crossings by highway travelers. This is too narrow. The dictionary definition of the word "impede" is to place obstructions in the way of; obstruct, hinder, as to impede progress. It is synonymous with check, hinder, delay.

The evidence in the record shows, the public travel is impeded, in this sense, at each of these crossings, and the Board so found. The word "prevent" is used in the early charters of the lessors of the prosecutor in place of the word "impede."

It is quite evident, the rule, as to negligence and contributory negligence at grade crossings, as laid down by the courts, cannot be used as a guide in construing this statute, because in these cases, the statute requires the railroad company, only to ring a bell or blow a whistle, under normal conditions, on the approach of a train to a grade crossing, at a distance of nine hundred feet. Then, too, there is a well recognized distinction, between actions,where the interest of the general public at crossings is involved and those which assert the rights of individuals who are injured. *Palmyra* vs. *Pennsylvania Railroad Co.,* 62 N. J. Eq., 614.

II. The next ground of attack is that the order, under the statute, should have been directed to the two original chartered railroad companies, construing the words of the statute, "the company operating such

railroad" to mean, the company which is charged with the legal duty of operating, or at least, that the order should have been directed to the prosecutor and the said two companies jointly, so that, the expenses of altering the grades might be apportioned, among all the companies, in accordance with their several interests. The original companies are the Paterson and Hudson River R. R. Co., organized under P. L. 1831, p. 24, and the Paterson and Ramapo R. R. Co. organized under P. L. 1841, p. 97. They were leased, by two separate leases, each dated September 9th, 1852, to a company known as the "Union Railroad Company." These leases were declared legal and valid by the legislature, March 14, 1853; P. L. 1853, p. 480. This validating act speaks of the corporation or individuals *using* the aforesaid roads. By various assignments, foreclosures, proceedings and sales, the Erie Railroad Company, the present prosecutor, on November 14th, 1895, acquired title to all the property and rights of the two lessor companies. As stated above, the statute provides (section 1 of the act, P. L. 1913, p. 91), that, "the company operating such railroad" and the expense (section 2), "shall be paid by such railroad," "the balance to be paid by the company operating such railroad."

On behalf of the two original companies, it is insisted, that they do not directly or indirectly institute, direct or control any of the operations upon these respective roads, nor is the duty of operating such roads charged upon them by law. The lease of the Paterson and Hudson River Railroad Company provides, "and that at the termination of the leases or either of them, any erections or improvements on the said above mentioned and demised property that may have been made by the parties of the second part, or their assigns, at their own expense, shall be paid for by the parties of the first part, at their appraised and just value." The lease of the Paterson and Ramapo

Railroad Company has a like provision, but in different language. Both leases provide, that the erections and improvements shall be valued by arbitrators, and the party of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns. Both leases, however, provide that "the parties of the second part do hereby covenant and agree with the parties of the first part, that the said parties of the second part, and their assigns, will keep and maintain and run said railroad and other premises hereby demised, in such manner, order and condition, as the said parties of the first part are bound to keep, and maintain and run the same by the charter of the said parties of the first part, and the statutes supplementary thereto, and that they will indemnify and save harmless the said parties of the first part from all damages to which they may be subject by reason of said road and premises not being so kept, maintained and run." The prosecutor in paragraph three of its answer admits, that it operates a railroad running through the City of Paterson.

The legislature's intention on this point is not obscure. Apt and precise words are used to express that intention, and taken in connection with the provisions of the leases and the validating act of the legislature above referred to, the intention of the legislature cannot be misunderstood.

There is no reason, why the courts should not give to the words used by the legislature, their plain, natural meaning, viz., that power or instrument, which puts in action and supervises the workings of the plant, the Erie Railroad Company, as being "the company operating such railroad." The dangerous conditions, to the elimination of which the act is directed, are the result of the operation of the railroad, by the Erie Railroad Company, against whom the order is directed in accordance with the plain terms of the statute.

III. The next ground of attack is based upon that clause of the statute, which provides that the Board *may* order the company operating such railroad to alter the crossing. The insistence is, if the statute is construed to confer on the Board, arbitrary power to order or refuse to order the alteration of the grade crossings, in its discretion, the statute is invalid. It is conceded that the Board could constitutionally be delegated power, to determine whether or not certain facts exist, but when such facts have been found, it is urged the statute then leaves it to the Board, to decide arbitrarily, whether it will or will not make an order for the alteration of the crossings..

The obvious answer to this point of the prosecutor is the fact, that the prosecutor was required by the order to make the alterations and changes in the grades, so as to it, the statute is mandatory, and if the facts before the Board justify the order, it is not arbitrary. The prosecutor is not concerned with what might be ordered to be done by some one else, by the Board of Public Utility Commissioners.

There is a line of authorities, however, which hold that *"may"* in a statute means must or shall. Thus, in England, in the case of *King* vs. *Harlow,* 2 Salk., 609, it was said that the word "may" in a statute shall be taken to be mandatory, where the thing to be done, is for the sake of justice, or the public good. So, Chancellor Kent, in the case of *Newburgh Turnpike Company* vs. *Miller,* 5 Johns Ch., 113, said, in respect to statutes, the rule of construction seems to be, that the word "may" means must or shall, only in cases where the public interests and rights are concerned, and where the public or third persons have a claim, *de jure,* that the power shall be exercised. These cases were cited with approval by our courts, in the cases of *Davidson* vs. *Davidson,* 17 N. J. L., 171; *Seiple* vs. *Borough of Elizabeth,* 27 *ib.,* 410; *Atlantic City Water Works Co.* vs. *Road,* 50 *ib.,* 672.

So, there is a line of authorities which hold, that the agencies of government do not act automatically. It is necessary, to vest in its officers certain general powers, with a discretion in the governmental agents, as to their exercises. It would be as impractical as it is undesirable, to attempt to formulate in advance, a set of hard and fast rules, by which every conceivable public act should be governed. In order to accomplish the ends of local government, it has been found expedient to create various boards and commissions, which are charged with the duty of supervising, directing, and controlling particular subjects. It has been held, that the granting of such power by the legislature was not a grant of either legislative or judicial power. *People* vs. *Roth,* 249 Ill., 532. For other illustrative cases see, In re Connecticut Co., 94 Atl., 992 (Conn.). In Matter of New York Elevated R. R. Co. 70 N. Y., 327; *Trustees of Saratoga Springs* vs. *Saratoga Gas &c. Co.,* 191 *ib.,* 123; *Alton & C. R. R. Co.* vs. *Vandalia &c. R. R. Co.,* 268 Ill., 68.

It is further urged that if the Court should hold the statute valid, still the order in the present case should be set aside for the reason that it is insisted the evidence shows without dispute, that the prosecutor has not, and in all reasonable probability will not have sufficient funds for the purpose of meeting the cost of complying with the order. The determination of this question is one of fact, in the first instance, devolving upon the Board of Public Utility Commissioners. The Board had before it the financial history of the Erie Railroad Company, its indebtedness, its income and many other details bearing upon the finances of the company, and from this evidence, the Board found adversely to the prosecutor, the Erie Railroad Company. After a careful reading of the voluminous testimony on this point, we are unable to say that the Board's determination is without sufficient facts to support its conclusion. The prosecutor has eight

years in which to comply with the order of the Board and do the work. Where the work is in itself a reasonable, proper and fair exaction when considered with reference to the object to be attained, the expense is not a reason against its legality. *Health Department of the City of New York* vs. *Rector, etc. of Trinity Church,* 145 N. Y., 32; 27 L. R. A., 710. *Woodruff* vs. *New York &c. R. R. Co.,* 59 Conn., 63, the order being based upon and made in an exercise of the police power, which is a part of the reserve power of the state.

Point VIII is that the order of the Board is invalid in so far as it requires the prosecutor to make changes in switches, side-tracks, leads, bridges, yards, structures and other facilities and property of the prosecutor and of other companies, co-partnerships or individuals.

We think in this respect the order properly interpreted is justified by the statute properly construed.

The statute authorizes the Board, in a proper case, to order the railroad to alter grade crossings according to plans to be approved by the Board, by substituting therefor crossings not at grade, either by carrying the highway under or over the railroad, or by reconstructing the railroad under or over the highway or by vacating, relocating or changing the lines, width, direction or location of the highway and the opening of a new highway in the place of the one vacated, and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings.

Now the order of the Board directs the railroad company "to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof * * * and profile of same, also annexed to and made part hereof * * * and profile of same, also annexed to and made part hereof * * *

which said plan and profile are hereby approved; by substituting therefor crossings not at the grade of the public highways known as Madison avenue, Straight street, Clay street, Market street and Park avenue, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Keen street, Warren street, Putnam and River streets; by changing the lines, width and direction thereof and carrying so much thereof as so changed under the said railroad, except in the case of Madison avenue which is carried over the railroad, according to and as shown on said plan and profile for said purpose, and by vacating the remaining parts of said highways within the lines of the right of way of said railroad company, and further by vacating that part of Madison avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison avenue; by substituting for, the existing crossings at Cedar street a crossing under the railroad at Taylor street and for the existing crossing at Franklin street a crossing under the railroad at Montgomery street and also by widening and altering the existing highways known as Essex street, Governor street and Fulton street, adjusting the structures spanning them to the proposed grade or grades (which said new highways shall be located, and of the width, length and direction and carried over or under the said railroad where so indicated); by reconstructing said railroad and highways and by performing all other work required according to and as shown on the said plan and profile."

It therefore appears, we think, that the order is confined in its direction to the company to the alteration of the crossings in question by changing the highways and by reconstructing the railroad and by performing such work as is required thereby. It does not require the railroad company to make changes in private sidings, and the like, not its property, and not

within the limits of its right of way. The closing words of the order "and by performing all other work required according to and as shown on said plan and profile" do not affect this conclusion as to the scope of the order. These general words follow specific provisions of the order and under an elementary rule of construction are limited thereby. Further they refer back to the introductory general mandate of the order requiring the company to "alter said crossings and each of them" and are limited thereby.

Neither does the order require the owners of such private sidings to reconstruct them. The plan which accompanies the order simply suggests to such owners a method by which their property may be conformed to the new conditions so as to admit of a continuance of the siding facilities theretofore enjoyed. The order only requires others than the railroad company to make such changes in, and removals of, their property and constructions as are necessary to carry the order and plan into effect. In this it accords with Section 4 of the statute. Since the mandate of the order to the railroad company is limited to requiring the changing of highways and the reconstruction of the railroad, the changes in, or removal of, such private sidings cannot be said to be necessary to carry the order to the railroad into effect. Of course the plan does indicate a way in which, in part, existing siding facilities may be continued after the ordered changes in the highways, and the ordered reconstruction of the railroad are made. It is appropriate that it should do so, for in the adoption of a plan, the effect thereof on existing industrial facilities should be taken into account, and this factor should also be taken into consideration in determining whether the plan adopted is reasonable or unreasonable.

As we have pointed out, in so far as the order directs the prosecutor to make changes in its own sidetracks, and the like, it was within the power conferred

by the statute if such changes were fairly incidental to the changes of grade of the main line tracks. We think that such ordered changes were of that character.

Point IX is that the order is invalid in so far as it requires changes in the construction and location of the station building at Market street, and the station building at River street.

We think this point is not well founded in fact.

The order (leaving out of account the plan and profile) does not require any change in the construction or location of these station buildings. It does not deal with them. The plan and profile do display reconstructed stations at new nearby locations. If these changes are fairly incidental to the changing of the highways or the reconstruction of the railroad, they are deemed to be a part of the order and must be made. That some reconstruction of both stations is rendered necessary by the reconstruction of the railroad, and will have to be made some time, either according to the judgment of the railroad managers or as may be lawfully directed by the Public Utility Board, is not questioned. But it is contended that the change in the location of the stations was not fairly incidental to the changing of the highways or the reconstruction of the railroad. If so, the reconstruction of the stations at new locations is not required by the present order. Upon full consideration we think that is so. We do not find that the change in the location of the stations was incidental to, or rendered necessary by, the elimination of the grade crossings. Accordingly we hold that the order under review does not require the railroad company to reconstruct these station buildings at the new locations as indicated and suggested upon the plan. No doubt Section 17 (b) of the Public Utility Act (P. L. 1911, p. 379) conferring upon the Board power "after hearing upon notice" to require a public utility "to fur-

nish safe adequate and proper service and to keep and maintain its property and equipments in such condition as to enable it to do so," is ample to authorize the Board, in a proper case, to order the relocation of a railroad station. But this was not a proceeding under that section. Aside from the fact that such relocation was not ordered, it will be noticed that such changes were not asked for in the petition. There was no hearing and no evidence upon the question whether the existing stations at these points were safe, adequate and proper, nor was any notice given to the prosecutor that such question was to be passed upon by the Board in this proceeding, other than such as might be inferred from the "suggestion" of the city engineer that such changes might be desirable if the tracks were elevated.

Point X is that the order is invalid in so far as it requires the prosecutor to construct structures upon its lands for the use of Fuller's Express Company and Morris & Co., in substitution for the structures now occupied by them as lessees and which will be rendered useless by the elimination work.

It is true that the plan adopted by the Board has indicated upon it suggested possible locations upon the lands of the railroad company of substituted structures for these private companies, but it does not require the railroad company to provide such locations or to erect such structures since neither the existing structures, nor the suggested structures constitute any part of the railroad. This matter is sufficiently discussed under Point VIII.

Point XI is that the statute and order, in so far as they permit or require the prosecutor to make certain changes in the properties of the Public Service Railway Company, and in so far as they limit the proportion of the expense of the alterations in certain of the grade crossings to be paid by the street

railway using the same, are unconstitutional and invalid.

The alleged unconstitutionality of the imposition by Section 2 of the statute of not exceeding ten per centum of the cost directly chargeable to the elimination of the grade crossings used by the street railway upon that company, is dealt with elsewhere in this opinion.

The contention that the order is invalid in that it requires the prosecutor to do the physical work of removing and changing the property of the Public Service Railway Company is not well founded in fact. The order does not require the prosecutor to do that. It requires the Public Service Railway Company to change and remove such of its property and construction as is necessary to carry into effect the order, and further directs that both the prosecutor and the Public Service Railway Company keep specific and complete records of the expenses directly chargeable to the crossings and each of them, so used by such street railway company.

The order directs the Public Service Railway Company to pay ten per centum of the expenses of the changes required by the order directly chargeable to the crossings used by it. This was the maximum amount allowed by the statute and, of course, the prosecutor cannot complain that it was so limited.

Point XII is that the statute and order are unconstitutional and invalid in so far as they permit or require the prosecutor to make changes in the existing streets with respect to grade, width and structure, and to make other changes by the abolition of existing crossings and the substitution of other crossings therefor on new highways.

We have elsewhere herein indicated that the statute in this respect violates no constitutional provision. We also think that the order in this respect is within the powers conferred by the statute. The changes

required in respect to the grade and width and structures in existing highways which remain, and those requiring the abolition of existing crossings and the substitution of other crossings therefor on new highways, are all fairly incidental to, and were rendered necessary by the separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroads. Being so regarded it is valid. *In re Selectmen of Norwood,* 161 Mass., 259; 37 N. E., 199; *Davis* vs. *County Commissioners of Hamshire Co.,* 153 Mass., 218; 26 N. E., 848.

In so far as the execution of such order may require the exercise of the power of eminent domain, it will be seen that Section 13 of the general railroad act as now amended (P. L. 1914, p. 490) confers upon the railroad company power to take by condemnation any land and property required for the purpose of complying with any order made by the Board of Public Utility Commissioners. It will also be noticed that the owners of property to be taken have no right to be made parties to, or to demand a hearing in this proceeding. *In re Directors of Old Colony Railroad Co.,* 163 Mass., 356; 40 N. E., 198. It is also to be noticed in this connection that, under the charter of the City of Paterson, the city has ample power to lay out, open, change, alter or vacate the streets involved, and to take such lands and real estate as may be necessary therefor. P. L. 1871, p. 846, Sec. 92; P. L. 1907, p. 114; P. L. 1910, p. 524; P. L. 1911, p. 179. Under this latter act the Board of Public Works of Paterson has power to vacate streets. *Sherwood* vs. *City of Paterson,* 94 Atl., 311. The order directs the railroad company, the City of Paterson and all other parties to proceed with due diligence to the execution of the order and to comply with all the requirements thereof. Of course, in carrying out its part of the order,

the City of Paterson must act in conformity with its charter and the laws amending the same. *Clark* vs. *City of Elizabeth,* 61 N. J., 565.

Point XIII is that the order in so far as it requires the prosecutor to reconstruct the railroad is invalid because not made in accordance with the statute; and that the statute is unconstitutional because it does not permit the Public Utility Board to order the elimination of the grade crossings by depressing the highway in part or by elevating the railroad in part.

We think there is no merit in this contention for reasons elsewhere stated in this opinion.

Point XIV is that the order is invalid and the statute is unconstitutional in so far as they require the elimination of grade crossings of highways laid out after the railroad tracks were constructed.

There is no merit in this point. We have elsewhere sufficiently indicated that we think that such a requirement in a statute would not render it unconstitutional. Undoubtedly the statute in question applies alike to highways existing at the time of the construction of the railroad and to highways subsequently laid out. The order in the respect mentioned is therefore within the powers conferred by the statute.

Worcester, N. & R. R. Co. vs. *City of Nashua,* 63 N. H. 593; 4 Atl., 298.

New York & N. E. R. Co. vs. *City of Waterbury,* 60 Conn., 1; 22 Atl., 439.

Northern Pacific Railway Co. vs. *State of Minnesota,* Ex. Rel. Duluth, 208 U. S., 583.

Point XV is that the statute and order are unconstitutional and illegal in so far as they require the prosecutor to reconstruct highways outside of the right of way of the prosecutor at the crossings.

With respect to the suggestion that the statute is unconstitutional for such reason we have nothing to add to what we have elsewhere said.

With respect to the contention that the order is illegal in that it requires the railroad company to make changes in the highways outside of its right of way at its own expense, we say that it appears that such changes are fairly incidental to the changes in the crossings of the railroad and are therefore proper.

In re Selectmen of Norwood, 161 Mass., 259; 37 N. E. 199.

Davis vs. *County Commissioners of Hamshire Co.,* 153 Mass., 218; 26 N. E., 848.

Point XVII is that the order is unreasonable in that it requires the prosecutor to alter the crossings according to a plan which is more expensive to the prosecutor than is necessary for the purpose of removing the danger to public safety or the impediment to public travel.

The real complaint under this point is that the Board refused to adopt certain modifications suggested by the prosecutor respecting the plans for the elimination of crossings at Keen, Warren and River streets, and for the consolidation of the crossings at Straight and Clay streets.

But we think that the propriety of the plan adopted by the Board is amply supported by evidence. This court will not disturb such a finding unless it be unreasonable, or based upon some illegal principle, or lacks evidential support. *Public Service Ry. Co.* vs. Public Utility Board, 87 N. J. L., 250.

Point XVIII is that the order is unreasonable in that (a) it arbitrarily limits the dates of the beginning and completion of the work, (b) it arbitrarily requires the work to be done in designated divisions and in the sequence of such divisions, and (c) it makes no provision for such changes or modification of details of the plan as may become necessary during the progress of the work.

With respect to the first two propositions we are clearly of the opinion that the times fixed, and the

division of the work, are entirely reasonable and proper.

Passing now to the other complaint. The fact that the order makes no provision for such modifications of the details of the plans as may become necessary during the progress of the work is no reason for setting it aside. There is a reasonable presumption in favor of the plan adopted by the Board. *In re Selectmen of Westborough,* 169 Mass., 495; 48 N. E., 763. If in the course of executing the order unforeseen contingencies arise, or details are found to require change or things required become unnecessary by reason of changed conditions or for any other cause, the order made and plan adopted by the Board may be modified on application. Section 31 of the Public Utility Act provides that the Board may at any time modify an order made by it. P. L. 1911, p. 386.

The constitutional objections argued by counsel for the prosecutor will be considered in the order in which the points are presented in his brief.

Point IV. That the statute is unconstitutional because it takes the property of the prosecutor as the lessee and operator of the railroads owned by the Paterson & Hudson Railroad Company and the Paterson & Ramapo Railroad Company for the private use and benefit of the said two companies, the respective owners of said railroads.

The argument is that in as much as the order for grade crossing elimination calls for the permanent improvement at the expense of the operating lessee of the property owned by the lessors, the money of the lessee so expended is taken for the private use of the owners of the property so improved. Is this so in point of fact? The lease of the Paterson and Hudson River Railroad Company to the Union Railroad Company made on September 9, 1852, and assigned to the New York and Erie Railroad Company contains the following provision: "And it is in like

manner further agreed by and between the parties to these presents that if any erections or improvements shall, during the said term hereby demised, or any future term or terms hereafter demised, be made on said demised premises or appurtenant thereto, the same shall, at the termination of said term or terms, and the cessation of the interest of the parties of the second part of, in and to the same, by the expiration thereof, or other termination thereof, be valued by arbitrators to be appointed in like manner as last above provided, and the award of a majority of such arbitrators shall be conclusive as to the value of the said erection and improvements; and the parties of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns."

The lease from the Paterson and Ramapo Railroad Company to the Union Railroad Company and assigned to the New York and Erie Railroad Company contains a precisely similar covenant.

Such permanent erections or improvements and the monies thereon expended are not therefore taken for the private use of the lessors in the sense contemplated by the constitution; upon the contrary, such improvements are to be used and enjoyed by the lessee during its term, and if taken at all by the lessor are to be paid for at their value, which may be greatly in excess of their cost. Such a prearranged purchase is not the taking of property *in invitum* that is reprobated by the constitutional provision on which the argument is based.

These same considerations apply also to the second contention made under this point in the brief, viz: that compliance with the order constitutes a confiscation of the property of the prosecutor, because of the cost of such compliance.

The broader ground, however, by which both of these contentions are met is that the provisions in

question of the Fielder Act constitute a regulation adopted by the legislature for public safety under the police power of the State and hence are not a taking of private property without just compensation, although conformity to such regulation involves expense. This is the language of our court of last resort delivered by Mr. Justice Depue in the case of *Morris and Essex Railroad Company* vs. *The City of Orange* (63 N. J. L., p. 252). This definitive statement and concrete application of the police power is sufficient authority for this court in the present case, unless it be necessary that whenever the police power is mentioned an essay on the subject shall be delivered, on the contrary, it would seem that the proper way for a lower court to deal with an established rule of law was to treat it as established.

In as much, however, as a federal question is involved it may be well to quote from one of the most recent decisions of the Supreme Federal Court. In the case of *Chicago, Milwaukee & St. Paul Rw. Co.* vs. *Minneapolis* (232 U. S., p. 430) Mr. Justice Hughes delivering the opinion of the court, said:

"It is well settled that railroad corporations may be required, at their own expense, not only to abolish existing grade crossings, but also to build and maintain suitable bridges or viaducts to carry highways newly laid out over their tracks, or to carry their tracks, over such highways," citing a large number of cases in the State and Federal Courts.

Other specific illustrations of the application of this established rule to the elimination of grade crossings are *Davis* vs. *County Commissioners,* 153 Mass., p. 218; *N. Y. & N. E. R. R. Co.* vs. *Bristol,* 151 U. S., p. 556, *In re Selectmen of Norwood,* 161 Mass., p. 259. *Illinois Central R. R. Co.* vs. *Copiah County,* 81 Miss., p. 685; *City of Harriman* vs. *Southern Ry. Co.,* 111 Tenn., p. 538; *St. Louis & S. F. R. Co.* vs. *Fayetteville,* 75 Ark., p. 534; *C. B. & A. Rw. Co.* vs. *Drainage*

Commrs., 200 U. S., p. 561; *Cincinnati I. & W. R. R. Co.* vs. *Connersville*, 218 U. S., p. 336; *Chicago, M. & St. Paul R. R. Co.* vs. *Minneapolis*, 232 U. S., p. 430; *Mo. & Pac. Ry. Co.* vs. *Omaha*, 235 U. S., p. 121.

Upon the point that these Federal decisions, especially the two last cited, extend the rule of some of our earlier State decisions, it is to be remarked, first, that there is no conflict as to the fundamental doctrine of the police power but only as to its application, and, secondly, that as to due process of law and other matters involving ultimately a federal question the decisions of the State courts yielded those pronounced upon such questions by the Supreme Federal tribunal.

Point V. Which is that the statute under review is unconstitutional because it deprives the prosecutor of its property without due process of law or just compensation, in that it requires the entire expense of abolishing the grade crossings to be paid by the prosecutor is fully answered by what has just been said under the previous point. We have nothing to add excepting that the case of *New York & New England R. R. Co.* vs. *Bristol* (151 U. S., p. 556), on which counsel relies for his main argument has been stripped of the force accorded to it by counsel by the more recent case of *Chicago, Milwaukee & St. Paul* vs. *Minneapolis* in 232 U. S.

The contention that the legislature could not lawfully limit the proposition of expense to be borne by the street railway company to ten per cent. of the total expense of the alteration of a crossing is, of course, unsound if the entire expense might at the legislative will have been placed upon the prosecutor. The opposite contention, viz., that the imposition of any part of the expense upon the trolley company was unlawful is, of course, not now under consideration.

The same remark applies to the limitation of the

expense imposed upon the municipality affected.

Under this point there is also a running attack made upon the principle of Utility Boards in general, involving their powers as well as their procedure, but as far as discoverable no constitutional limitation is pointed out or discussed. Under this subhead similar Boards in other jurisdictions are described and the differences noted, but no constitutional question raised that is not covered, as far as we are able to do so, by the principles decided in the cases already cited.

Point VI is that, "Said statute is unconstitutional and said order is unreasonable, for the reason that the prosecutor is not given the alternative of decreasing or eliminating the alleged danger to public safety and the alleged impediment to public travel by decreasing the number of train movements or by abandoning the railroad." In so far as this reason challenges the discretion exercised by the Board in making its order we are not concerned with it in this part of our opinion, in so far as it constitutes an attack upon the statute the contention must be that the legislative act was unconstitutional because it did not affirmatively authorize the railroad company to decrease the number of its trains or to abandon its railroad.

The abandonment of the railroad was not germane to the object of the statute, and the power to deal with that question could not be delegated to the agency created by the act.

The decrease in the number of train movements was a latter primarily under the control of the prosecutor, and hence required no statutory permission; if by such decrease the danger and congestion at the crossings were in fact eliminated or reduced to a negligible point that fact would doubtlessly be recognized by the Board and dealt with accordingly. It was for the prosecutor to make that fact appear and

its failure to do so involved no constitutional infirmity in the statute.

Point VII is an attack upon the title of the original Public Utility Act of 1911, and upon the duality of the objects alleged to be embraced in that act as supplemental by the Fielder Act of 1912.

The title of the original act expressed broadly and inclusively the object of the statute; it does not express the means and methods of attaining that object; but this is not required.

Bumstead vs. *Govern,* 47 N. J. L., p. 368.
Affirmed, 48 N. J. L., p. 612.
Hickman vs. *State,* 62 N. J. L., p. 499.
Affirmed, 63 N. J. L., p. 666.

As was said by this Court in *Moore* vs. *Burdett* (62 N. J. L., p. 164), "The object of a law must not be confused with its product. * * * The object of every law, by force of the constitution must be single and be expressed in the title of the law; the product may be as diverse as the object requires and finds its expression in the terms of the enactment only. In fine, the title of an act is a label not an index." The statute has, in a constitutional sense, a single object. To attain this object it enacts various methods and matters so related to such object and to each other as to effectuate a single purpose. The inclusion of such inter-related matters is not the intermixing of things that have no proper relation to each other, hence the statute as a whole has a single object.

Payne vs. *Mahon,* 44 N. J. L., p. 213.
Newark vs. *Mt. Pleasant Cemetery Company,* 58 N. J. L., p. 168.

Point XVI is that, "The statute and order violate the Constitution of the United States in that they impair the obligation of the prosecutor's contracts as follows:

(*a*) Contracts with the holders of the prosecutor's stocks, bonds, notes and other obligations.

(*b*) Contracts between the State of New Jersey and the prosecutor or its predecessors in interest.

(*c*) Contracts between the prosecutor or its predecessors, and the Public Service Railway Company or its predecessors.

(*d*) Contracts between the prosecutor and the various switch owners.

(*e*) Contracts between the Paterson and Hudson River Railroad Company and Ramapo Railroad Company; and the prosecutor or its predecessors."

These objections may be considered together, since, despite their apparent diversity, they rest upon a common principle and present but a single legal question, to wit, whether these contracts whenever made or upon whatever consideration based were subject to the future exercise by the state of its police power. The specific application of the general doctrine treated under Point IV to the obligation of contracts is well stated by Mr. Justice Depue in *M. & E. R. R. Co.* vs. *Orange,* where, after pointing out that certain New York and Connecticut decisions were placed upon the ground that the charters of the respective companies were subject to alteration or repeal, but that the opinion of the Connecticut Court and of the Supreme Court of the United States in *New York and New England Railroad* vs. *Bristol,* 62 Conn., 252; 26 Atl., 122; 151 U. S., 556, lays stress upon the fact that the regulations were a proper exercise of the police power of the state, he said: "In *Boston and Maine Railroad Co.* vs. *County Commissioners,* 79 Me., 3861, S. C., 10, Atl. Rep., 113, an act requiring the expense of building and maintaining so much of the townway or highway as was within the limits of the highway where such way crossed the tract at grade, should be borne by the railroad company, was held to be constitutional. This decision was made against a company whose

charter provided that it should not be altered, amended or repealed. The power of the legislature to impose such burdens for general safety under the police power was declared to be fundamental and that the act did not impair any contract in the company's charter. Whether the corporation has an irrepealable contract in its charter or not is immaterial. Police powers are inherent in the government, and the legitimate exercise of legislative power in securing public safety does not impair the obligation of contracts nor deprive anyone of property without due process of law."

A later expression of the same thought by the Supreme Court of the United States speaking through Mr. Justice Day is as follows: "The exercise of the police power cannot be limited by contract for reasons of public policy, and it is immaterial upon what consideration the contract rests, as it is beyond the authority of the state or the municipality to abrogate this power so necessary to public safety."

Chicago, Burl. & Q. R. R. Co. vs. *Nebraska,* 170 U. S., p. 57.

Northern Pacific Rw. Co. vs. *Minnesota,* 208 U.S., p. 583.

Many of the cases cited under point IV are to the same effect and sustain the same doctrine, the acceptance of which renders it unnecessary and indeed futile to follow the brief in its recapitulation of the hardships that result from the observance of such legal rule.

That the contracts of the railroad with others for switch connections and service were subject to the police power was held by the Court of Errors and Appeals in *Swift* vs. *Delaware, Lackawanna & Western R. R. Co.* (66 N. J. Eq., p. 34).

Cases in other jurisdictions are:

Branson vs. *Philadelphia,* 47 Pa. St., p. 329.

Kinealy vs. *St. Louis, K. & North R. R. Co.*, 69 Mo., p. 658.

Otis Elevator Co. vs. *Chicago*, 263 Ill., p. 419.

As to the Public Utilities, the doctrine of their subservience to the police power is the same.

Jersey City vs. *City of Hudson*, 13 N. J. Eq., p. 420.

Stillwater Water Co. vs. *Stillwater*, 50 Mo., p. 498.

Detroit vs. *Fort Wayne & E. Ry. Co.*, 90 Mich., p. 646.

Columbus Gas & Coke Co. vs. *Columbus*, 50 Ohio St., p. 65.

Natick Gas Co. vs. *Natick*, 175 Mass., p. 246.

New England Tel. & Tel. Co. vs. *Boston T. Co.*, 182 Mass., p. 397.

New Orleans Gas L. Co. vs. *Drainage Comm'rs.*, 197 U. S., p. 453.

Point XIX is that, "Said order imposes a burden upon the interstate traffic of the prosecutor and interferes with and impairs its operation to perform its duty as an interstate carrier of freight and passengers because:

(*a*) It requires changes in the location or grade of switches, side tracks, leads, bridges, yards, structures and other facilities and properties of the prosecutor which are used by the prosecutor in the furtherance of its interstate business.

(*b*) It compels the prosecutor to raise and expend moneys for the purpose of complying with said order, which said moneys would otherwise be available for and would be used by the prosecutor in the making of changes and improvements which are essential for the purpose of enabling the prosecutor to carry on its interstate business."

Whether or not the police regulations of a state

constitute an unlawful interference with interstate commerce is distinctly a question for the ultimate decision of the highest Federal Court. The attitude of that court upon this question is well expressed by Mr. Justice Gray delivering the opinion of the Court in the case of *Chicago M. & C. E. R. R. Co.* vs. *Solan*, 169 U. S., p. 133:

> "The rules prescribed for the construction of railroads and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the state to regulate the relative rights and duties of all persons and corporations within its limits."

So long as this attitude is maintained by the Federal Court the doctrine enunciated by it would gain nothing by our concurrence and suffer nothing by our dissent. We, however, not only recognize the authority but also concur in the soundness of the rule laid down.

Point XX is that, "Said order is in violation of the Constitution of the State of New Jersey and of the United States, in so far as it deprives the prosecutor of the rights, benefits, advantages, privileges and contracts now possessed by it with reference to the several leads, switches and side tracks which under said order are required to be destroyed or relocated and reconstructed, for the following reasons." Upon this point we can add nothing to what has already been said in

discussing the scope and dominance of the police power.

Point XXI is that, "Said order and the statute upon which same is based are in violation of the Constitution of the State of New Jersey because:

> (*a*) They impair the jurisdiction of the courts of equity of the State of New Jersey by depriving them of their jurisdiction over the regulation of the use of easements.
>
> (*b*) They impair the jurisdiction of the courts of law of the State of New Jersey by depriving them of their jurisdiction to compel the performance of the duties imposed by law upon the prosecutor or its predecessors in interest."

As to the alleged invasion of the exclusive jurisdiction of the Court of Chancery to regulate conflicting public easements our decision might well rest upon the reasoning of the opinion of Mr. Justice Kalisch in this court in the case of *Erie R. R. Co.* vs. *Board of Public Utility Commissioners* (87 N. J. L., p. 438). In view, however, of the argument of counsel and the attempt to distinguish that case from the present one, it will be as well to point out that there is an essential difference between the jurisdiction exercised by Chancery over conflicting public easements and the exertion by the legislature of its police power to avert danger at railway crossings. Under the inherent power of the Court of Equity all questions as to the existence, character, duration and priority of such conflicting easements, together with their respective paramountcy or subservience as well as questions of acquiescence, estoppel, contribution and expense are considered by the Court of Chancery and are either adjudicated by it or are relegated to a court of law for decision, as the case may be; whereas, in the legislative exercise of its police power all of these matters are determined by the statute, leaving nothing of a

judicial nature to be adjudicated by the statutory tribunal excepting the applicability of such legislative scheme to a given state of facts, if it be found to exist, and the determination thereupon of the practical methods of accomplishing the legislative object. This exercise by the legislature of its police power which in its simplest expression is illustrated in statutes requiring the erection of safety gates, the posting of flagmen and the giving of audible signals long antedated the adoption of the Constitution of 1844, so that the jurisdiction of the Court of Chancery that was confirmed by that instrument was not exclusive in respect to the exercise of such powers by the legislature, even if the jurisdiction of equity at any time was or could be exclusive as to such exercises of this sovereign power, which is not for a moment admitted even for the purposes of argument.

In the case of *Palmyra* vs. *Pennsylvania R. R. Co.* (62 N. J. Eq., p. 601), the contention of the railroad was that powers of this nature were so essentially legislative that they could not constitutionally be exercised by the Court of Chancery under legislative authority, which is the precise opposite of the contention of the prosecutor in the present case. The truth is that neither extreme view is the proper one; the correct view being that the mixed administrative and quasi-judicial functions to be performed by the Board of Public Utilities Commissioners under the statute, which do not in a constitutional sense properly belong to either of the three great departments of government may, because of that circumstance, be lawfully exercised under express legislative authority by a statutory tribunal without infringing upon the constitution itself or upon the prerogatives of the Court of Chancery. This principle, although not this precise application of it, is illustrated in:

Paul vs. *Gloucester Co.*, 50 N. J. L., p. 584.

Moreau vs. *Freeholders of Monmouth*, 68 N. J. L., p. 480.

Ross vs. *Freeholders of Essex,* 69 N. J. L., p. 291.

Iowa Life Ins. Co. vs. *Eastern Mutual Life Ins. Co.,* 64 N. J. L., p. 340.

In the matter of Drainage of Lands, 35 N. J. L., p. 497.

Palmyra vs. *Penn. R. R. Co.,* 62 N. J. Eq., p. 601.

Eckert vs. *Perth Amboy & W. R. R. Co.,* 66 N. J. Eq., p. 437.

As to the alleged impairment of the mandamus power of this Court, what has just been said as to the Court of Chancery measurably covers this matter also, at least in principle.

There is, however, another doctrine peculiar to the prerogative writs of this Court, viz.: that stated by Mr. Justice Trenchard in *Newark* vs. *Kazinski* (86 N. J. L., p. 59), to the effect that where this Court may by its writ of *certiorari* supervise the action of a statutory tribunal the fact that such tribunal is exercising under legislative authority powers similar to or identical with those exercised by this Court under its prerogative writs is a negligible circumstance. The question is, however, almost if not entirely academic, since the functions exercised by the Statutory Board in this case do not bear the slightest resemblance to the mandamus function of this Court.

We have now reviewed *seriatim* the points of constitutional law as presented in the elaborate brief of counsel for the prosecutor without finding that any of them requires us to declare invalid the Statute of 1913 as a whole or as to any of its essential features. If any other constitutional question has been argued by counsel, incidentally and outside of his stated points, it may upon that account have escaped our attention, but it will, nevertheless, we confidently believe, be found to be covered by the principles we

have discussed and by the cases cited to illustrate them.

The conclusion that we have reached from the foregoing considerations of all of the reasons filed and argued by the prosecutor is that each of the orders of the Board of Public Utility Commissioners brought up by the two writs of *certiorari* in this case should be affirmed, with costs.

Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

PUBLIC SERVICE RAILWAY COMPANY,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON.

Argued December 22, 1915.

Decided June 23, 1916.

1. The provision of Section 2 of the Supplement to an Act concerning Public Utilities, approved March 12, 1913 (Fielder Act) (P. L. 1913, p. 91), by which ten per centum of the expense of eliminating a grade crossing of a steam railroad used by a street railway may be ordered to be paid by the company operating such street railway is within the legitimate sphere of legislation under the police power of the State.

ON CERTIORARI.

The order of the Board of Public Utility Commissioners drawn under review as to one of its terms by this *certiorari* is fully set out in the statement of facts prefaced to the opinion delivered at this term in the case of *Erie Railroad Company* vs. *Board of Public Utility Commissioners.*

Before Justices Garrison, Trenchard and Black.

For the prosecutor, Frank Bergen, Esq.

For the defendants, Edward F. Merrey, Esq., Frank H. Sommer, Esq.

The opinion of the Court was delivered by:

GARRISON, *J.*

The prosecutor of this writ, the Public Service Railway Company, objects to the order of the Board of Public Utility Commissioners imposing upon the prosecutor ten per centum of the cost incurred in abolishing grade crossings on three highways over which the prosecutor operates its cars. The reasons relied on by counsel "briefly stated are, that the burden which the order attempts to impose on the prosecutor is neither a tax nor an assessment nor a legitimate exercise of the police power." In as much as the order merely follows the statute the attack is really upon the latter. The language of the statute is that "the Board may order not exceeding ten per centum of such expense directly chargeable to the crossing used by the street railway company to be paid by the company operating such street railway.

We agree that this imposition of a part of the expense of abolishing dangerous grade crossings is neither a tax nor an assessment for a public improvement, but, we think, that it is a legitimate exercise of the police power. The contention of counsel for the prosecutor is placed squarely upon the proposition that the police power is not legitimately exercised in the present case "unless the property (of the prose-

cutor) has become a public nuisance and so lost its right to protection"; and he then proceeds to demonstrate that a street railway is not a public nuisance. We of course, agree to this, but we entirely dissent from the narrow definition of the police power which would restrain its exercise to the case of property that had become in a legal sense a nuisance.

If such a narrow definition has any place in the doctrine of the police power, it is confined to the appropriatory aspect of that power, *i. e.,* to such appropriation as is incidental to the destruction of property as a nuisance and has no place in the vastly wider scope of such power that is regulative of energies that are curbed, not that they may be impaired or destroyed, but, on the contrary, that they may be of greater service and beneficence to the public.

Instances of such regulative exercises of the police power are met at every turn and constitute in fact the chief characteristics of modern social life. There are, to use a rough analogy, two aspects of the exercise of the police power, one so to speak *in rem* and the other *in personam;* and it is to the former alone that the proposition of counsel has any possible pertinence, and even in that connection it is of doubtful value as a definition, and of no apparent service as a criterion.

The distinction between these two aspects of the police power is perfectly patent. The destruction of a pest house would be an illustration of appropriation of property because it was *per se* a nuisance, *i. e.,* a menace to the public health, while the compulsory vaccination of school children would be in order to prevent them from becoming such. The securing of public safety from anticipated dangers rather than the abatement of consummated nuisances is the essence of the police power in its broader scope. That there are such dangers to be anticipated from the operation at a grade crossing of a steam railroad and

a trolley line is not more obvious than that each of these public agencies contributes its element to such danger. The steam road may indeed furnish in greater degree the active element of danger to human life, but the surface road in its operation brings to such place of danger its human freight in extraordinary numbers and under special conditions, which, or so the legislature might determine, greatly increase and accentuate the normal danger and hence justify its elimination by the joint act or at the joint expense of both of the public agencies that contribute in its production. It is matter of common knowledge that during what are termed the rush hours of the day a single surface car of modern construction carries a hundred or more passengers and that the cars thus crowded follow each other in an almost unbroken procession. The stalling of one of these cars upon a grade crossing by the sudden giving out of the electric current, or its propulsion on to the railroad track by the failure of a brake to work properly, or as in the Newark case (*State* vs. *Young,* 56 Atl. Rep., p. 471) by the failure to sand the track would imperil the lives of scores, who were brought into such position of peculiar peril by reason of being passengers on a street railway. It is not at all a question of the creating of a common nuisance, but solely of the participation in and contribution to a common source of danger arising from the transportation problem in its relation to grade crossings of common carriers of passengers

The State grants this use of its highways for the convenience of its citizens, and the incorporators of such companies eagerly seek the privileges thus granted because of the profits to be derived therefrom; hence, if dangers arise from the very success of such enterprises it is eminently within the exercise of the police power of the State in the elimination of such dangers to place a portion of the expense of so doing

upon those who profit by the very success which has contributed to such dangers.

The fact that by such a collision as we have suggested the lives of the passengers on the steam railroad are also imperilled, so far from demonstrating that the entire expense of eliminating the dangerous condition should be borne by such railroad, merely emphasizes the participation of each carrier in the production of a common source of danger, and hence points to their joint contribution to the expenses of its elimination.

In support of this obvious conclusion counsel for the defendant cites a number of pertinent authorities, but the question would seem to be at bottom one of fact, from which, when the fact is once established, the legal result follows as a necessary consequence. The establishment of such fact is, moreover, a part of the legislative function and as such is not subject to review by the Judicial Department.

In *Hopper* vs. *Stack* (69 N. J. L., p. 562) we said, "Every exercise of the police power involves, of necessity, the determination by the lawmaker of some fact quite apart from the exercise of any legislative discretion concerning it," and illustrations of such determinations of fact were given and the matter discussed at some length.

The proposition thus advanced has been not only adopted by the Court of Errors and Appeals, but has been elevated into a presumption. "Police regulations of this character," said Chancellor Pitney in *Meehan* vs. *Excise Commissioners* (75 N. J. L., p. 557) "must, in the absence of clear evidence to the contrary, be deemed to be based upon facts within the possession of the legislature rendering such legislation proper, if not necessary, see *Hopper* vs. *Stack* (40 Vroom, 562)." And in *State* vs. *Sutton* (87 N. J. L., p. 192) also a Court of Errors decision, a condition that would justify the exercise of the police power,

was spoken of as "one of those determinations of fact that the legislature has the right to make for itself when prescribing a police regulation," citing *Hopper* vs. *Stack and Lyons* vs. *Morris Co.* (86 N. J. L., p. 206). It is this prerogative of the Legislative Department of the Government thus to predicate its exercise of the police power of the State upon facts within its own possession and keeping that renders such power so unamenable to precise judicial definition rather than any inherent difficulty in defining the limits of such power when applied to a given state of facts.

The foregoing remarks, coupled with our discussion of the topic and citation of authorities in the case of *Erie R. R. Co.* vs. *Board of Public Utility Commissioners* decided at this term, lead to the conclusion that the provision of the Fielder Act drawn under review was within the proper sphere of legislation and that the order of the Utility Board brought up by this *certiorari* merely carried out the clearly expressed intent of the legislature. That the State through its chosen agencies is not required in such a situation to ascertain the exact quota of contribution to a common danger and by that standard assign the expense of its elimination is borne out by the cases cited by counsel for the defendant. Under such circumstances the province of the judicial office is thus stated by Chief Justice Beasley in *Douglass* vs. *Essex Co.* (38 N. J. L., p. 214): "Where that which is directed to be done is within the sphere of legislation and the terms used clearly express the intent, all reasoning derived from the supposed inconvenience or even absurdity of the result is out of place. It is no province of the courts to supervise legislation and keep it within the bounds of propriety and commonsense, so that even if in this case it could be demonstrated that the regulation in question was incommodious or even hurtful, an appeal for relief to the

judicial power would be utterly in vain." This is stronger language than is called for by the circumstances of the present case, but the rule of law to which it leads up cannot be too strongly stated, or too rigidly observed if the relative spheres of the Legislative and Judicial Departments of the Government are to be kept separate in obedience to the constitutional mandate.

The order of the Utility Board brought up by this writ is affirmed with costs.

Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

PASSAIC WATER COMPANY,
Prosecutor,
vs.
BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF THE CITY OF PATERSON,
Defendants.

Argued December 24, 1915. Decided June 23, 1916.

On *certiorari* to review an order of the Board of Public Utility Commissioners, under the act of 1913, page 91.

Before Justices Garrison, Trenchard and Black.

John B. Humphreys, Esq., for Passaic Water Company.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward H. Merrey, Esq., for City of Paterson.

Per curiam:

In this case, there are twelve reasons presented to the court, for setting aside the order made by the Board of Public Utility Commissioners. They are, however, argued under four points, in prosecutor's brief. The first and fourth points argued are, the statute upon which the order under review is based is invalid and unconstitutional; because, it takes the private property of the prosecutor for public use without any compensation, denies the prosecutor the equal protection of the law; impairs the obligation of contracts, etc. All these points are disposed of in the opinion of the court, in the case of the *Erie Railroad Company* vs. *Board of Public Utility Commissioners.*

The second point argued is, the statute is unconstitutional, in so far as it deprives the Court of Chancery of its exclusive jurisdiction over the regulation of the use of easements. This point is disposed of in the opinion of the court, in the case of the *Erie Railroad Company* vs. *Board of Public Utility Commissioners.*

The third point argued is, the order is invalid and beyond the jurisdiction of the Board, in so far as it requires the prosecutor to change the location of its water pipes, water mains, etc., arguing, that the title of the statute does not truly express the object of the legislation which it embodies, this and the other points under this head are disposed of also in the opinion of the court, in the case of the *Erie Railroad Company* vs. *Board of Public Utility Commissioners.*

The order under review will be affirmed with costs.

Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

WESTERN UNION TELEGRAPH CO.,
Prosecutor,
vs.
BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF THE CITY OF PATERSON,
Defendants.

Argued December 24, 1915.

Decided June 23, 1916.

On *certiorari* to review an order of the Board of Public Utility Commissioners, under the Act of P. L. 1913, page 91.

Before Justices Garrison, Trenchard and Black.

Messrs. Collins & Corbin, Gilbert Collins, Esq., George S. Hobart, Esq., Albert T. Benedict, and the brief of the New York Bar, for prosecutor.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward H. Merrey, Esq., for City of Paterson.

Per curiam:

In this case, there are eleven reasons presented to the court, for setting aside the order made by the Board of Public Utility Commissioners. They are in the main, identical with the reasons presented by the prosecutor, the Passaic Water Company, except an additional reason, viz: the order is invalid, because it imposes a burden upon the interstate traffic of the prosecutor, interferes with and impairs, its ability to

perform its duty, as a common carrier of such traffic.

They are, however, argued under five points, in prosecutor's brief. The first four points are constitutional questions, all of which are disposed of in the opinion of the court, in the case of *Erie Railroad Company* vs. *Board of Public Utility Commissioners.*

The fifth point is, the order is invalid stating six reasons, these, also, have been disposed of in the opinion of the court, in the case of the *Erie Railroad Company* vs. *Board of Public Utility Commissioners.* They need no further discussion.

The order under review will be affirmed with costs.

Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

D. FULLERTON & CO.,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF THE CITY OF PATERSON,
Defendants.

Argued December 24, 1915. Decided June 23, 1916.

On *certiorari* to review an order of the Board of Public Utility Commissioners, under the act of P. L. 1913, p. 91.

Before Justices Garrison, Trenchard and Black.

Messrs. Hudson & Joelson, for D. Fullerton & Co.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward H. Merrey, Esq., for City of Paterson.

Per curiam:

In this case, there are eight reasons presented to the Court for setting aside the order made by the Board of Public Utility Commissioners. They are, however, argued under four points in prosecutor's brief.

The first point argued is that the order, if construed to require prosecutor to make changes in its building necessary to have the same conform to the side track of the Erie Railroad, when reconstructed is invalid, because the prosecutor is not a public utility and the Board has no power to order it to make such changes.

The second point argued is that the order, if construed to require the prosecutor at its own expense to reconstruct the existing side track, it is without the jurisdiction of the Board. The work commanded to be done by the order in altering the crossing is specifically (a) the changing of the highways and (b) the reconstruction of the railroad.

The third point argued is, the order under review, takes the private property of the prosecutor for public use, without just or any compensation, and takes the property of the prosecutor for private use of other companies.

The fourth point argued is, the order under review, takes the property of the prosecutor without due process of law and deprives the prosecutor of the equal protection of the law. All these points are disposed of in the opinion of the Court, in the case of *Erie Railroad Co.* vs. *Board of Public Utility Commissioners.*

The order under review will be affirmed with costs.

Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

MEYER & DEVOGEL,
FULLER'S EXPRESS COMPANY,
MORRIS & COMPANY,
Prosecutors,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF THE CITY OF PATERSON,
Defendants.

Argued December 24, 1915. Decided June 23, 1916.

On *certiorari* to review an order of the Board of Public Utility Commissioners, under the act of P. L. 1913, p. 91.

Before Justices Garrison, Trenchard and Black.

William B. Gourley, Esq., for prosecutors.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward H. Merrey, Esq., for City of Paterson.

Per curiam:

In each of these cases, there are eight reasons presented to the Court, for setting aside the order made by the Board of Public Utility Commissioners. They are identical with the reasons, presented in the case of D. Fullerton & Co., prosecutor, except in the case of Fuller's Express Co., prosecutor, presents an additional reason, viz.: the order directing changes, relocation, etc., is invalid because it imposes a burden upon the interstate traffic of the prosecutor, interferes with and impairs, its ability to perform its duty, as

a common carrier of such interstate traffic. These cases were argued orally, before the Court, by Mr. Gourley. All the points in these cases, are disposed of in the opinion of the Court, in the case of the *Erie Railroad Company* vs. *Board of Public Utility Commissioners*. The order under review will be affirmed with costs.

Rule for Judgment.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson, for alteration of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting there-

for crossings not at the grade of said streets; together with the petition of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs. Dated June 28, 1916.

On motion of

EDWARD F. MERREY,
Attorney of Defendants.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* (*Writ of July 22, 1915.*) *Rule for Judgment.*

The Court having inspected the report, determination or order of the Board of Public Utility Commissioners dated July 9, 1915, denying an application by Erie Railroad Company for a rehearing of the proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," which resulted in an order of said Board dated April 20, 1915, whereby said Erie Railroad Company was ordered to alter certain crossings and each of them named in said order according to the plan therefor, thereto annexed and made part thereof substituting therefor crossings not at the grade of said streets, which application for rehearing was for the purpose of considering a plan suggested in said application in lieu of the plans approved by said Board, together with the said application for rehearing, the testimony and exhibits offered before said Board, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said report, determination or order, and having heard the argument of

counsel, and having duly considered the same, do order that the said *certiorari* be dismissed, that the said report, determination or order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,

Attorney of defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners made on the twentieth day of April in the year of our Lord one thousand nine hundred and fifteen, requiring Public Service Railway Company to pay ten per centum of the cost of abolishing certain grade crossings of the Erie Railroad Company in the City of Paterson, to wit, at Park avenue and Market street, Broadway and River street, together with all proceedings had and taken by the Board of Public Utility Commissioners upon which the same is founded, and all the testimony of

witnesses and other evidence taken thereon and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of
EDWARD F. MERREY,
Attorney of Defendants.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

PASSAIC WATER COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and Passaic Water Company and certain

others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets, and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order into effect, should change or remove the same, according to said plan; together with the petition of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do ORDER that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,

Attorney of Defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

WESTERN UNION TELEGRAPH COMPANY, *Prosecutor,* vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and Western Union Telegraph Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order into effect, should change or remove the same, according to said plan; together with the peti-

tion of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of
EDWARD F. MERREY,
Attorney of Defendant, City of Paterson.

New Jersey State Library

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

D. FULLERTON & CO., *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and D. Fullerton & Co. and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets, and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order into effect, should change or remove the same, according to said plan; together with the petition of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company

for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of
EDWARD F. MERREY,
Attorney of Defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

JACOB MEYER AND KOMMER DE VOGEL, partners, as MEYER & DE VOGEL, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was peti-

tioner and Erie Railroad Company, and Jacob Meyer and Kommer De Vogel, partners, trading and doing business as Meyer & De Vogel, *et al.,* were respondents, directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," together with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,
Attorney of Defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

FULLERS EXPRESS COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company and Fullers Express Company, *et al.,* were respondents, directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," together with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,

Attorney of Defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

MORRIS AND COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Rule for Judgment*

The Court having inspected the order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company and Morris and Company, *et al.*, were respondents, directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," together with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,
Attorney of Defendant, City of Paterson.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY, *Prosecutor,* *vs.* THE BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari Tested June 16, 1915.* *Notice of Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners.

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals

COLLINS & CORBIN,
Attorneys of Prosecutor.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY, *Prosecutor,* *vs.* THE BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari Tested July 22, 1915.* *Notice of Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners.

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

COLLINS & CORBIN,
Attorneys of Prosecutor.

Notice of Appeal.

Filed June 29, 1916.

NEW JERSEY SUPREME COURT.

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Notice of Appeal.*

PLEASE TAKE NOTICE, that Public Service Railway Company, the prosecutor in the above stated cause, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause affirming the order of the Board of Public Utility Commissioners brought up for review by writ of *certiorari* herein.

Dated June 29, 1916.

FRANK BERGEN,
Attorney of Prosecutor-Appellant.

To L. Edward Herrmann, Attorney of the Board of Public Utility Commissioners.

Edward F. Merrey, Attorney of the City of Paterson.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

PASSAIC WATER COMPANY, *Prosecutor,* *vs.* THE BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Notice of Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners.

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

HUMPHREYS & SUMNER,
Attorneys of Prosecutor.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

WESTERN UNION TELEGRAPH COMPANY, *Prosecutor,* *vs.* THE BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Notice of Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners.

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals

COLLINS & CORBIN,
Attorneys of Prosecutor.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

D. FULLERTON & COMPANY, *Prosecutor,* *vs.* THE BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants.*	*On Certiorari.* *Notice of Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners.

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

HUDSON & JOELSON,
Attorneys of Prosecutor.

Notice of Appeal.

Filed July 13, 1916.

NEW JERSEY SUPREME COURT.

JACOB MEYER AND KOMMER DE VOGEL, partners, etc., *Prosecutors,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Notice of Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners and Edward F. Merrey, Esq., Attorney of City of Paterson.

TAKE NOTICE, that the prosecutors appeal to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated June 29th, 1916.

WILLIAM B. GOURLEY,
Attorney of Prosecutors.

Notice of Appeal.

Filed July 13, 1916.

NEW JERSEY SUPREME COURT.

MORRIS AND COMPANY, *Prosecutor,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY AND CITY OF PATERSON, *Defendants.*	*On Certiorari.* *Notice of Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners and Edward F. Merrey, Esq., Attorney of City of Paterson.

TAKE NOTICE, that the prosecutors appeal to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated June 29th, 1916.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

Grounds of Appeal.

Filed July 24, 1916.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ERIE RAILROAD COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants-Respondents.* *On Appeal*	*On Appeal from Supreme Court. (Re certiorari tested June 16, 1915.)* *Grounds of Appeal.*

The appellant states the following grounds of appeal—that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari,* which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

COLLINS & CORBIN,
Attorneys of Appellant.

Grounds of Appeal.

(Filed July 24, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

ERIE RAILROAD COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, *Defendants-Respondents.*	*On Appeal from Supreme Court. (Re certiorari tested July 22, 1915.* *Grounds of Appeal.*

The appellant states the following grounds of appeal—that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari,* which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

COLLINS & CORBIN,
Attorneys of Appellant.

Grounds of Appeal.

(Filed July 12, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendants-Respondents.*	*On Certiorari.* *Grounds of Appeal.*

The appellant states the following grounds of appeal:

The Supreme Court upon the writ of *certiorari* in said cause which removed the order of the Board of Public Utility Commissioners bearing date the twentieth day of April, 1915, in said court for review, affirmed the same; whereas for one or more of the reasons filed by the appellant prosecutor in said court for the reversal of said order, the Supreme Court ought to have reversed, vacated and set aside said order; and the appellant here states and alleges each of said reasons for reversal, so as aforesaid filed in the Supreme Court, appearing in this cause, as grounds for appeal in this court.

FRANK BERGEN,
Attorney of Prosecutor-Appellant.

Grounds of Appeal.

(Filed July 14, 1916.)

NEW JERSEY COURT OF ERRORS APPEALS.

PASSAIC WATER COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, *Defendants-Respondents.*	*On Appeal from Supreme Court. (Re certiorari tested June 16, 1915.* *Grounds of Appeal.*

The appellant states the following grounds of appeal, that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari,* which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

HUMPHREYS & SUMNER,
Attorneys of Appellant.

Grounds of Appeal.

Filed July 24, 1916.

NEW JERSEY COURT OF ERRORS AND APPEALS.

WESTERN UNION TELEGRAPH COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, *Defendants-Respondents.*	*On Appeal from Supreme Court.* *Grounds of Appeal.*

The appellant states the following grounds of appeal—that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari,* which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

COLLINS & CORBIN,
Attorneys of Appellant.

Grounds of Appeal.

Filed July 24, 1916.

NEW JERSEY COURT OF ERRORS AND APPEALS.

D. FULLERTON & COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, *Defendants-Respondents.*	*On Appeal from Supreme Court.* *Grounds of Appeal.*

The appellant states the following grounds of appeal—that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari,* which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

HUDSON & JOELSON,
Attorneys of Appellant.

Grounds of Appeal.

Filed August 16, 1916.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JACOB MEYER AND KOMMER DE VOGEL, partners, etc., *Prosecutors-Appellants,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendants-Respondents.*	*On Appeal from Supreme Court.* *Grounds of Appeal.*

The appellants state the following grounds of appeal, that the Supreme Court affirmed the order of the Board of Public Utility Commissioners, whereas for each of the reasons for reversal filed by said appellants as prosecutors in *certiorari* in said court, which reasons are hereby stated as grounds of appeal, the order of said Board should have been reversed.

WILLIAM B. GOURLEY,
Attorney of Prosecutors-Appellants.

Grounds of Appeal.

Filed August 16, 1916.

NEW JERSEY COURT OF ERRORS AND APPEALS.

MORRIS AND COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendant-Respondent.*	*On Appeal from Supreme Court.* *Grounds of Appeal.*

The appellant states the following grounds of appeal, that the Supreme Court affirmed the order of the Board of Public Utility Commissioners, whereas for each of the reasons for reversal filed by said appellant as prosecutors in *certiorari* in said court, which reasons are hereby stated as grounds of appeal, the order of said Board should have been reversed.

WILLIAM B. GOURLEY,
Attorney of Prosecutor-Appellant.

New Jersey Court of Errors and Appeals

ERIE RAILROAD COMPANY, *Prosecutor-Appellant,* vs BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, *Defendants-Respondents*	*On Certiorari. (Re Paterson Grade Crossings.)*

Brief for the City of Paterson.

STATUTES.

Ch. 57, p. 91, Laws of 1913.

A Supplement to an act entitled "An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April twenty-first, one thousand nine hundred and eleven.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. Whenever a public highway and a railroad cross each other at the same level and it shall appear to the board that such crossing is dangerous to public safety or that the public travel on such highway is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad, within such time as said board may fix, to alter such crossing according to plans to be approved by said board, by substi-

tuting therefor a crossing not at the grade of such public highway either by carrying such public highway under or over such railroad, or by reconstructing such railroad under or over such public highway, or by vacating, relocating or changing the lines, width, direction or location of such highway and the opening of a new highway in the place of the one ordered vacated.

2. The entire expense of such alterations, changes, relocation or opening, including damages to adjacent property, shall be paid by such railroad, unless a street railway uses such crossing, in which event the board may order not exceeding ten per centum of such expense directly chargeable to the crossing used by the street railway company, to be paid by the company operating such street railway and the balance to be paid by the company operating such railroad.

3. The expense of removing, relaying or relocating any municipal water or sewer pipes or other municipal pipes, conduits or subways, shall be borne by the municipality owning the same and also the expense of paving, curbing and flagging the highway constructed as the result of the change of grade.

4. Where the order of said board shall require changes in, or the removal of the property or constructions of any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe lines or other company or corporation, co-partnership or individual, they shall, at their own expense, move or change the grade or location of their property or constructions in conformity with the order of said board. They shall be deemed parties in interest and shall be given notice of hearing and an opportunity to be heard.

5. The board or body having charge of the finances of any municipality wherein any such crossing exist may present to the Board of Public Utility Commissioners a petition in writing setting forth the facts upon which relief under this act is sought, or upon the petition of any railroad company whose tracks cross or are crossed at grade, or said Board of Public Utility Commissioners may, of its own motion, proceed with respect to any such crossing; whereupon said Board of Public Utility Commissioners shall fix a time and place for a hearing before it and shall give such notice thereof as it shall deem reasonable to the municipality and corporations, co-partnership or individuals interested therein and after such hearing, shall determine or order what, if any, alterations to or changes in or connected with such crossing and public highway shall be made.

6. All the powers, supervision, regulation of, jurisdiction and control over public utilities granted by the act to which this is a supplement, are hereby vested in the Board of Public Utility Commissioners and courts of this State as may be necessary to carry the provisions of this act into effect.

7. This act shall take effect immediately.

Approved, March 12, 1913.

Ch. 238, p. 491, Laws of 1914.

A Supplement to an act entitled "A supplement to an act entitled 'An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers,' approved April twenty first, one thousand nine

hundred and eleven," which supplement was approved March twelfth, one thousand nine hundred and thirteen.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. The notice of time and place of hearing required to be given by section five (5) of the act to which this act is a supplement may, except as to the municipality or municipalities and the railroad company or companies interested in the hearing, be given by publication of a notice in a newspaper or newspapers circulating in the municipality or municipalities in which the crossing or crossings to which such hearing relates may be located; such newspaper or newspapers to be designated by the Board of Public Utility Commissioners. Such publication shall be at such intervals and for such period of time as said Board shall deem reasonable; and shall be directed generally "To whom it may concern," give notice of the time and place of hearing and describe generally the object of such hearing.

2. This act shall apply equally to all proceedings under the act to which this is a supplement now pending before or hereafter instituted before or by said Board of Public Utility Commissioners.

3. If, for any reason, any section or provision of this act shall be questioned in any court, and shall be held to be invalid, no other section or provision of this act shall be affected thereby.

4. This act shall take effect immediately.

Approved April 17, 1914.

CHRONOLOGY.

March 12, 1913.—Fielder Grade Crossing Law approved.

September 11, 1913.—Board of Finance of the City of Paterson ordered petition filed with Board of Public Utility Commissioners.

October 17, 1913.—First hearing; city offers maps and witnesses showing conditions at crossings, including census showing use of crossings.

October 31, 1913.—Second hearing; continuation of city's case.

November 14, 1913.—Third hearing; continuation of city's case.

December 4, 1913.—Fourth hearing; opening of case for Erie. Witnesses testify to financial condition of company.

December 5, 1913.—Fifth hearing. Erie offers testimony as to physical condition of road in Paterson.

December 11, 1913.—Sixth hearing. Paterson & Hudson River and Paterson & Ramapo Railroads produce witnesses as to early conditions of their railroads.

December 26, 1913.—Seventh hearing. Erie introduces additional evidence as to its financial condition. Siding owners gave evidence of effect anticipated from changes in railroad.

January 9, 1914.—Eighth hearing. Additional evidence by Erie engineers and by siding owners as to conditions of the railroad and adjoining property.

January 29, 1914.—Ninth hearing. Erie puts old maps and records concering streets in evidence.

May 21, 1914.—Tenth hearing. City offers a plan for the elimination of the crossings at grade referred to in its petition and the same is explained by the city engineers. Plan is given to Erie for criticism.

July 9, 1914.—Eleventh hearing. Erie engineers criticize plan.

July 13, 1914.—Twelfth hearing. Criticism continued. Siding owners explain how their property will be affected by plan. Case is closed and is taken into conference by Board.

October 9, 1914.—Public Service Railway Company asks to be heard concerning cost to it.

October 16, 1914.—Thirteenth hearing. Public Service Railway Company puts in evidence as to cost to it under plan.

October 23, 1914—Fourteenth hearing. Conference of engineers suggested.

October 29, 1914.—Fifteenth hearing. Matter reopened and Erie offers additional evidence as at financial condition.

November 2, 1914.—Sixteenth hearing. More evidence as to financial condition.

November 4, 1914.—Seventeenth hearing. More evidence as to financial condition.

January 11, 1915.—Board files its report.

February 5, 1915.—Eighteenth hearing. Evidence on time required to complete work offered by both parties.

February 5, 1915.—Erie asks case be reopened.

April 20, 1915.—Commission makes order now befor Court.

June 15, 1915.—Erie files petition for rehearing and offers substitute plan of joint operation

of Erie and Susquehanna Railroads.

June 16, 1915.—Writ of certiorari to review order of April 20, 1915, allowed.

June 28, 1915.—Board hears evidence on substitute plan.

July 9, 1915.—Board denies application of June 15, 1915.

July 22, 1915.—Writ of certiorari to review this last order allowed.

September 30, 1915.—Depositionss taken before David A. Newton, Supreme Court Examiner, on behalf of company over objection of defendants.

Dated April 20, 1915.

STATE OF NEW JERSEY.
BOARD OF PUBLIC UTILITY
COMMISSIONERS.

ORDER.

IN THE MATTER OF THE APPLICATION OF THE CITY OF PATERSON FOR ALTERATION OF GRADE CROSSINGS ON THE LINE OF THE ERIE RAILROAD.

The Board of Finance of the City of Paterson, a municipality of this state, having presented to, and filed with, the Board of Public Utility Commissioners, a petition in writing, and an amendment to said petition, likewise in writing, praying that, by virtue of the powers conferred by an Act of the Legislature of this state, entitled, "A Supplement to an Act concerning Public Utilities; to create a Board of Public Utility Commissioners, and to prescribe its duties and powers, approved April 21, 1911," which supplement was approved March 12, 1913, and which constitutes Chapter 57 of the Laws of 1913, the Board order the alteration of the crossing of Madison Avenue, Clay and Straight Street (two crossings), Cedar Street, Market Street and Park Avenue (one crossing), Ellison Street, Van Houten Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Franklin Street, Keen Street, Warren Street, River and Putnam Streets (one crossing), each of which streets and highways is a public highway in said City of Paterson, where the same cross at the

same level the railroad of the Erie Railroad Company, in said City of Paterson, "according to plans to be approved by said Board by substituting for each of such crossings a crossing not at the grade of such public highways either by carrying such public highway under or over such railroad or by reconstructing such railroad under or over such public highway or by vacating, relocating or changing the lines, width, direction or location of such highway, and the opening of a new highway in place of the one or ones ordered vacated," and which petition set forth the facts upon which relief under said statute was sought, and the Board having fixed a time and place for a hearing before it upon said petition, and having given notice thereof to the said municipality, the Erie Railroad Company, the Paterson and Ramapo Railroad Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, and all corporations, co-partnerships and individuals interested, all in accordance with the provisions of said act, and the said Erie Railroad Company having filed its answer to said petition, which answer was later amended, and the Paterson and Ramapo Railroad Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, Passaic Water Company, Western Union Telegraph Company, National Silk Dyeing Company, Fullers' Express Company, the Herman Company, John Agnew Company, James Wilson & Sons (Inc.), P. S. Van Kirk Company, Henry M. Post, Paterson Brewing and Malting Company, Public Service Electric Company, Public Service Gas Company, Public Service Railway Company, D. Fullerton &

Company, Meyer & DeVogel, Leslie Elliott & Co., Samuel Smith & Sons Company, Morris & Company, McNab & Harlin Manufacturing Company, New York Telephone Company, and Paterson, Passaic & Suburban Telephone Company having likewise filed answers, and all of the parties in interest who appeared having been duly heard, the Board of Public Utility Commissioners filed a report of its findings and determination on January 11th, 1915, which report is made part of this order by reference thereto herein, and it

Now appearing to said Board that the Board of Finance of the City of Paterson is the board or body having charge of the finances of said municipality, and that said Madison Avenue (Clay Street, Straight Street), Cedar Street, Market Street, Park Avenue, Ellison Street, Van Houten Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Franklin Street, Keen Street, Warren Street, River Street and Putnam Street is each a public highway; and that the said road of the Erie Railroad Company in said city public highways, and each of them, and the railcross each other at the same level, and that such crossings are, and each of them is, dangerous to public safety and that the public travel on such highways, and each of them, is impeded thereby and that the said Erie Railroad Company is operating said railroad, and that said crossings, and each of them, should be altered according to a plan and profile approved by the board, and such a plan and profile having been prepared,

Now, therefore, it is on this twentieth day of April, nineteen hundred and fifteen, ORDERED, and the said Board of Public Utility Commissioners

by virtue of the power and authority vested in it by the aforesaid act, does hereby ORDER the Erie Railroad Company to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof, entitled, "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings Plan for Elimination of Grade Crossings on Main Line of Erie Railroad from Madison Avenue to River Street, Paterson, N. J. Based on Surveys Made by the City of Paterson, H. J. Harder, Eng'r. Scale, 1 in.=50 ft. January, 1915, Approved Chas. A. Mead, Chief Inspector Div. of Bridges and Grade Crossings," and profile of same also annexed to and made part hereof, entitled, "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings. Profile for Elimination of Grade Crossings on Main Line of Erie Railroad from Madison Avenue to River Street, Paterson, N. J. Based on surveys made by the City of Paterson, H. J. Harder, Eng'r. Scales: Hor. 1″=100′ Vert. 1″=4′. January, 1915, Drawn by J. L. Vogel, Approved Chas. A. Mead, Chief Inspector Div. of Bridges & Grade Crossings," which said plan and profile are hereby approved; by substituting therefor crossings not at the grade of the public highways known as Madison Avenue, Straight Street, Clay Street, Market Street and Park Avenue, Ellison Street, Van Houten Street, Broadway Fair Street, Hamilton Avenue, Lafayette St., Keen Street, Warren Street, Putnam and River Streets; by changing the lines, width and direction thereof and carrying so much thereof as so changed under the said railroad, except in the case

of Madison Avenue, which is caried over the railroad, according to and as shown on said plan and profile for said purpose, and by vacating the remaining parts of said highways within the lines of the right of way of said railroad company, and further by vacating the part of Madison Avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison Avenue; by substituting for the existing crossings at Cedar Street a crossing under the railroad at Taylor Street and for the existing crossing at Franklin Street a crossing under the railroad at Montgomery Street and also by widening and altering the existing highways known as Essex Street, Governor Street and Fulton Street, adjusting the structures spanning them to the proposed grade or grades (which said new highways shall be located, and of the width, length and direction and carried over or under the said railroad where so indicated); by reconstructing said railroad and highways and by performing all other work required according to and as shown on the said plan and profile.

Any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual whose property or construction it may be necessary to change or remove to carry said plan and this order into effect shall change or remove the same, according to said plan.

AND IT IS FURTHER ORDERED, that the said Erie Railroad Company and the City of Paterson, and Public Service Railway Company, Public Service Gas Company, Public Service Electric Company,

Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company and Western Union Telegraph Company, and all other parties to this proceeding, and each and every of them, proceed with due diligence to the execution of this order, and comply with all of the requirements thereof and the duties imposed upon them thereby, and by the said act under which this order is made, and the laws of this state, and that to that end, they and each of them exercise in good faith, all of the powers conferred upon them and each or any of them by the laws of this state.

And it is further ordered, that the said Erie Railroad Company begin the actual work of construction required in the performance and execution of this order on or before the first day of August, nineteen hundred and sixteen, and continuously carry on the same thereafter and perform and fully comply with the directions and requirements of this order, and complete all of the work required to be done within eight years from the date hereof, and that in the continuous prosecution of said work it takes up in the order named the divisions thereof in said profile marked and designated "A," "B," "C," and "D"; the work required in connection with Section "A" thereof to be begun on or before August 1st, 1916, and to be completed within four years and three months from the date hereof; the work required in connection with Section "B" to be begun within four years and three months from the date hereof and completed within five years and six months from

the date hereof; the work required in connection with Section "C" to be begun within five years and six months from the date hereof and completed within seven years and three months from the date hereof; and the work in connection with Section "D" to be begun within seven years and three months and completed within eight years from the date hereof.

And it appearing to the Board that the street railway operated by Public Service Railway Company uses the said crossings at (1) Park Avenue and Market Street, (2) Broadway and (3) River Street, the Board in accordance with the power and authority vested in it by said act further ORDERS the Public Service Railway Company to pay ten per centum of the expenses of the alterations, changes, relocating and opening, required by this order, including damages to adjacent property, directly chargeable to the crossings, and each of them, so used by the said street railway operated by it.

And the said Erie Railroad Company and said Public Service Railway Company are ordered to keep specific and complete records of the expenses directly chargeable to the crossings, and each of them, so used by said street railway of said Public Service Railway Company and leave is hereby given to said companies or either of them, to make application to the Board for further order in the event that they cannot agree upon the amount of such expenses so directly chargeable to said crossings used by the street railway operated by said Public Service Railway, or any of them.

This order shall take effect May 20th, 1915.

Dated April 20th, 1915.

BOARD OF PUBLIC UTILITY
COMMISSIONERS,
By
(Signed) RALPH W. E. DONGES,
(SEAL) *President.*
Attest:
(Signed) ALFRED N. BARBER,
Secretary.

I hereby certify the foregoing to be a true copy of order adopted by the Board of Public Utility Commissioners, at a meeting held Tuesday, April 20th, 1915, and recorder in the minutes of said meeting.

(Signed) ALFRED N. BARBER,
Secretary.

DECISIONS OF SUPREME COURT.

ERIE R. CO. v. BOARD OF PUBLIC UTILITY COMMISSIONERS et al.

(Supreme Court of New Jersey. June 23, 1916.)

(*Syllabus by the Court.*)

1. Railroads (key)99(4)—Construction and Maintenance—Crossings—Statutory Provision.

The act of 1913 (P. L. 1913, page 91), known as the "Fielder Grade Crossing Act," is not confined in its operation to a single crossing, but in a proper case may include one or more crossings in the same petition.

[Ed. Note.—For other cases, see Railroads. Cent. Dig. §§ 297, 300-303; Dec. Dig. (key)99(4).]

2. Railroads (key)99(11)—Highway Crossings—Abolition of Grade Crossing—Review.

The Supreme Court, upon certiorari, or under section 38 of the act of 1911 (page 374), can review the action of the board of public utility commissioners, in ordering an alteration of the grade of a highway with a steam railroad, for the purpose of ascertaining whether or not such order is purely arbitrary, whether or not it has a reasonable basis to rest upon, and whether or not it is supported to any extent by the facts submitted to the board for its consideration.

[Ed. Note.—For other cases, see Railroad, Cent. Dig. § 304; Dec. Dig. (key)99(11).]

3. Railroads (key)99(4)—Highway Crossings—Abolition of Grade Crossings—Review.

The evidence in the record is sufficient to support the findings of the board that such crossings are dangerous to public safety, or the public travel is impeded, being the jurisdictional facts.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 297, 300-303; Dec. Dig. (key)99(4).]

4. Railroad Grade Crossings—Review of Proceedings.

Quære, upon the review of such an order, can additional testimony be taken under the provisions of the certiorari act?

5. Railroads (key)99(1)—Crossing Highways—Statutory Provisions—"Impede."

The word "impede" in this statute means to place obstructions in the way of; obstruct; hinder; as, to impede progress. It is synonymous with check; hinder; delay.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 293; Dec. Dig. (key)99(1). For other definitions see Words and Phrases, 1st and 2d series, "impede."]

6. Railroads (key)99(4)—Crossing Highways—Abolition of Grade Crossing.—"Company Operating Railroad."

The Erie Railroad Company, as the lessee of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, is "the company operating such railroad" within the meaning of the statute. The order of the board of public utility commissioners was properly directed against the prosecutor, the Erie Railroad Company. The dangerous conditions, to the elimination of which the act is directed, are the result of the operation of the railroad by the Erie Railroad Company.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 297, 300-303; Dec. Dig. (key)99(4).]

7. Railroads (key)99(4)—Crossing Highways—Statutory Provision—"May."

The statute provides, the board of public utility commissioners "may" order the company operating such railroad, etc., to alter the crossing. As to the prosecutor, the statute is mandatory. The prosecutor is not concerned with what might happen to some one else. When in a statute the word "may" means must or shall.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 297, 300-303; Dec. Dig. (key)99(4). For other definitions, see Words and Phrases, First and Second Series; May.]

8. Railroads (key)99(2)—Crossing Highways—Regulation—Police Power.

Where the work it in itself a reasonable, proper, and fair exaction, when considered with reference to the object to be obtained, the expense is not a reason against its legality, when the order for such work is based upon, and made in an exercise of, the police power, which is a part of the reserved power of the state.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 294; Dec. Dig. (key)99(2).]

9. Railroads (key)99(4)—Crossing Highways—Abolition of Grade Crossings—Public Utility Board.

The Fielder Act (P. L. 1913, p. 91, c. 57) authorizes the public utility board, in a proper case, to order a railroad company to alter grade crossings according to plans to be approved by the board, by substituting therefor crossings not at grade, either by carrying the highway under or over the railroad, or by reconstructing the railroad under or over the highway, or by vacating, relocating, or changing the lines, width, direction, or location of the highway, and the opening

of a new highway in the place of the one vacated,and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 297, 300-303; Dec. Dig (key)99(4).]

10. Railroads (key)99(2)—Crossing Highways —Abolition of Grade Crossing—Order.

An order of the public utility board, made pursuant to the Fielder Act, which is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad, and by performing such work as is required thereby, does not require the company to make changes in private sidings, and the like, not its property, and not within the limits of the right of way.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 194; Dec. Dig. (key)99(2).]

11. Railroads (key)99(2)—Crossing Highways —Abolition of Grade Crossings—Order.

Where an order of the public utility board for the elimination of grade crossings under the Fielder Act is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad, and by performing such work as is required thereby, a change in the location of a station building not fairly incidental to, nor rendered necessary by , the changing of the highways or the reconstruction of the railroad, is not required by such order.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 294; Dec. Dig (key)99(2).]

12. Railroads (key)99(2)—Crossing Highways —Abolition of Grade Crossing—Order.

An order of the public utility board for the elimilation of grade crosings under the Fielder Act, which is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad and by performing such work as is required thereby, does not require the construction by the railroad company of structures upon its lands for the use of private parties in substitution for structures now occupied by them as lessees, and which will be rendered useless by the elimination work.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 294; Dec. Dig. (key)99(2).]

13. Railroads (key)99(2)—Crossing Highways —Abolition of Grade Crossing—Order.

Where the order of the public utility board under the Fielder Act for the elimination of grade crossings directs the street railway company to pay 10 per centum of the expense of the changes required by the order directly chargeable to the crossings used by it, that being the maximum amount allowed by the statute, the steam railroad company cannot complain that the street railway company was not ordered to pay more.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 294; Dec. Dig (key)99(2).]

14. Railroads (key)99(2)—Crossing Highways —Abolition of Grade Crossing—Order.

An order made by the public utility board under the Fielder Act, requiring the railroad company to make changes in the existing and remaining streets in respect to grade, width, and structure,

and to make other changes by the abolition of existing crossings and the substitution of other crossings therefor on new highways, is not invalid by reason of such requirements; it appearing that such changes are all fairly incidental to, and were rendered necessary by, the separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroad.

[Ed. Note—For other cases, see Railroads, Cent. Dig. § 294; Dec. Dig. (key)99(2).]

15. Eminent Domain (key)177—Crossing Highways—Abolition of Grade Crossing—Parties.

Section 13 of the General Railroad Act, as amended by P. L. 1914, p. 490, confers upon a railroad company power to take by condemnation any land or property required for the purpose of complying with an order made by the public utility board under the Fielder Act, and the owners of property to be taken have no right to be made parties to, or to demand a hearing in, the proceedings under the Fielder Act.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 478, 480, 481, 483, 485; Dec. Dig. (key)177.]

16. Railroads (key)99(1)—Crossing Highways—Statutory Provision.

The provisions of the Fielder Act are applicable alike to highways existing at the time of the construction of the railroad and to highways subsequently laid out.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 293; Dec. Dig. (key)99(1).]

17. Railroads (key)99(2)—Crossing Highways—Abolition of Grade Crossings—Order.

An order made by the public utility board under the Fielder Act, requiring the railroad company to make changes in the highways outside of its right of way at its own expense, is valid in respect to such requirement; it appearing that such changes are fairly incidental to the changes ordered in the crossings at the railroad.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 294; Dec. Dig. (key)99(2).]

18. Railroads (key)99(11)—Crossing Highways—Abolition of Grade Crossings—Review.

The Supreme Court, upon review by certiorari of an order of the public utility board under the Fielder Act, will not disturb the action of the board in adopting plans of its own, rather than those suggested by the railroad company, unless such action was unreasonable, or based upon some illegal principle, or lacks evidential support.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 304; Dec. Dig. (key)99(11).]

19. Railroads (key)99(2)—Crossing Highways—Abolition of Grade Crossings—Order.

The fact that an order made by the public utility board under the Fielder Act makes no provision for such modification of the details of the plans as may become necessary during the progress of the work is no reason for setting aside the order. There is a reasonable presumption in favor of the plans adopted, and the board may at any time, for good reason, properly modify its order.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 294; Dec. Dig. (key)99(2).]

20. Eminent Domain (key)2(8)—Nature of Right—Constitutional Provision.

Statutory requirements enacted by the Legislature for public safety under the police power of the state are not a taking of private property for public use without just compensation, although conformity to such requirements involves expense.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 3; Dec. Dig. (key)2(8).]

21. Railroads (key)99(1)—Crossing Highways —Abolition of Grade Crossings.

Railroad corporations may, in the exercise of the police power by the Legislature, be required at their own expense, not only to abolish grade crossings that existed when the railroad was constructed, but also to carry their tracks over highways laid out since the construction of the railroad or to carry such highways over their tracks, and the expense of such permanent improvement of the railroad property may be imposed by the Legislature upon the railroad corporation operating such railroad without violating any constitutional provision.

[Ed. Note.—For other cases, see Railroads, Cent. Dig § 293; Dec. Dig. (key)99(1).]

22. Railroads (key)99(1)—Crossing Highways —Abolition of Grade Crossings.

A statutory requirement for the abolition of grade crossings is neither unconstitutional nor unreasonable because it does not affirmatively authorize the railroad company to lessen or eliminate the danger at such crossing by decreasing the number of its train movements.

[Ed. Note.—For other cases, see Railroads. Cent. Dig. § 293; Dec. Dig. (key)99(1).]

23. Statutes (key)109, 113(1)—Subjects of Titles —Expression of Subject in Title.

The object of a law must, by force of the Constitution, be single and be expressed in its title; but the methods of attaining such object and the matters relating thereto, which may be as various as such object requires, need be expressed in the terms of the enactment only.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 136-139, 141; Dec. Dig. (key) 109, 113(1).]

24. Constitutional Law (key) 154(1)—Impairment of Obligation of Contract—Contract of Corporation.

Any contract that a railroad corporation is empowered by the state to enter into is made subject to the future exercise by the state of its police power; and hence the obligations of such contracts are not in a constitutional sense impaired by such future legislation.

[Ed. Note.—For other cases, see Constitutional Law, Dec. Dig. (key) 154(1).]

25. Commerce (key)58—Means of Regulation—Railroad Crossings.

A state statute requiring the elimination of dangerous grade crossings is an exercise of the police power that is within the scope of the local law, and is not in interference with interstate commerce in the present state of federal legislation upon that subject.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. §§ 77-86, 100; Dec. Dig. (key)58.]

26. Constitutional Law (key) 56 —Courts—Jurisdiction—Constitutional and Statutory Provisions.

The supplement to "An act concerning public utilities," approved March 12, 1913, (Fielder Act), is not an invasion of the exclusive jurisdic-

tion of the Court of Chancery to regulate conflicting public easements.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 62-65; Dec. Dig. (key) 56.]

27. Courts (key) 207 (4)—Impairment of Jurisdiction—Mandamus.

The Fielder Act does not impair the mandamus power of the Supreme Court.

[Ed. Note.—For other cases, see Courts, Dec. Dig. (key) 207 (4).]

Certiorari by the Erie Railroad Company to the Board of Public Utility Commissioners and another to review orders of the board. Orders affirmed.

There are two writs of certiorari in this case. The first was allowed on June 16, 1915, for the purpose of reviewing an order of the board of public utility commissioners, dated April 20, 1915. The second writ was allowed on July 22, 1915, for the purpose of reviewing an order of the said board dated July 9, 1915, denying the petition for a rehearing of the previous order. The order under review was made by virtue of the alleged power and authority vested in the said board by the statute, P. L. 1913, p. 91, known as the "Fielder Grade Crossing Act," which is a supplement to the act creating a board of public utility commissioners and prescribing its duties and powers. The records of both writs, with the writs allowed seven other prosecutors, for convenience, have been included in the record of the proceedings under the first writ allowed. The prosecutor, the Erie Railroad Company, is ordered to alter 15 grade crossings in the city of Paterson, by changing the grade of the streets and reconstructing the steam

railroad according to the plan and profile annexed thereto, by substituting therefor crossings not at the grade of the public highways known as Madison avenue, Straight street, Clay street, Market street, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Franklin street, Keen street, Warren street, Putnam street, and River street. The order further directs any telegraph or telephone company, etc., whose property or construction it may be necessary to change or remove, in order to carry said plan and order into effect, to change or remove the same according to said plan. The Erie Railroad Company, the city of Paterson, and all other parties are ordered to proceed with due diligence to the execution of the order and comply with all the requirements thereof. It was ordered that the work shall be begun on or before August 1, 1916, and be completed within eight years from April 20, 1915; that it be prosecuted in accordance with a single plan, but in four separate divisions, marked A, B, C, and D. A provides for the elimination of the crossings at Market street, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, and Franklin street. Section B provides for the elimination of the crossings at Keen street, Warren street, and River street. Section C provides for the elimination of the crossings at Straight street and Clay street. Section D provides for the elimination of the crossing at Madison avenue, according to a plan submitted by the Erie Railroad Company, known as Exhibit R-105, at an estimated cost of $192,133.92 less than the plan prepared by the city

and which carries Madison avenue over the tracks of the railroad.

River street and Madison avenue are at the two extreme points. Measured along the railroad, the distance is about 10,800 feet, or substantially two miles. Market street, in section A, is practically in the center of the city of Paterson, and is the most traveled of all the streets mentioned in the order. From Market street to Madison avenue, at the southerly end of the work, is about 6,000 feet, and to River street, at the other or northern end, it is about 4,800 feet. From Market to Clay and Straight streets, in section C, it is about 3,000 feet. From Market street to Ellison street, in the same section, it is 600 feet, to Van Houten street 350 feet farther on, to Broadway 300 feet more, Fair street 250 feet, and Hamilton avenue 250 feet, all in the same section, and from Market street to Keen street, in section B, about 4,000 feet, and to River street about 4,800 feet, the most northerly end of the work, thus considering all the crossings mentioned in the petition in one comprehensive plan or scheme.

The order states the time in which each section is to be completed, commencing with section A, in which Market street is included. The Public Service Railway Company, operating trolley lines over three of the crossings, viz., Park avenue and Market street, one crossing, Broadway, and River Street, is charged with 10 per centum of the cost of the alterations, including damages to adjacent property directly chargeable to the alteration of those crossings used by the trolley company.

The statute provides the board *may* order the company operating the railroad to alter the crossings, and the entire expense of such alterations, including damage to adjacent property, shall be paid by such railroad, unless a street railway uses such crossing, in which event an amount of such cost, not exceeding 10 per centum of such expense directly chargeable to the crossing used by the street railway company, is to be paid by such company. The estimated cost of the alteration of the crossings is $2,948,218, for what is called plan 2, the one adopted by the board. This does not include damage to adjacent property. The amount of such damage due to changing grades of streets, estimated at $168,500; the amount due to revision of buildings and sidings off the railroad right of way, estimated at $131,922.

The jurisdiction of the board is derived from the provision of the statute, which provides that, "whenever a public highway and a railroad cross each other at the same level and it shall appear to the board that such crossing is dangerous to public safety or that public travel on such highway is impeded thereby, the board of public utility commissioners may order the company operating such railroad" to alter such crossing according to plans to be approved by said board. The order was based upon proceedings initiated by the board of finance of the city of Paterson, being the board directed in the statute, to file a petition in writing for that purpose in which the facts are stated upon which the relief under the act is sought. In the petition it is recited that the Erie Railroad Company operates said railroad by virtue of a lease from two separate railroad compan-

ies, viz., the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company. Certain facts relating to each of the 15 crossings are alleged, and it prays that the said railroad should be elevated to pass over said highways. A time and place were fixed for hearings, notice of which was given to the corporations therein named. Answers were filed. The testimony was taken before the board commencing on the 17th day of October, 1912, and lasting until February 5, 1915, 18 hearings in all.

From the testimony it appeared that some of the streets mentioned in the petition were laid out after the railroad was built. The charters of the lessor companies (P. L. 1831, p. 29, § 9, P. L. 1841, p.103 §11) provide and impose a duty upon the said railroads to construct and keep in repair good and sufficient bridges or passages over and under said railroads or roads, where any public or other road shall cross the same so that the passage of carriages, horses, and cattle on said road shall not be "prevented" thereby.

The findings of the board were made in a report dated January 11, 1915, which recites the facts on which the order was made, dated April 20, 1915. The board found and determined the crossing of each of the streets involved in the proceeding to be dangerous to public safety and that public travel on such highways is impeded thereby. The board also found that the consideration of the entire subject is simplified by the acquiescence of all parties to the proceeding, and that all the crossings mentioned in the petition must be considered in any plan of elimination. It was not questioned but that a general plan for the separa-

tion of grades at the crossings was practicable. There was a difference of opinion between the engineers as to details, but the chief objection raised was to the expense.

Then on February 5, 1915, a petition for a further hearing was filed by the Erie Railroad Company, and on April 20, 1915, the same date as the order, a report by the board was made denying a further hearing, in which it is stated, as to the reduction of train movements, that the company was afforded every opportunity to furnish such proof, if it had any, and did not avail itself of such opportunity; in addition, the offer on this score was so indefinite that it did not appear reasonable to delay the proceedings for that purpose. Then writs of certiorari were obtained by the Erie Railroad Company, Public Service Railway Company, Passaic Water Company, Western Union Telegraph Company, D. Fullerton & Co., Meyer & De Vogel, Fuller's Express Company, and Morris & Co.

On June 15, 1916, a petition for a rehearing was filed by the Erie Railroad Company, and testimony thereunder was taken June 28, 1915, by the board. On July 9, 1915, a report was made by the board, denying the application for a rehearing. On July 22, 1915, a certiorari was obtained by the Erie Railroad Company to review this report, determination, or order, and on the 27th of September, 1915, an order was obtained from a Justice of the Supreme Court, granting leave to take affidavits on two days' notice. Such affidavits or depositions were taken on the part of the Erie Railroad Company, before a Supreme Court examiner on September 30, 1915.

Many reasons have been filed by each of the prosecutors why the order of April 20, 1915, should not be set aside. The reasons of all the prosecutors are substantially included within the 78 reasons filed by the Erie Railroad Company and their amendments, except when the facts specially apply to a particular prosecutor. Under the certiorari obtained by the Erie Railroad Company to review the order denying a rehearing, the Erie Railroad Company has filed 6 separate reasons why that order should be set aside. Under section 38 of the Public Utility Act of 1911 (P. L. 1911, p. 374) the Supreme Court is given jurisdiction by petition to review the order of the board and to set aside such order when it clearly appears that there was no evidence before the board to support reasonably such order, or that the same was without the jurisdiction of the board, or the order of the board may be reviewed by certiorari in appropriate cases.

All the points made by the counsel for the prosecutor are covered in the opinion of the court. To facilitate reference thereto, the numbering employed by the counsel for the prosecutor, the Erie Railroad Company, will be adopted in the opinion and adhered to throughout.

The writs of certiorari other than those prosecuted by the Erie Railroad Company will be disposed of in separate memoranda or opinions.

Argued November term, 1915, before GARRISON, TRENCHARD, and BLACK, JJ.

Gilbert Collins and George S. Hobart, both of Jersey City, and Duane E. Minard and Herbert A. Taylor, both of New York City, for prosecutor.

Frank H. Sommer, of Newark, for defendant

Board of Public Utility Com'rs. Edward F. Merrey, of Paterson, for defendant City of Paterson and its board of finance.

PER CURIAM. [1] I. The first ground of attack made by the prosecutor, the Erie Railroad Company, is on the construction of the statute. It is contended that the words "such crossing," "a crossing," "the crossing," in the statute, indicate that it was the intention of the Legislature to have only one crossing considered in any one proceeding. The petition of the City of Paterson prays for, and the order of the board of public utility commissioners provides for, the separation or alteration of 15 separate crossings. The board in its report determined that at each of the crossings involved a condition exists such as was designed to be remedied by the statute. The question then arises as to whether it is practicable and feasible to alter such crossings.

The board further found that the entire subject is simplified by the acquiescence of all parties, to the proceedings, that all of the crossings mentioned in the petition must be considered in any plan of elimination. There was no intimation from any one that a change of a particular crossing only should be considered. It was not questioned but that a general plan for the alteration of grades at the crossings was practicable. The question then is: What was the legislative intent? The board having found the jurisdictional facts, which will be considered hereafter, does the statute limit the board to the alteration of a single crossing in a separate proceeding, or can two or more crossings, or a group of crossings, that are dangerous to public safety, or that impede public travel on

such highways, and which are connected or related to one another, so that an alteration in the one necessarily makes an alteration in the other, be considered by the board under the statute in a single proceeding, and a single plan be made for their alteration? It may be observed, in the first place, the statute does not expressly or inferentially prohibit such a proceeding; and second, if a restricted construction be placed upon the statute, the effect will be, as shown by this record, to leave those crossings in the cities of the state, where the greatest use is made of the highways at the railroad crossings, and presumptively where the greatest danger is, intact and not subject to alteration. No substantial reason is stated for limiting the construction of the statute to a single crossing, in a separate proceeding, excluding a group of crossings, where the record shows that much of the testimony applicable to one is applicable to all. The plan of alteration applicable to one, as a practical and engineering problem, is so intimately connected with all, that it involves all the crossings, except, perhaps, Madison avenue, in section D, which will be considered hereafter. The record discloses no valid reason for so construing and limiting the operation of the statute.

True, we are not concerned with the reasonableness or unreasonableness of the statute. Our duty is to find the intention expressed by the Legislature and to give it effect. If a separate plan of alteration of each crossing and a separate proceeding is requisite, it would make it wholly impossible to alter any of the crossings from a practical point of view, since the alteration of the several crossings must, as is conceded, proceed under a general

plan. Such a purpose should not be attributed to the Legislature when the statute will reasonably admit of a different construction. In determining the meaning of a statute the courts will keep in mind the circumstances surrounding its enactment and the objects sought to be obtained by the statute. Alton etc., R. R. Co., vs. Vandalia, etc., R. R. Co., 268 Ill. 75, 108 N. E. 800; Warner v. King, 267 Ill. 87, 107 N. E. 837. This being a remedial statute, it should receive a liberal, rather than a narrow construction As was said by Mr. Justice Dixon, speaking for the Court of Errors and Appeals, in reference to the first grade crossing statute passed by the Legislature (P. L. 1874, p. 45):

> "The avowed object of this statute is highly beneficent, and therefore its provisions tending towards the accomplishment of that object should be liberally construed." Read v. City of Camden, 54 N. J. Law, 373, 24 Atl. 549

Subsequently this language was cited with approval by that court in the case of Morris Dredging Co. v. Jersey City, 64 N. J. Law, 590, 46 Atl. 609.

The prosecutor does not point out, or even attempt to show, how or in what way 15 separate petitions, with 15 separate hearings, would be more advantageous to it, but, on the contrary, rather acquiesces in the idea that all the crossings mentioned in the petition must be considered in one plan of alteration, if alteration is to be made at all, and that a general plan of the alteration of the grades at the several crossings is practical as an engineering problem.

Mr. Brameld, the engineer of the prosecutor, the Erie Railroad Company, at page 509 of the record, testified: "There are various changes which I think will have to be made." At page 526: "Of course, I haven't worked up the detailed solution of every one of them, but from my general knowledge of the situation I think they could be taken care of"—i. e., the details. The testimony further shows that section D provides for the elimination of the crossing at Madison avenue, according to a plan submitted by the prosecutor, the Erie Railroad Company, known as Exhibit R-105, which is an estimated cost of $192,133.92 less than the plan prepared by the city, and which carries Madison avenue over the tracks of the railroad, instead of under the tracks. We think the construction of the statute cannot be limited to a single crossing in a separate proceeding, but in a proper case, where the jurisdictional facts appear, several crossings may be considered in one proceeding, when so related to one another, that the consideration of the one necessarily involves the consideration of the other, as a practical engineering problem.

[2] The next ground of attach is that the evidence taken before the board of public utility commissioners does not justify, nor reasonably support, the board's conclusions or findings. To that end the insistence is that this court has power, and should review the board's findings of fact. We understand such to be the power of this court. The rule on this point is stated thus by Chief Justice Gummere, speaking for the Court of Errors and Appeals in the case of West Jersey, etc., R.

R. Co. v. Board of Public Utility Commissioners, 87 N. J. Law, 170, 94 Atl. 60:

> "That court [i. e., the Supreme Court] can upon certiorari, or under the statutory procedure provided by section 38 of the act of 1911 (page 374), review such action for the purpose of ascertaining whether or not it is purely arbitrary, whether or not it has a reasonable basis to rest upon, whether or not it is supported to any extent by the facts submitted to the board for its consideration, and, if it shall be made to appear to the court that such action is purely arbitrary, or that it has no reasonable basis upon which to rest, or is unsupportel by the facts laid before the board, the court may declare it null and void, and order it to be set aside. So, too, if the board refuses to consider the matter at all, the court by mandamus can compel it to do so." Public Service Gas Co. v. Board of Public Utility Commissioners, 84 N. J. Law, 463, 87 Atl. 651; City of Passaic v. Board of Public Utility Commissioners, 87 N. J. Law, 705, 95 Atl. 127; Erie R. R. Co. v. Board of Public Utility Commissioners, 87 N. J. Law, 438, 95 Atl. 177.

[3] Our reading of the record shows that a mass of testimony was presented to the board, particularly with reference to the various elements of danger and the impediments to travel, at all of the level crossings of the highways—such as a list of accidents at some of the crossings; obstructions to the view of persons traveling along the highways in both directions; a series of pho-

tographs, made and produced by the railroad company, showing the obstructions to the view at each crossing; delays to travel in general; the fact that at the crossings where there are trolley tracks every street car is stopped, near the railroad crossing, until the conductor goes over it on foot, and releases a derail switch; schedules made at different times, as to the number of persons, vehicles drawn by horses, automobiles, bicycles, and trolley cars passing over such crossings, in a given period; testimony that the crossings were protected by gates and automatic bells; the number of trains and drill locomotives passing over the crossing within a given time; operation of gates etc., from which the board found the facts, in its report, that each of the crossings was dangerous to public safety, and we think, after reading the evidence, the conclusion of the board is supported by the facts that were before it. The question is one of fact, to be determined according to the circumstances of each case. Mayor, etc., of Newark v. Erie Railroad Co., 75 N. J. Eq. 29, 71 Atl. 620. This applies to both conditions called for in the statute, viz: That such crossings are dangerous to public safety, or the public travel on such highways is impeded This, at the same time, disposes of the prosecutor's contention that the evidence as to one crossing cannot be extended to include other crossings, or that nondangerous crossings cannot be ordered to be eliminated at the expense of the prosecutor, the Erie Railroad Company. This also was considered under point I.

[4] In this connection may be considered point 22 of the brief of the prosecutor, the Erie Rail-

road Company. It is there urged that the prosecutor had the right to take additional testimony under the provisions of the certiorari act. Such testimony was taken before a Supreme Court examiner and returned with the record; but, as the prosecutor says, to use the words of the brief, the point is perhaps of comparatively small importance in the present case, for the reason that the affidavits and exhibits served but to explain the evidence and exhibits that were already in evidence. This renders it unnecessary to further consider this point. See Dubelbeiss v. Town of West Hoboken, 82 N. J. Law, 683, 82 Atl. 897.

[5] But it is further urged that the word "impede" has a well-recognized meaning, having been used in many of the earlier charters of the railroad companies. The argument is that the obvious purpose of those statutes was to make the surface of the railroad ties and rails conform to the surface of the highway at a railroad crossing; that the rails and ties as they passed the highway would impede travel, and if the railroad happened to be constructed in a cut or on an embankment the impediment to travel would thereby be increased; that the word "impede" refers to permanent physical obstructions due to the grade and construction of the railroad tracks, citing North Manheim Twp. (Pa.) 14 Atl. 137; and that the highway crossings are to be constructed and maintained as not to unreasonably obstruct the use of the crossings by highway travelers. This is too narrow. The dictionary definition of the word "impede" is to place obstructions in the way of; obstruct; hinder; as, to impede progress. It is

synonymous with check; hinder; delay.

The evidence in the record shows the public travel is impeded, in this sense, at each of these crossings, and the board so found. The word "prevent" is used in the early charters of the lessors of the prosecutor in place of the word "impede." It is quite evident that rule as to negligence and contributory negligence at grade crossings, as laid down by the courts, cannot be used as a guide in construing this statute, because in those cases the statute requires the railroad company only to ring a bell or blow a whistle, under normal conditions, on the approach of a train to a grade crossing, at a distance of 900 feet. Then too, there is a well-recognized distinction between actions where the interest of the general public at crossings is involved and those which assert the rights of individuals who are injured. Palmyra v. Pennsylvania Railroad Co. 62 N. J. Eq. 614, 50 Atl. 369.

[6] II. The next ground of attack is that the order, under the statute, should have been directed to the two original chartered railroad companies, construing the words of the statute, "the company operating such railroad," to mean the company which is charged with the legal duty of operating, or at least that the order should have been directed to the prosecutor and the said two companies jointly, so that the expenses of altering the grades might be apportioned among all the companies in accordance with their several interests. The original companies are the Paterson & Hudson River Railroad Company, organized under P. L. 1831, p. 24, and the Paterson & Ramapo Railroad Com-

pany, organized under P. L. 1841, p. 97. They were leased, by two separate leases, each dated September 9, 1852, to a company known as the "Union Railroad Company." These leases were declared legal and valid by the Legislature March 14, 1853. P. L. 1853, p. 480. This validating act speaks of the corporation of individuals *using* the aforesaid roads. By various assignments, foreclosures, proceedings, and sales, the Erie Railroad Company, the present prosecutor, on November 14, 1895, acquired title to all the property and and right of the two lessor companies. As stated above, the statute provides (section 1 of the act [P. L. 1913, p. 91]) that "the company operating such railroad" and the expense (section 2) "shall be paid by such railroad," "the balance to be paid by the company operating such railroad."

On behalf of the two original companies it is insisted that they do not directly or indirectly institute, direct, or control any of the operations upon these respective roads, nor is the duty of operating such roads charged upon them by law. The lease of the Paterson & Hudson River Railroad Company provides:

> "And that at the termination of the leases, or either of them, any erections or improvements on the said above mentioned and demised property that may have been made by the parties of the second part, or their assigns, at their own expense, shall be paid for by the parties of the first part, at their appraised and just value."

The lease of the Paterson & Ramapo Railroad Company has a like provision, but in different language. Both leases provide that the erections

and improvements shall be valued by arbitrators, and the party of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns. Both leases, however, provide that:

> "The parties of the second part do hereby covenant and agree with the parties of the first part that the said parties of the second part and their assigns will keep and maintain and run said railroad and other premises hereby demised in such manner, order, and condition as the said parties of the first part are bound to keep and maintain and run the same by the charter of the said parties of the first part and the statutes supplementary thereto, and that they will indemnify and save harmless the said parties of the first part from all damages to which they may be subject by reason of said road and premises not being so kept, maintained, and run."

The prosecutor, in paragraph 3 of its answer, admits that it operates a railroad running through the City of Paterson.

The Legislature's intention on this point is not obscure. Apt and precise words are used to express that intention, and, taken in connection with the provisions of the leases and the validating act of the Legislature above referred to, the intention of the Legislature cannot be misunderstood.

There is no reason why the courts should not give to the words used by the Legislature their plain natural meaning, viz., that power or instrument which puts in action and supervises the workings of the plant, the Erie Railroad Company, as

being "the company operating such railroad." The dangerous conditions, to the elimination of which the act is directed, are the result of the operation of the railroad by the Erie Railroad Company, against whom the order is directed in accordance with the plain terms of the statute.

[7] III. The next ground of attack is based upon that clause of the statute which provides that the board *may* order the company operating such railroad to alter the crossing. The insistence is, if the statute is construed to confer on the board arbitrary power to order or refuse to order the alteration of the grade crossings, in its discretion, the statute is invalid. It is conceded that the board could constitutionally be delegated power to determine whether or not certain facts exist; but, when such facts have been found, it is urged the statute then leaves it to the board to decide arbitrarily whether it will or will not make an order for the alteration of the crossings.

The obvious answer to this point of the prosecutor is the fact that the prosecutor was required by the order to make the alterations and changes in the grades, so as to it the statute is mandatory, and, if the facts before the board justify the order, it is not arbitrary. The prosecutor is not concerned with what might be ordered to be done by some one else by the board of public utility commissioners.

There is a line of authorities, however, which hold that "may" in a statute means must or shall. Thus, in England, in the case of King v. Barlow, 2 Salk, 609, it was said that the word "may" in a statute shall be taken to be mandatory, where

the thing to be done is for the sake of justice or the public good. So Chancellor Kent, in the case of Newburgh Turnpike Company v. Miller, 5 Johns Ch. (N. Y.) 113, 9 Am. Dec. 274, said in respect to statutes, the rule of construction seems to be that the word "may" means must or shall only in cases where the public interests and rights are concerned, and where the public or third persons have a claim de jure that the power shall be exercised. These cases were cited with approval by our courts in the cases of Davison v. Davison, 17 N. J. Law, 171, Seiple v. Borough of Elizabeth, 27 N. J. Law, 410, and Atlantic City Waterworks Co. v. Read, 50 N. J. Law, 672, 15 Atl. 10. So there is a line of authorities which hold that the agencies of government do not act automatically. It is necessary to vest in its officers certain general powers, with a discretion in the governmental agents as to their exercise. It would be as impracticable as it is undesirable to attempt to formulate in advance a set of hard and fast rules by which every conceivable public act should be governed. In order to accomplish the ends of local government, it has been found expedient to create various boards and commissions, which are charged with the duty of supervising, directing, and controlling particular subjects. It has been held that the granting of such power by the Legislature was not a grant of either legislative or judicial power. People v. Roth, 249 Ill. 532, 94 N. E. 953, Ann Cas. 1912A, 100. For other illustrative cases see Connecticut Co. v. City of Norwalk, 89 Conn. 528, 94 Atl. 992. In matter of New York Elevated R. R. Co., 70 N. Y. 327; Trustees of Saratoga Springs v. Saratoga Gas, etc., Co., 191 N.

Y. 123, 83 N. E. 693, 18 L. R. A. (N. S.) 713; Alton, etc. R.R. Co. v. Vandalia, etc., R.R. Co., 268 Ill. 68, 108 N. E. 800.

[8] It is further urged that, if the court should hold the statute valid, still the order in the present case should be set aside, for the reason that it is insisted the evidence shows, without dispute, that the prosecutor has not, and in all reasonable probability will not have, sufficient funds for the purpose of meeting the cost of complying with the order. The determination of this question is one of fact, in the first instance, devolving upon the board of public utility commissioners. The board had before it the financial history of the Erie Railroad Company, its indebtedness, its income, and many other details bearing upon the finances of the company, and from this evidence the board found adversely to the prosecutor, the Erie Railroad Company. After a careful reading of the voluminous testimony on this point, we are unable to say that the board's determination is without sufficient facts to support its conclusion. The prosecutor has eight years in which to comply with the order of the board and do the work. Where the work is in itself a reasonable, proper, and fair exaction when considered with reference to the object to be attained, the expense is not a reason against its legality (Health Department of the City of New York v. Rector, etc., of Trinity Church, 145 N. Y. 32, 39 N. E. 833, 27 L. R. A. 710, 45 Am. St. Rep. 579; Woodruff v. New York, etc., R. R. Co. 59 Conn. 63, 20 Atl. 17); the order being based upon and made in an exercise of the

the police power, which is a part of the reserve power of the state.

[9] Point VIII is that the order of the board is invalid, in so far as it requires the prosecutor to make changes in switches, side tracks, leads, bridges, yards, structures, and other facilities and property of the prosecutor and of other companies, copartnerships, or individuals. We think in this respect the order, properly interpreted, is justified by the statute, properly construed. The statute authorized the board, in a proper case, to order the railroad to alter grade crossings according to plans to be approved by the board, by substituting therefor crossings not at grade, either by carrying the highway under or over the railroad, or by reconstructing the railroad under or over the highway, or by vacating, relocating or changing the lines, width, direction, or location of the highway, and the opening of a new highway in the place of the one vacated, and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings.

[10] Now the order of the board directs the railroad company—

> "to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof, * * * and profile of same, also annexed to and made part hereof, * * * which said plan and profile are hereby approved; by substituting therefor crossings not at the grade of the public

highways known as Madison avenue, Straight street, Clay street, Market street, and Park avenue, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Keen street, Warren street, Putnam and River streets; By changing the lines, width, and direction thereof, and carrying so much thereof as so changed under the said railroad, except in the case of Madison avenue, which is carried over the railroad, according to and as shown on said plan and profile for said purpose, and by vacating the remaining parts of said highways within the lines of the right of way of said railroad company, and further by vacating that part of Madison avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison avenue; by substituting for the existing crossings at Cedar street a crossing under the railroad at Taylor street and for the existing crossing at Franklin street a crossing under the railroad at Montgomery street, and also by widening and altering the existing highways known as Essex street, Governor street, and Fulton street, adjusting the structures spanning them to the proposed grade or grades (which said new highways shall be located, and of the width, length and direction, and carried over or under the said railroad where so indicated); by reconstructing said railroad and highways, and by performing all other work required according to and as shown on the said plan and profile."

It therefore appears, we think, that the order is confined in its direction to the company to the alteration of the crossings in question by changing the highways, and by reconstructing the railroad, and by performing such work as is required thereby. It does not require the railroad company to make changes in private sidings, and the like, not its own property, and not within the limits of its right of way. The closing words of the order, "and by performing all other work required according to and as shown on said plan and profile," do not affect this conclusion as to the scope of the order. These general words follow specific provisions of the order, and under an elementary rule of construction are limited thereby. Further they refer back to the introductory general mandate of the order, requiring the company to "alter said crossings, and each of them," and are limited thereby.

Neither does the order require the owners of such private sidings to reconstruct them. The plan which accompanies the order simply suggests to such owners a method by which their property may be conformed to the new conditions, so as to admit of a continuance of the siding facilities theretofore enjoyed. The order only requires others than the railroad company to make such changes in, and removals of, their property and construction as are necessary to carry the order and plan into effect. In this it accords with section 4 of the statute. Since the mandate of the order to the railroad company is limited to requiring the changing of highways and the reconstruction of the railroad, the changes in or removal of, such private sidings cannot be said to be

necessary to carry the order to the railroad into effect. Of course, the plan does indicate a way in which, in part, existing siding facilities may be continued after the ordered changes in the highways, and the ordered reconstruction of the railroad are made. It is appropriate that it should do so, for, in the adoption of a plan, the effect thereof in existing industrial facilities should be taken into account, and this factor should also be taken into consideration in determining whether the plan adopted is reasonable or unreasonable.

As we have pointed out, in so far as the order directs the prosecutor to make changes in its own side tracks and the like, it was within the power conferred by the statute, if such changes were fairly incidental to the changes of grade or the main line tracks. We think that such ordered changes were of that character.

[11] Point IX is that the order is invalid in so far as it requires changes in the construction and location of the station building at Market street, and the station building at River street.

We think this point is not well founded in fact. The order (leaving out of account the plan and profile) does not require any change in the construction or location of these station buildings. It does not deal with them. The plan and profile do display reconstructed stations at new nearby locations. If these changes are fairly incidental to the changing of the highways or the reconstruction of the railroad, they are deemed to be a part of the order and must be made. That some reconstruction of both stations is rendered necessary by the reconstruction of the railroad, and will have

to be made some time, either according to the judgment of the railroad managers or as may be lawfully directed by the public utility board, is not questioned.

But it is contended that the change in the location of the stations was not fairly incidental to the changing of the highways or the reconstruction of the railroad. If so, the reconstruction of the stations at new locations is not required by the present order. Upon full consideration we think that is so. We do not find that the change in the location of the stations was incidental to, or rendered necessary by, the elimination of the grade crossings. Accordingly we hold that the order under review does not require the railroad company to reconstruct these station buildings at the new locations as indicated and suggested upon the plan. No doubt section 17 (b) of the Public Utility Act (P. L. 1911, page 379), conferring upon the board power "after hearing upon notice" to require a public utility "to furnish safe, adequate, and proper service, and to keep and maintain its property and equipments in such condition as to enable it to do so," is ample to authorize the board, in a proper case, to order the relocation of a railroad station. But this was not a proceeding under that section. Aside from the fact that such relocation was not ordered, it will be noticed that such changes were not asked for in the petition. There was no hearing and no evidence upon the question whether the existing stations at these points were safe, adequate, and proper, nor was any notice given to the prosecutor that such question was to be passed upon by the board in this proceeding, other than such as

might be inferred from the "suggestion" of the city engineer that such changes might be desirable if the tracks were elevated.

[12] Point X is that the order is invalid in so far as it requires the prosecutor to construct structures upon its lands for the use of Fuller's Express Company and Morris & Company, in substitution for the structures now occupied by them as lessees, and which will be rendered useless by the elimination work.

It is true that the plan adopted by the board has indicated upon it suggested possible locations upon the lands of the railroad company of substituted structures for these private companies; but it does not require the railroad company to provide such locations or to erect such structures since neither the existing structures, nor the suggested structures constitute any part of the railroad. This matter is sufficiently discussed under point VIII.

[13] Point XI is that the statute and order, in so far as they permit or require the prosecutor to make certain changes in the properties of the Public Service Railway Company, and in so far as they limit the proportion of the expense of the alterations in certain of the grade crossings to be paid by the street railway using the same, are unconstitutional and invalid.

The alleged unconstitutionality of the imposition by section 2 of the statute of not exceeding 10 per centum of the cost directly chargeable to the elimination of the grade crossings used by the street railway upon that company, it dealt with elsewhere in this opinion.

The contention that the order is invalid in that it requires the prosecutor to do the physical work of removing and changing the property of the Public Service Railway Company is not well founded in fact. The order does not require the prosecutor to do that. It requires the Public Service Railway Company to change and remove such of its property and construction as is necessary to carry into effect the order, and further directs that both the prosecutor and the Public Service Railway Company keep specific and complete records of the expenses directly chargeable to the crossings, and each of them, so used by such street railway company. The order directs the Public Service Railway Company to pay 10 per centum of the expenses of the changes required by the order directly chargeable to the crossings used by it. This was the maximum amount allowed by the statute, and, of course, the prosecutor cannot complain that it was so limited.

[14] Point XII is that the statute and order are unconstitutional and invalid in so far as they permit or require the prosecutor to make changes in the existing streets with respect to grade, width, and structure, and to make other changes by the abolition of existing crossings and the substitution of other crossings therefor on new highways.

We have elsewhere herein indicated that the statute in this respect violates no constitutional provision. We also think that the order in this respect is within the powers conferred by the statute. The changes required in respect to the grade and width and structure in existing highways which remain, and those requiring the abolition of existing crossings, and the substitution of other

crossings therefor on new highways, are fairly incidental to, and were rendered necessary by, the separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroads. Being so regarded, it is valid. In Selectmen of Norwood v. New York & N. E. R. Co., 161 Mass. 259, 37 N. E. 199; Davis v. County Commissioners of Hamshire Co., 153 Mass. 218, 26 N. E. 848, 11 L. R. A. 750.

[15] In so far as the execution of such order may require the exercise of the power of eminent domain, it will be seen that section 13 of the General Railroad Act as now amended (P. L. 1914, p. 490) confers upon the railroad company power to take by condemnation any land and property required for the purpose of complying with any order made by the board of public utility commissioners. It will also be noticed that the owners of property to be taken have no right to be made parties to, or to demand a hearing in, this proceeding. In re Directors of Old Colony Railroad Co., 163 Mass. 356, 40 N. E. 198. It is also to be noticed in this connection that, under the charter of the city of Paterson, the city has ample power to lay out, open, change, alter, or vacate the streets involved and to take such lands and real estate as may be necessary therefor. P. L. 1871, p. 846, § 92; P. L. 1907, p. 114; P. L. 1910, p. 524; P. L. 1911, p. 179. Under this latter act the board of public works of Paterson has power to vacate streets. Sherwood v. City of Paterson, 94 Atl. 311. The order directs the railroad company, the city of Paterson, and all other parties to proceed

with due diligence to the execution of the order and to comply with all the requirements thereof. Of course, in carrying out its part of the order, the City of Paterson must act in conformity with its charter and the laws amending the same. Clark v. City of Elizabeth, 61 N. J. Law, 565, 40 Atl. 616, 737.

Point XIII is that the order, in so far as it requires the prosecutor to reconstruct the railroad, is invalid, because not made in accordance with the statute, and that the statute is unconstitutional, because it does not permit the public utility board to order the elimination of the grade crossings by depressing the highway in part or by elevating the railroad in part. We think there is no merit in this contention, for reasons elsewhere stated in this opinion.

[16] Point XIV is that the order is invalid and the statute is unconstitutional in so far as they require the elimination of grade crossings of highways laid out after the railroad tracks were constructed.

There is no merit in this point. We have elsewhere sufficiently indicated that we think that such a requirement in a statute would not render it unconstitutional. Undoubtedly the statute in question applies alike to highways existing at the time of the construction of the railroad and to highways subsequently laid out. The order in the respect mentioned is therefore within the powers conferred by the statute. Worcester, N. & R. R. Co. v. City of Nashua, 63 N. H. 593, 4 Atl. 298; New York & N. E. R. Co. v. City of Waterbury, 60 Conn. 1, 22 Atl. 439; Northern Pacific Railway

Co. v. State of Minnesota ex rel. Duluth, 208 U. S. 583, 28 Sup. Ct. 341, 52 L. Ed. 630.

[17] Point XV is that the statute and order are unconstitutional and illegal in so far as they require the prosecutor to reconstruct highways outside of the right of way of the prosecutor at the crossings.

With respect to the suggestion that the statute is unconstitutional for such reason, we have nothing to add to what we have elsewhere said. With respect to the contention that the order is illegal, in that it requires the railroad company to make changes in the highways outside of its right of way at its own expense, we say that it appears that such changes are fairly incidental to the changes in the crossings of the railroad and are therefore proper. Selectmen of Norwood v. New York & N. E. R. Co., 161 Mass. 259, 37 N. E. 199; Davis v. County Commissioners of Hamshire Co., 153 Mass. 218, 26 N. E. 848, 11 L. R. A. 750.

[18] Point XVII is that the order is unreasonable, in that it requires the prosecutor to alter the crossings according to a plan which is more expensive to the prosecutor than is necessary for the purpose of removing the danger to public safety or the impediment to public travel.

The real complaint under this point is that the board refused to adopt certain modifications suggested by the prosecutor respecting the plans for the elimination of crossings at Keen, Warren, and River streets, and for the consolidation of the crossings at Straight and Clay streets. But we think that the propriety of the plan adopted by the board is amply supported by evidence. This court

will not disturb such a finding, unless it be unreasonable, or based upon some illegal principle, or lacks evidential support. Public Service Ry. Co. v. Public Utility Board, 87 N. J. Law, 250, 93 Atl. 585.

[19] Point XVIII is that the order is unreasonable, in that (a) it arbitrarily limits the dates of the beginning and completion of the work; (b) it arbitrarily requires the work to be done in designated divisions and in the sequence of such division; and (c) it makes no provision for such changes or modification of details of the plan as may become necessary during the progress of the work.

With respect to the first two propositions we are clearly of the opinion that the times fixed, and the division of the work, are entirely reasonable and proper. Passing now to the other complaint: The fact that the order makes no provision for such modifications of the details of the plans as may become necessary during the progress of the work is no reason for setting it aside. There is a reasonable presumption in favor of the plan adopted by the board. In re Selectmen of Westborough, 169 Mass. 495, 48 N. E. 763. If in the course of executing the order unforeseen contingencies arise, or details are found to require change, or things required become unnecessary by reason of changed conditions or for any other cause, the order made and plan adopted by the board may be modified on application. Section 31 of the Public Utility Act provides that the board may at any time modify an order made by it. P. L. 1911, p. 386.

The constitutional objections argued by counsel for the prosecutor will be considered in the order in which the points are presented in his brief.

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[20] Point IV. That the statute is unconstitutional because it takes the property of the prosecutor as the lessee and operator of the railroads owned by the Paterson & Hudson Railroad Company and the Paterson & Ramapo Railroad Company for the private use and benefit of the said two companies, the respective owners of said railroads.

The argument is that inasmuch as the order for grade crossing elimination calls for the permanent improvement at the expense of the operating lessee of the property owned by the lessors, the money of the lessee so expended is taken for the private use of the owners of the property so improved. Is this so in point of fact? The lease of the Paterson & Hudson River Railroad Company to the Union Railroad Company, made on September 9, 1852, and assigned to the New York & Erie Railroad Company, contains the following provision:

> "And it is in like manner further agreed, by and between the parties to these presents, that if any erections or improvements shall, during the said term hereby demised, or any future term or terms hereafter demised, be made on said demised premises or appurtenant thereto, the same shall, at the termination of said term or terms, and the cessation of the interest of the parties of second part of, in, and to the same, by the expiration thereof, or other termination thereof, be valued by arbitrators to be appointed in like manner as last above provided, and the award of a majority of such arbitrators shall be conclusive as to the value of the said erection and improvements;

and the parties of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns."

The lease from the Paterson & Ramapo Railroad Company to the Union Railroad Company, and assigned to the New York & Erie Railroad Company, contains a precisely similar covenant.

Such permanent erections or improvements and the moneys thereon expended are not, therefore, taken for the private use of the lessors in the sense contemplated by the Constitution; upon the contrary, such improvements are to be used and enjoyed by the lessee during its term, and if taken at all by the lessor are to be paid for at their value, which may be greatly in excess of their cost. Such a perarranged purchase is not the taking of property in invitum that is reprobated by the constitutional provision on which the argument is based.

[21] These same considerations apply also to the second contention made under this point in the brief, viz., that compliance with the order constitutes a confiscation of the property of the prosecutor, because of the cost of such compliance.

The broader ground, however, by which both of these contentions are met, is that the provisions in question of the Fielder Act constitute a regulation adopted by the Legislature for public safety under the police power of the state, and hence are not a taking of private property without just compensation, although conformity to such regulation involves expense. This is the language of our court of last resort delivered by Mr. Justice Depue in the case of Morris & Essex Railroad Company v. City of Orange, 63 N. J. Law, 252, 43 Atl. 730, 47 Atl. 363. This definite statement and con-

crete application of the police power is sufficient authority for this court in the present case, unless it be necessary that whenever the police power is mentioned an essay on the subject shall be delivered; on the contrary, it would seem that the proper way for a lower court to deal with an established rule of law was to treat it as established.

Inasmuch, however, as a federal question is involved, it may be well to quote from one of the most recent decisions of the federal Supreme Court. In the case of Chicago, Milwaukee & St. Paul R. Co. v. Minneapolis, 232 U. S. 430, 34 Sup. Ct. 400, 58 L. Ed. 671, Mr. Justice Hughes, delivering the opinion of the court, said:

> "It is well settled that railroad corporations may be required at their own expense, not only to abolish existing grade crossings, but also to build and maintain suitable bridges or viaducts to carry highways, newly laid out, over their tracks, or to carry their tracks over such highways"—Citing a large number of cases in the state and federal courts.

Other specific illustrations of the application of this established rule to the elimination of grade crossings are Davis v. County Commissioners, 153 Mass. 218, 26 N. E. 848, 11 L. R. A. 750; N. Y. & N. E. R. R. Co. v. Bristol, 151 U. S. 556, 14 Sup. Ct. 437, 38 L. Ed. 269; Selectmen of Norwood v. New York & N. E. R. Co., 161, Mass. 259, 37 N. E. 199; Illinois Central R. R. Co. v. Copiah County, 81 Miss. 685, 33 South. 502; City of Harriman v. Southern Ry. Co., 111 Tenn. 538, 82 S. W. 213; St. Louis & S. F. R. Co. v. Fayette-

ville, 75 Ark. 534, 87 S. W. 1174; C., B. & Q. Ry. Co. v. Drainage Com'rs, 200 U. S. 561, 26 Sup. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 1175; Cincinnati, I. & W. R. R. Co. v. Connersville, 218 U. S. 336, 31 Sup. Ct. 93, 54 L. Ed. 1060, 20 Ann. Cas 1206; Chicago, M. & St. Paul R. R. Co. v. Minneapolis, 232 U. S. 430, 34 Sup. Ct. 400, 58 L. Ed. 671; Mo. Pac. Ry. Co. v. Omaha, 235 U. S. 121, 35 Sup. Ct. 82, 59 L. Ed. 157.

Upon the point that these federal decisions, especially the two last cited, extend the rule of some of our earlier state decisions, it is to be remarked, first, that there is no conflict as to the fundamental doctrine of the police power, but only as to its application; and, secondly, that as to due process of law and other matters involving ultimately a federal question the decisions of state courts yield to those pronounced upon such questions by the supreme federal tribunal.

Point V, which is that the statute under review is unconstitutional, because it deprives the prosecutor of its property without due process of law or just compensation in that it requires the entire expense of abolishing the grade crossings to be paid by the prosecutor, is fully answered by what has just been said under the previous point. We have nothing to add excepting that the case of New York & New England R. R. Co. v. Bristol, 151 U. S. 556, 14 Sup. Ct. 437, 38 L. Ed. 269, on which counsel relies for his main argument, has been stripped of the force accorded to it by counsel by the more recent case of Chicago, Milwaukee & St. Paul v. Minneapolis, 232 U. S. 430, 34 Sup. Ct. 400, 58 L. Ed. 671.

The contention that the Legislature could not lawfully limit the proportion of expense to be borne by the street railway company to 10 per cent. of the total expense of the alteration of a crossing is, of course, unsound, if the entire expense might at the legislative will have been placed upon the prosecutor. The opposite contention, viz., that the imposition of any part of the expenses upon the trolley company was unlawful, is of course, not now under constderation. The same remark applies to the limitation of the expense imposed upon the municipality affected.

Under this point there is also a running attack made upon the principle of utility boards in general, involving their powers as well as their procedure, but as far as discoverable no constitutional limitation is pointed out or discussed. Under this subhead similar boards in other jurisdictions are described and the differences noted, but no constitutional question raised that is not covered, as far as we are able to do so, by the principles decided in the cases already cited.

[22] Point VI is that:

> "Said statute is unconstitutional, and said order is unreasonable, for the reason that the prosecutor is not given the alternative of decreasing or eliminating the alleged danger to public safety and the alleged impediment to public travel by decreasing the number of train movements or by abandoning the railroad."

In so far as this reason challenges the discretion exercised by the board in making its order,

we are not concerned with it in this part of our opinion; in so far as it constitutes an attack upon the statute, the contention must be that the legislative act was unconstitutional because it did not affirmatively authorize the railroad company to decrease the number of its trains or to abandon its railroad. The abandonment of the railroad was not germane to the object of the statute, and the power to deal with that question could not be delegated to the agency created by the act.

The decrease in the number of train movements was a matter primarily under the control of the prosecutor, and hence required no statutory permission; if by such decrease the danger and congestion at the crossings were in fact eliminating or reduced to a negligible point, that fact would doubtlessly be recognized by the board and dealt with accordingly. It was for the prosecutor to make that fact appear, and its failure to do so involved no constitutional infirmity in the statute.

[23] Point VII is an attack upon the title of the original Public Utility Act of 1911, and upon the duality of the objects alleged to be embraced in that act as supplemented by the Fielder Act of 1913. The title of the original act expresses broadly and inclusively the object of the statute; it does not express the means and methods of attaining that object, but this is not required. Bumsted v. Govern, 47 N. J. Law, 368, 1 Atl. 835, affirmed Govern v. Bumstead, 48 N. J. Law, 612, 9 Atl. 577; Hickman v. State, 62 N. J. Law, 499, 41 Atl. 942, affirmed 63 N. J. Law, 666, 44 Atl. 1099. As was said by this court in Moore v. Burdett, 62 N. J. Law, 164, 40 Atl. 631:

> "The 'object' of a law must not be confused with its product. * * * The object of every law, by force of the Constitution, must be single and be expressed in the title of the law; the product may be as diverse as the object requires, and finds its expression in the terms of the enactment only. In fine, the title of an act is a label, not an index."

The statute has, in a constitutional sense, a single object. To attain this object it enacts various methods and matters so related to such objects and to each other as to effectuate a single purpose. The inclusion of such interrelated matters is not the intermixing of things that have no proper relation to each other; hence the statute as a whole has a single object. Payne v. Mahon, 44 N. J. Law, 213; Newark v. Mt. Pleasant Cemetery Company, 58 N. J. Law, 168, 33 Atl. 396.

[24] Point XVI is that:

> "The statute and order violate the Constitution of the United States, in that they impair the obligation of the prosecutor's contracts as follows: (a) Contracts with the holders of the prosecutor's stocks, bonds, notes, and other obligations. (b) Contracts between the state of New Jersey and the prosecutor or its predecessors in interest. (c) Contracts between the prosecutor or its predecessors and the Public Service Railway Company or its predecessors. (d) Contracts between the prosecutor and the various switch owners. (e) Contracts between the Paterson & Hudson

River Railroad Company and Ramapo Railroad Company and the prosecutor or its predecessors."

These objections may be considered together, since, despite their apparent diversity, they rest upon a common principle and present but a single legal question, to wit, whether these contracts, whenever made or upon whatever consideration based, were subject to the future exercise by the state of its police power. The specific application of the general doctrine treated under point IV to the obligation of contracts is well stated by Mr. Justice Depue in M. & E. R. R. Co. v. Orange, where, after pointing out that certain New York and Connecticut decisions were placed upon the ground that the charters of the respective companies were subject to alteration or repeal but that the opinion of the Connecticut court and of the Supreme Court of the United States in New York & New England Railroad v. Bristol, 62 Conn. 252, 26 Atl. 122, and 151 U. S. 556, 14 Sup. Ct. 437, 38 L. Ed. 269, lays stress upon the fact that the regulations were a proper exercise of the police power of the state, he said:

"In Boston & Maine Railroad Co. v. County Commissioners, 79 Me. 386, 10 Atl. 113, an act requiring the expense of building and maintaining so much of the townway or highway as was within the limits of the highway where such way crossed the track at grade, should be borne by the railroad company, was held to be constitutional. This decision was made against a company whose charter provided that it should not be altered, amended, or repealed. The

> power of the Legislature to impose such burdens for general safety under the police power was declared to be fundamental, and that the act did not impair any contract in the company's charter. Whether the corporation has an irrepealable contract in its charter or not is immaterial. Police powers are inherent in the government, and the legitimate exercise of legislative power in securing public safety does not impair the obligation of contracts nor deprive any one of property without due process of law."

A later expression of the same thought by the Supreme Court of the United States, speaking through Mr. Justice Day, is as follows:

> "The exercise of the police power cannot be limited by contract for reasons of public policy, * * * and it is immaterial upon what consideration the contract rests, as it is beyond the authority of the state or the municipality to abrogate this power so necessary to the public safety." Chicago, Burl. & Q. R. R. Co. v. Nebraska, 170 U. S. 57, 18 Sup. Ct. 513, 42 L. Ed. 948; Northern Pacific R. Co. v. Minnesota, 208 U. S. 583, 28 Sup. Ct. 341, 52 L. Ed. 630.

Many of the cases cited under point IV are to the same effect and sustain the same doctrine, the acceptance of which renders it unnecessary and indeed futile to follow the brief in its recapitulation of the hardships that result from the observance of such legal rule.

That the contracts of the railroad with others for switch connections and service were subject

to the police power was held by the Court of Errors and Appeals in Swift v. Delaware, Lackawanna & Western R. R. Co., 66 N. J. Eq. 34, 58 Atl. 939. Cases in other jurisdictions are Branson v. Philadelphia, 47 Pa. 329; Kinealy v. St. Louis, K. & N. R. R. Co., 69 Mo. 658; Otis Elevator Co. v. Chicago, 263 Ill. 419, 105 N. E. 338, 52 L. R. A. (N. S.) 192. As to the public utilities, the doctrine of their subservience to the police power is the same. Jersey City v. City of Hudson, 13 N. J. Eq. 420; Stillwater Water Co. v. Stillwater, 50 Minn. 498, 52 N. W. 893; Detroit v. Ft. Wayne & E. Ry. Co., 90 Mich .646, 51 N. W. 688; Columbus Gas & Coke Co. v. Columbus, 50 Ohio St. 65, 33 N. E. 292, 19 L. R. A. 510, 40 Am. St. Rep. 648; Natick Gas Co. v. Natick, 175 Mass. 246, 56 N. E. 292; New England Tel. & Tel. Co. v. Boston T. Co., 182 Mass. 397, 65 N. E. 835; New Orleans Gas L. Co. v. Drainage Com'rs, 197 U. S. 453, 25 Sup. Ct. 471, 49 L. Ed. 831.

[25] Point XIX is that:

> "Said order imposes a burden upon the interstate traffic of the prosecutor and interferes with and impairs its operation to perform its duty as an interstate carrier of freight and passengers because: (a) It requires changes in the location or grade of switches, side tracks, leads, bridges, yards, structures and other facilities and properties of the prosecutor which are used by the prosecutor in the furtherance of its interstate business. (b) It compels the prosecutor to raise and expend moneys for the purpose of complying with said order, which said moneys would otherwise be available

> for and would be used by the prosecutor in the making of changes and improvements which are essential for the purpose of enabling the prosecutor to carry on its interstate business."

Whether or not the police regulations of a state constitute on unlawful interference with interstate commerce is distinctly a question for the ultimate decision of the highest federal court. The attitude of that court upon this question is well expressed by Mr. Justice Gray, delivering the opinion of the court in the case of Chicago, M. & St. P. R. R. Co. v. Solan, 169 U. S. 133, 18 Sup. Ct. 289, 42 L. Ed. 688:

> "The rules prescribed for the construction of railroads, and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the state to regulate the relative rights and duties of all persons and corporations within its limits."

So long as this attitude is maintained by the federal court the doctrine enunciated by it would gain nothing by our concurrence and suffer nothing by our dissent. We, however, not only recognize the authority, but also concur in the sound-

ness of the rule laid down.

Point XX is that:

> "Said order is in violation of the Constitution of the State of New Jersey and of the United States in so far as it deprives the prosecutor of the rights, benefits, advantages, privileges, and contracts now possessed by it with reference to the several leads, switches, and side tracks which under said order are required to be destroyed or relocated and reconstructed, for the following reasons."

Upon this point we can add nothing to what has already been said in discussing the scope and dominance of the police power.

[26] Point XXI is that:

> "Said order and the statute upon which same is based are in violation of the Constitution of the state of New Jersey because: (a) They impair the jurisdiction of the courts of equity of the State of New Jersey by depriving them of their jurisdiction over the regulation of the use of easements. (b) They impair the jurisdiction of the courts of law of the State of New Jersey by depriving them of their jurisdiction to compel the performance of the duties imposed by law upon the prosecutor or its predecessors in interest."

As to the alleged invasion of the exclusive jurisdiction of the Court of Chancery to regulate conflicting public easements, our decision might well rest upon the reasoning of the opinion of Mr. Justice Kalisch in this court in the case of Erie R. R.

Co. v. Board of Public Utility Commissioners, 87 N. J. Law, 438, 95 Atl. 177. In view, however, of the argument of counsel and the attempt to distinguish that case from the present one, it will be as well to point out that there is an essential difference between the jurisdiction exercised by chancery over conflicting public easements and the exertion by the Legislature of its police power to avert danger at railway crossings. Under the inherent power of the court of equity all questions as to the existence, character, duration, and priority of such conflicting easements, together with their respective paramountcy or subservience, as well as questions of acquiescence, estoppel, contribution, and expense, are considered by the Court of Chancery, and are either adjudicated by it or are relegated to a court of law for decision, as the case may be; whereas, in the legislative exercise of its police power, all of these matters are determined by the statute, leaving nothing of a judicial nature to be adjudicated by the statutory tribunal, excepting the applicability of such legislative scheme to a given state of facts, if it be found to exist, and the determination thereupon of the practical methods of accomplishing the legislative object. This exercise by the Legislature of its police power, which in its simplest expression is illustrated in statutes requiring the erection of safety gates, the posting of flagmen, and the giving of audible signals, long antedatel the adoption of the Constitution of 1844, so that the jurisdiction of the Court of Chancery that was confirmed by that instrument was not exclusive in respect to the exercise of such powers by the Legislature, even if the jurisdiction of equity at any time was

or could be exclusive as to such exercises of this sovereign power, which is not for a moment admitted, even for the purposes of argument.

In the case of Palmyra v. Pennsylvania R. R. Co., 62 N. J. Eq. 601, 50 Atl. 369, the contention of the railroad was that powers of this nature were so essentially legislative that they could not constitutionally be exercised by the Court of Chancery under legislative authority, which is the precise opposite of the contention of the prosecutor in the present case. The truth is that neither extreme view is the proper one; the correct view being that the mixed administrative and quasi judicial functions to be performed by the board of public utilities commissioners under the statute, which do not in a constitutional sense properly belong to either of the three great departmnets of government, may, because of that circumstance, be lawfully exercised under express legislative authority by a statutory tribunal without infringing upon the Constitution itself or upon the prerogatives of the Court of Chancery. This principle, although not this precise application of it, is illustrated in Paul v. Gloucester Co., 50 N. J. Law, 585, 15 Atl. 272, 1 L. R. A. 86; Moreau v. Freeholders of Monmouth, 68 N. J. Law, 480, 53 Atl. 208; Ross v. Freeholders of Essex, 69 N. J. Law, 291, 55 Atl. 310; Iowa Life Ins. Co. v. Eastern Mutual Life Ins. Co., 64 N. J. Law, 340, 45 Atl. 762; In the matter of Drainage of Lands, 35 N. J. Law, 497; Palmyra v. Penn. R. R. Co., 62 N. J. Eq. 601, 50 Atl. 369; Eckert v. Perth Amboy & W. R. R Co., 66 N. J. Eq. 437, 57 Atl. 438.

[27] As to the alleged impairment of the mandamus power of this court, what has just been

said as to the Court of Chancery measurably covers this matter also, at least in principle. There is, however, another doctrine peculiar to the prerogative writs of this court, viz., that stated by Mr. Justice Trenchard in Newark v. Kazinski, 86 N. J. Law, 59, 90 Atl. 1016, to the effect that, where this court may by its writ of certiorari supervise the action of a statutory tribunal, the fact that such tribunal is exercising under legislative authority powers similar to or identical with those exercised by this court under its prerogative writs is a negligible circumstance. The question is, however, almost if not entirely academic, since the functions exercised by the statutory board in this case do not bear the slightest resemblance to the mandamus function of this court.

We have now reviewed seriatim the points of constitutional law as presented in the elaborate brief of counsel for the prosecutor, without finding that any of them requires us to declare invalid the statute of 1913 as a whole or as to any of its essential features. If any other constitutional question has been argued by counsel, incidentally and outside of his stated points, it may upon that account have escaped our attention; but it will, nevertheless, we confidently believe, be found to be covered by the principles we have discussed and by the cases cited to illustrate them.

The conclusion that we have reached from the foregoing considerations of all of the reasons filed and argued by the prosecutor is that each of the orders of the board of public utility commissioners, brought up by the two writs of certiorari in this case, should be affirmed, with costs.

PUBLIC SERVICE RY. CO. v. BOARD OF PUBLIC UTILITY COM'RS et al.

(Supreme Court of New Jersey. June 23, 1916.)

(*Syllabus by the Court.*)

Railroad (key) 99 (1)—Maintenance—Expense of Crossings.

The provision of section 2 of the Supplement to an act concerning public utilities, approved March 12, 1913, the Fielder Act (P. L. 1913, page 91), by which 10 per centum of the expense of eliminating a grade crossing of a steam railroad used by a street railway may be ordered to be paid by the company operating such street railway is within the legitimate sphere of legislation under the police power of the state.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 293; Dec. Dig. (key) 99 (1).]

Certiorari by the Public Service Railway Company to the Board of Public Utility Commissioners and another. Order of the board affirmed.

Argued November term, 1915, before GARRISON, TRENCHARD, and BLACK, JJ.

Frank Bergen, of Newark, for prosecutor, Edward F. Merrey, of Paterson, and Frank H. Sommer, of Newark, for defendants.

GARRISON, J. The prosecutor of this writ, the Public Service Railway Company, objects to the order of the board of public utility commissioners imposing upon the prosecutor 10 per centum of the cost incurred in abolishing grade crossings on three highways over which the prosecutor operates its cars. The reasons relied on by counsel, "briefly stated, are that the burden which the order attempts to impose on the prosecutor is neither a tax nor an assessment nor a legitimate

exercise of the police power." Inasmuch as the order merely follows the statute, the attack is really upon the latter. The language of the statute is that:

> "The board may order not exceeding ten percentum of such expense directly chargeable to the crossing used by the street railway company to be paid by the company operating such street railway."

We agree that this imposition of a part of the expense of abolishing dangerous grade crossings is neither a tax nor an assessment for a public improvement, but we think that it is a *legitimate exercise of the police power*. The contention of counsel for the prosecutor is placed squarely upon the proposition that the police power is not legitimately exercised in the present case "unless the property [of the prosecutor] has become a *public nuisance* and so lost its right to protection," and he then proceeds to demonstrate that a street railway is not a public nuisance. We, of course, agree to this; but we entirely dissent from the narrow definition of the police power which would restrain its exercise to the case of property that had become in a legal sense a *nuisance*.

If such a narrow definition has any place in the doctrine of the police power, it is confined to the appropriatory aspect of that power; i. e., to such appropriation as is incidental to the destruction of property as a nuisance and has no place in the vastly wider scope of such power that is regulative of energies that are curbed, not that they may be impaired or destroyed, but, on the contrary, that they may be of greater service and beneficence to the public.

Instances of such regulative exercises of the police power are met at every turn and constitute in fact the chief characteristics of modern social life. There are, to use a rough analogy, two aspects of the exercise of the police power, one, so to speak, in rem, and the other in personam; and it is to the former alone that the proposition of counsel has any possible pertinence, and even in that connection it is of doubtful value as a definition, and of no apparent service as a criterion.

The distinction between these two aspects of the police power is perfectly patent. The destruction of a pesthouse would be an illustration of appropriation of property because it was per se a nuisance, i. e., a menace to the public health, while the compulsory vaccination of school children would be in order to prevent them from becoming such. The securing of public safety from anticipated dangers rather than the abatement of consummated nuisances is the essence of the police power in its broader scope. That there are such dangers to be anticipated from the operation at a grade crossing of a steam railroad and a trolley line is not more obvious than that each of these public agencies contributes its element to such danger. The steam road may indeed furnish in greater degree the active element of danger to human life, but the surface road in its operation brings to such place of danger its human freight in extraordinary numbers and under special conditions, which, or so the Legislature might determine, greatly increase and accentuate the normal danger and hence justily its elimination by the joint act or at the joint expense of both of the public agencies that contribute in its production. It

is matter of common knowledge that during what are termed the rush hours of the day a single surface car of modern construction carries a hundred or more passengers and that the cars thus crowded follow each other in an almost unbroken procession. The stalling of one of these care upon a grade crossing by the sudden giving out of the electric current, or its propulsion on to the railroad track by the failure of a brake to work properly, or as in the Newark Case (State v. Young, 56 Atl. 471), by the failure to sand the track would imperil the lives of scores, who were brought into such position of peculiar peril by reason of being passengers on a street railway. It is not at all a question of the creating of a common nuisance, but solely of the participation in and contribution to a common source of danger arising from the transportation problem in its relation to grade crossings of common carriers of passengers.

The state grants this use of its highways for the convenience of its citizens, and the incorporators of such companies eagerly seek the privileges thus granted because of the profits to be derived therefrom; hence, if dangers arise from the very success of such enterprises, it is eminently within the exercise of the police power of the state in the elimination of such dangers to place a portion of the expense of so doing upon those who profit by the very success which has contributed to such dangers.

The fact that by such a collision as we have suggested the lives of the passengers on the steam railroad are also imperiled, so far from demonstrating that the entire expense of eliminating the dangerous condition should be borne by such rail-

road, merely emphasizes the participation of each carrier in the production of a common source of danger, and hence points to their joint contribution to the expenses of its elimination.

In support of this obvious conclusion counsel for the defendant cites a number of pertinent authorities, but the question would seem to be at bottom one of fact, from which, when the fact is once established, the legal result follows as a necessary consequence. The establishment of such fact is, moreover, a part of the legislative function, and as such is not subject to review by the judicial department.

In Hopper v. Stack, 69 N. J. Law, 562, 56 Atl. 1, we said:

> "Every exercise of the police power involves, of necessity, the determination by the lawmaker of some fact quite apart from the exercise of any legislative discretion concerning it."

And illustrations of such determinations of fact were given and the matter discussed at some length.

The proposition thus advanced has been not only adopted by the Court of Errors and Appeals, but has been elevated into a presumption. "Police regulations of this character," said Chancellor Pitney in Meehan v. Excise Commissioners, 75 N. J. Law, 557, 70 Atl. 363, "must, in the absence of clear evidence to the contrary, be deemed to be based upon facts within the possession of the Legislature rendering such legislation proper, if not necessary, see Hopper v. Stack, 69 N. J. Law, 562, 56 Atl. 1." And in State v. Sutton, 87 N. J. Law, 192, 94 Atl. 788, also a Court of Errors

decision, a condition that would justify the exercise of the police power, was spoken of as "one of those determinations of fact that the Legislature has the right to make for itself when prescribing a police regulation," citing Hopper v. Stack and Lyons v. Morris Co., 86 N. J. Law, 206, 90 Atl. 1111. It is this prerogative of the legislative department of the government thus to predicate its exercise of the police power of the state upon facts within its own possession and keeping that renders such power so unamenable to precise judicial definition rather than any inherent difficulty in defining the limits of such power when applied to a given state of facts.

The foregoing remarks, coupled with our discussion of the topic and citation of authorities in the case of Erie R. R. Co. v. Board of Public Utility Commissioners, 98 Atl. 13, decided at this term, lead to the conclusion that the provision of the Fielder Act drawn under review was within the proper sphere of legislation, and that the order of the utility board brought up by this certiorari merely carried out the clearly expressed intent of the Legislature. That the state, through its chosen agencies, is not required in such a situation to ascertain the exact quota of contribution to a common danger, and by that standard assign the expense of its elimination, is borne out by the cases cited by counsel for the defendant. Under such circumstances the province of the judicial office is thus stated by Chief Justice Beasley in Douglass v. Essex Co., 38 N. J. Law, 214:

> "Where that which is directed to be done is within the sphere of legislation, and the terms used clearly express the intent, all

> reasoning derived from the supposed inconvenience, or even absurdity of the result, is out of place. It is no province of the courts to supervise legislation, and keep it within the bounds of propriety and common sense, so that even if in this case it could be demonstrated that the regulation in question was incommodious, or even hurtful, an appeal for relief to the judicial power would be utterly in vain."

This is stronger language than is called for by the circumstances of the present case, but the rule of law to which it leads up cannot be too strongly stated, or too rigidly observed, if the relative spheres of the legislative and judicial departments of the government are to be kept separate in obedience to the constitutional mandate. The order of the utility board brought up by this writ is affirmed, with costs.

POTTER v. BOARD OF PUBLIC UTILITY COM'RS et al.

(Supreme Court of New Jersey. June 23, 1916.)

(*Syllabus by the Court.*)

1. Emminent Domain (key) 20 (2)—Nature of Right—Purpose of Condemnation.

Property merely desirable for park development around the railroad station cannot be ordered taken by the board of public utility commissioners under the act of 1913 (P. L. 1913, p. 91).

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig § 61; Dec. Dig. (key)20(2).]

2. Eminent Domain (key) 20 (2)—Nature of Right—Purpose of Condemnation.

The order of the board of public utility commissioners, in such a case, cannot be sustained, under the acts of the Legislature—P. L. 1914, p. 490, or P. L. 1911, p. 379, § 17 (b).

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 61; Dec. Dig. (key) 20 (2).]

3. Public Service Commissioners (key) 32—Certiorari—Review—Scope and Extent.

The Supreme Court, on certiorari, has power to review the testimony, to ascertain whether or not the order is supported to any extent by the facts submitted to the board for consideration.

[Ed. Note.—For other cases, see Public Service Commissioners, Dec. Dig. (key) 32.]

Certiorari by John Potter to the Board of Public Utility Commissioners and others to review an order of the Board altering a grade crossing, under P. L. 1913, p. 91, known as the "Fielder Grade Crossing Act." Order set aside.

Argued November term 1915, before GARRISON, TRENCHARD, and BLACK, JJ.

Robert Carey, of Jersey City, for prosecutor. George Holmes, of New York City, for defendant Central R. Co. Berkeley C. Austin, of Cranford, for defendant Cranford Twp. Frank H. Sommer, of Newark, for defendant Board of Public Utility Com'rs.

BLACK, J. In this case there are 40 reasons presented to the court for setting aside the order made by the board of public utility commissioners. The order is dated the 16th day of April, 1915. All the points involved in these reasons, however, have been disposed of in the opinion filed this term in the case in which the Erie Railroad Company is prosecutor and the City Paterson is defendant, except those points which will now be brought under discussion. In general terms they are that, in so far as the order directs the taking of the prosecutor's property, it is in excess of the jurisdiction of the board of public utility commissioners, and also the findings of the board are not supported by the evidence. On both of these grounds the order of the public utility commissioners in this case will have to be set aside. The board in its report found that a proposed walk, "known as North avenue, the walk extending westward through the small triangular block known as the Potter Building, returning into the westerly sidewalk of Eastman street. In the development of this plan, the Potter Building is therefore proposed to be taken for the triple purpose of making an adequate approach to the station, a new highway from the west, and to open the end of Eastman street in a proper manner. * * * The taking * * * of the Potter property on the north side of the tracks bounded by Eastman

street, North avenue, and Union avenue, is necessary for the full, proper, and adequate development of the problem of providing a proper accommodation for traffic to and from the north and south sides of the railroad * * * In its judgment, however, a proper and adequate development and treatment of the problem before it makes necessary the adoption of the plan as a whole and the taking of the property requisite to its execution."

The facts, as shown by the record, illustrating the situation, upon which the board of public utility commissioners were called upon to act, in brief are these: A petition had been filed by the township committee of the township of Cranford, Union county, under the act of 1913 (P. L. 1913, p. 91), known as the "Fielder Grade Crossing Act," petitioning the board to alter the grade crossing of Union avenue with the Central Railroad Company of New Jersey, at Cranford. At that point Union avenue and the Central Railroad Company of New Jersey cross at the same level. The angle of crossing is about 45 degrees. Walnut avenue on the south, and Eastman street on the north, side of the crossing of Union avenue terminate at the crossing. Stations of the railroad company are located on each side of the tracks. They are connected by an underground passageway, located wholly on the lands of the railroad company. Six main tracks and a siding cross Union avenue at that point. Schedule A shows in detail the plan of alteration. The only material part which is necessary for this discussion is that part which shows the new underground passageway between the two stations. The opening on the north side is directly opposite the apex of the triangular build-

ing of the prosecutor, at the junction of Eastman street and North avenue. The opening at the south end of the new proposed underground passageway comes out on a new highway on the south of the railroad tracks, which connects Union avenue with Walnut avenue.

Mr. Mosher, the township engineer, testified the building on the triangular plot of land in the angle between Eastman street and Union avenue is approximately 20 feet from the right of way line of the railroad company. It does not abut on the railroad property at any point. He does not pretend to say, in any portion of his testimony, that the taking of the Potter property is necessary to the alteration of the grade crossing.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ERIE RAILROAD COMPANY, et als., *Prosecutors-Appellants,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendants-Respondents.*	*On Certiorari. Appeal from Supreme Court.*

Reply to Brief of Collins & Corbin.

STATEMENT.

The appellants in this case are the Erie Railroad Company, Public Service Railway Company, Passaic Water Company, Western Union Telegraph Co., D. Fullerton & Co., Jacob Meyen and others, partners, &c., Morris & Co.; the respondents are the Board of Utility Commissioners, the City of Paterson and the Board of Finance of said City.

Briefs are submitted by each appellant; by the respondent, the Board of Public Utility Commissioners, and the following is the brief of the City of Paterson. The brief of Public Utility Commissioners is referred to as containing a complete statement of facts and the argument presenting the cause of the respondents. The within brief is distinctly a reply, particularly to the briefs of the Erie Railroad Company and the Public Service Railway Corporation, incidentally to the briefs of the other appellants.

This brief of the Railroad Company covers 675

pages divided into four chapters. Chapter First sets forth reasons attacking the order of April 20, 1915, of the Board of Public Utility Commissioners on the ground that it exceeds the jurisdiction conferred upon the Board by the Fielder Law, chapter 57, Laws of 1913. There are seven reasons given.

I.

Number one is that because more than one highway grade crossing was directed to be eliminated in one and the same order.

This reason is so completely answered by the Supreme Court in its opinion that it is not necessary to enlarge upon that. The Supreme Court says: Par. 1.

> "In determining the meaning of a statute the Court will keep in mind the circumstances surrounding its enactment and the objects sought to be obtained by the statute."

When we think that this trunk line runs through the heart of the City of Paterson a distance of four miles from Madison Avenue to River Street, inclusive of which there are fifteen crossings to be altered, it becomes at once apparent that the work must be done in one job. The Board of Public Utility Commissioners require all the grades to be raised except Madison Avenue. This is the only way in which the work can be done. They have made this order as a result of the testimony not only of the City Engineer, but also of the engineer of the railroad company. It would be impossible to do anything else except to have the

tracks run through the city at practically the same level, which could not be done if one were raised and another lowered. They have all got to be raised or depressed except Madison Avenut.

As the Supreme Court says, the Prosecutor does not point out or even attempt to show how or in what way 15 separate petitions, with fifteen separate hearings could be more advantageous to it, but acquiesces in the idea of one plan of alteration.

If the contention of the prosecutor were correct, in this respect, the statute would be inoperative.

II.

The second point is that the order is invalid so far as it requires changes in the construction and location of the station buildings at or near Market Street, and at or near River Street, giving under this heading three distinct reasons why the order is invalid.

The complete answer to this point is that the order under review does not require this reconstruction, it simply suggests a feasible method for reconstruction.

The re-location of the station and the changes in existing under-grade crossings required by the order are necessary incidents of the changes required to be made, and therefore it would not be necessary to expressly set this forth in the petition.

The Public Utility Act, section 17b, empowers the board to require a railroad company "to furnish safe, adequate and proper service and to

keep and maintain its property and equipment in such condition as to enable it to do so." This provision of the statute empowers the board in appropriate cases to order the reconstruction and relocation of stations.

Paragraph 11 of the opinion of the Supreme Court deals with this point. The Court says:

> "We think this point is not well founded in fact. The order ***** does not require any change in the construction or location of these station buildings. ***** The plan and profile do display reconstructed stations at new or nearby locations. If these changes are fairly incidental to the changing of the highways or the reconstruction of the railroad, they are deemed to be a part of the order and must be made."

Further, the Court says:

> "We hold that the order under review does not require the railroad company to reconstruct these station buildings at the new locations as indicated and suggested upon the plan."
>
> "No doubt section 17 (b) of the Public Utility Act (P. L. 1911, page 379) *** is ample to authorize the board, in a proper case, to order the relocation of a railroad station."

It says finally:

> "Aside from the fact that such re-location was not ordered, it will be noticed that such changes were not asked for in the petition."

Therefore it can be regarded only as a suggestion.

III.

The third reason given is that the order is invalid so far as it requires the Prosecutor to make certain changes in the buildings, &c., of Fullers Express Co. and Morris & Co.

In relation to this, the order is merely suggestive and it may be modified at any time during the progress of the work upon application.

The Supreme Court in Paragraph 12, says:

> "It is true that the plan adopted by the board has indicated upon it *suggested* possible locations upon the lands of the railroad company of substituted structures for these private companies; but it does not *require* the railroad company to provide such locations or to erect such structures."

Counsel for prosecutor, insist, in their brief (p. 111, 112, 113) that the order does *require* the railroad company to provide such locations or to erect such structures. But if these structures do not constitute part of the railroad such a requirement would be brutum fulmen and the failure to observe it by the railroad company could not be followed by any penalty.

IV.

The fourth reason is that the order is invalid in so far as it permits or requires the Prosecutor to make changes in certain streets.

The Supreme Court disposes of this matter by saying: Paragraph 14.

> "The changes **** in these highways were all fairly incidental to and were ren-

> dered necessary by, the separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroads."

Prosecutor in the brief (p. 130) says that the evidence merely showed that the substitution of one grade crossing for another at Taylor and Franklin streets, was a matter of *convenience.* The City Engineer said it was not only more convenient but it gave a better distribution of streets. These are sufficient reasons for the order made.

V.

The fifth point is that the order is invalid in so far as it purports to command the Prosecutor to acquire certain property and to make changes with respect to the location or grade of various switches, side-tracks, &c.

The Supreme Court under paragraphs nine and ten disposed of this. It quotes the order of the Utility Commissioners and says:

> "It therefore appears, we think, that the order is confined in its direction to the company to the alteration of the crossings in question by changing the highways, and by reconstructing the railroad, and by performing such work as is required thereby. It does not *require* the railroad company to make changes in private sidings, and the like, not its property and not within the limits of its right of way. *****
>
> "The plan which accompanies the order simply *suggests* to such owners a method by which their property may be conformed

to the new conditions, so as to admit of a continuance of the siding facilities theretofore enjoyed. ***** In this it accords with Section 4 of the Statute. *****

"As we have pointed out, in so far as the order directs the Prosecutor to make changes in its own side tracks, and the like, it was within the power conferred by the statute, if such changes were fairly incidental to the changes of grade or the main line tracks. We think that such ordered changes were of that character."

The Board could order the railroad to raise its track over the grade crossings and let it handle all the details and all the parties whose interest might be affected. The order in this respect is trying to help the railroad by way of suggestion of a feasible method of reconstruction. The prosecutor says (Brief, p. 145),

"If that was the intention of the Board of Public Utility Commissioners, it is unfortunate ** that such intention was not expressed. The prosecutor can not take the risk of refusing obedience."

If there were any possible danger, the order can be modified as suggested by the Supreme Court.

VI.

Point 6 contends that the order is not according to the statute.

This is certainly trifling and deserves no answer. The petition of the City, the statute and the order are all substantially alike. There is

the power and the desire to remove the impediment and the danger of grade crossings.

The contention is (Brief, p. 167)

> "that according to the express words of the statute the highway itself must be carried *under* or *over* the railroad *or* the railroad itself must be reconstructed under or over the highway without any change of the grade of the highway and that the order directs that the railroad be elevated *in part* and that the grade of each highway be depressed *in part.*"

The order seeks to abolish certain grade crossings, and the power is given by the statute, for this purpose. The whole includes the part, and if, to accomplish the purpose, it is necessary to raise the railroad *in part* and to depress the highway, in part, this can be done.

VII.

The order is declared to be illegal under point 7, in so far as it requires the Prosecutor to relocate and reconstruct the several highways in the manner specified in the plan, and to change the grade of said highways outside of the right-of-way of the Prosecutor at said crossings.

The Supreme Court, under paragraph 14, disposes of this point and says as follows:

> "The changes required in respect to the grade and width and structure in existing highways which remain, and those requiring the abolition of existing crossings, and the substitution of other crossings therefor on new highways, are all fairly incidental to, and were rendered necessary by, the

separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroads."

The order requires only a change of streets where necessary to attain the object. If it required the change of a street in another part of the city of course that would be absurd. The Supreme Court of course says that the changes were fairly incidental to the changes in the crossings of the railroads. So far as the doing of this work conforms with the charter of the City of Paterson, as it is incidental to the raising of the crossings, the rights of the city in this respect must give way. As a matter of fact, however, the city is the petitioner in the cause and would consent to this if its consent were required, but any rights the city would possess in this matter must give way in the exercise of the power of the board to order any change of streets necessary to attain the object.

Chapter II of the railroad company's brief, contains nine reasons attacking said order on the ground that it is not reasonable nor justified by the evidence, covering from pages 179 to 383 of the brief.

VIII.

Reason 8 in their brief (which is the first reason of chapter two) is that the order is invalid because there is no evidence to reasonably support the conclusion that the crossings and each of them are dangerous to public safety.

The trend of the argument upon this point is to the effect that some of the crossings are not

dangerous. If this were so and it were admitted that the crossings at Market Street, Broadway and River Street were dangerous and the road should be raised at these points, this would involve and necessitate the raising of the tracks at all the other streets excepting, of course Madison Avenue. If the argument of the railroad is of any force, they could not carry out the order as to the crossings that are admittedly dangerous.

The Supreme Court disposes of this contention in paragraphs two and three of the opinion. Of course, the rule is as stated by the Supreme Court, that the court has power and should review the board's finding of fact for the purpose of ascertaining whether or not the action of the board is purely arbitrary; whether or not it has a reasonable basis to rest upon; whether or not it is supported to any extent by the facts submitted.

Under Paragraph 3 the court says that there was a mass of evidence submitted, that the question is one of fact to be determined according to the circumstances of each case.

The proof shows that you can't eliminate one crossing without eliminating all. The plan and the map show the same thing. All are involved. The argument of course is that you cannot saddle the expense on the railroad for elevating the crossings that are not dangerous, but it is within the power of the board to say that the tracks should be elevated through the city where they cross the grade streets like Market Street, Broadway and River Street, practically comprehending and taking in the entire route.

The best answer to this argument is made by the prosecutor itself (Brief, page 238):

> "It may be said that this argument would lead to an impasse, in that the board's order as to dangerous crossings would be impossible of fulfillment because such crossings could not be eliminated without at the same time destroying the non-dangerous crossings. If such is the result then the blame must rest upon the statute. It may be that the statute is defective in this respect, but that is no excuse for imposing upon the prosecutor the expense of eliminating crossings concerning which there is no sufficient proof as to the jurisdictional facts upon which the order of the board must be predicated."

As a matter of fact the evidence shows that the travel is impeded, and that there is danger to public safety at each of the crossings, the entire road for this four-mile stretch running through the entire city most congested as to population. But, as the prosecutor says, it would lead to an impasse to find some of these crossing points dangerous, and some not so, sufficient to require the railroad to be elevated at the particular crossing.

If the order of the board was that the railroad should elevate its tracks at Straight Street, Market Street, Broadway and River Street the railroad would find it impossible to do this without elevating its tracks throughout the entire four miles and over the other crossings where there is not so much impediment to travel and not so much danger.

The argument serves to show that the railroad is desirous of having the order set aside at any cost and for any reason.

IX.

Point nine of the argument of prosecutor is that the order is invalid because there is no evidence to reasonably support the conclusion that public travel on said crossings and each of them is impeded.

This is another long discussion in which much labor is spent upon the definition of the word "impede" with an attempt to show that at some of the crossings there is not such an impeding of travel as it was contemplated by the statute.

A complete answer to this argument is that there is sufficient evidence upon which to form a rational judgment of the impediment to travel and the Board of Public Utilities having so declared, their judgment must be sustained.

There is an attempt made to narrow the definition of the word "impede" and that there has never been any suggestion that this word had any reference to the incidental and necessary delay to highway travel caused by the use of the railroad tracks for the very purpose for which a railroad is organized, to wit, to run trains.

The definition of this word "impede" in the statute should be made according to the conditions existing at railroad crossings in cities of any considerable size.

Paragraph 5 of the Supreme Court opinion deals with this question. The Supreme Court says:

> "The dictionary definition of the word 'impede' is to place obstructions in the way of; obstruct; hinder; as, to impede progress. It is synonymous with check; hinder; delay."

> "The evidence in the record shows the public travel is impeded, in this sense, at each of these crossings, and the board so found."

It does seem trifling to haggle over the definition of the word "impede". One of the worst things at a grade crossing is the delay caused, not as the brief of the prosecutor says "to run trains" but by engines switching back and forth. It is positively heartbreaking to be held up for as much as five minutes at Market Street, when on foot, or in an automobile, or in a vehicle of any kind, when an engine will slowly move up and down just across the width of the street and the flagman will refuse to lift the gates, while hundreds of persons and vehicles gather on both sides. When the gates finally go up there is a hurry and scurry and a mad rush both ways, attended not only with great impediment, but great danger. The awful accidents that occur occasionally, at these crossings, constantly increasing with the increase of population and congestion, matters of common knowledge, make it inevitable that this railroad must elevate its road or go out of business. Any imperfection of petition, of proof or order, if allowed to be effective, can only result in continuous application until the great object is attained.

X.

The order is said to be unreasonable because the prosecutor is not given the alternative of decreasing the alleged danger and the alleged impediment by decreasing the number of train movements, or by abandoning the railroad.

This point ought to refute itself.

The Fielder law doesn't require anything of this kind and I suppose if the railroad did abandon the whole thing thing there would be no necessity to raise the tracks. They have that privilege if they wish, now. In my judgment the Supreme Court devotes entirely too much attention to this argument in paragraph 22.

XI.

The order is attacked as illegal in so far as it requires the prosecutor to construct bridges, or passages over crossings, for the reason that the evidence does not show that the highways were laid out and opened *before* the railroad tracks were constructed.

The cases dealing with the question of police power are largely all one way on this point of whether a crossing is made before or after the railroad. There can be no question that it is a legitimate exercise of the police power to compel a railroad company to elevate its tracks at a crossing made *after* the railroad was in operation. A great deal of evidence was submitted in this case as to when the streets were opened, and it appears that some were opened before and some afterwards.

Even if it were the law that the tracks should be raised over streets that were opened before the railroad was built and not raised over streets built after, the railroad would be brought to another impasse in this respect as the tracks cannot be elevated one block and depressed the next, a few feet further.

The cases are collected on this point in St. Paul, &c., 28 L. R. A. page 298, affirmed 214 U. S. Supreme Court, 497. See also rule laid down by Judge Dixon in Morris & Essex Railroad Company v. Orange, 63 N. J. Law, page 253; Erie Railroad Company v. Paterson, 79 N. J. Law, page 512. See other cases cited in this brief.

The Prosecutor, in its brief, page 275, admits that the cases supported this view, but says as follows:

> "But the rule, we submit, is different when the charter of a railroad or a general statute specifies the duty of the railroad with respect to highway crossings. The question for consideration then is, not what is the duty of the railroad at common law, but how shall the statute be construed."

The statute does not at all deal with the question of when crossings were opened. It deals with the fact of the crossing. It is very proper then to ascertain what the common law says as to whether this duty refers to streets made after a well as before.

XII.

The prosecutor claims that the evidence does not show, nor does the board find that the bridges and passages ordered to be constructed are such as are *suitable to the locality* in which the same are situated.

Complaint here is made that because the new bridges and passages at new crossings are to be built the *full width* of the street are relocated.

Prosecutor quotes Section 26 of the General Railroad Law as to the duty of the railroad company to construct good and sufficient bridges, passages, &c., and it says:

> "Said bridges and passages shall be of such width and character as shall be *suitable to the locality* in which the same are situated."
>
> "In State v. Lackawanna R. Co., 84 N. J. L. 289 *** it was held that an overhead railroad bridge constructed across a public highway need not be the entire width of the highway, but all that was required was a bridge that was 'suitable to the locality.' "

The prosecutor on page 304 of the brief says:

> "We submit that the order ***** should at least be modified in order that the further question of the width of streets should be considered."

Section 1 of the Fielder Act gives the Board authority to alter such crossings "according to the plans to be approved by the said board."

This plainly gives the board authority to approve whatever plans it sees fit, whether the bridges are or are not suitable to the locality. This of course will be taken into consideration, probably has been, but the trouble is that the brief is dealing with a fact to be found by the board and not subject to review.

XIII.

The order is attacked because it is claimed there was no evidence to justify the conclusion that the railroad crossing these several highways

is the railroad of the prosecutor; or to justify the conclusion that the prosecutor is the company operating such railroad.

The brief of the prosecutor undertakes to support this statement in pages 307 to 330.

The Act of course says that the company *operating* the railroad is the one liable. The Erie has a perpetual lease of the Paterson & Ramapo and the Paterson & Hudson River Railroad Company who are the real, underlying owners. The Erie is practically the owner and it may be stated with certainty that this great trunk line, paying very small rents to the real owners, are not likely to abandon the railroad or to abrogate the lease. The statute plainly means that the company that causes the danger and impediment is the company to remove these objections. The danger is almost wholly created by the railroad, the locomotive and the train is the only thing that can do injury.

Paragraph 6 of the Supreme Court opinion deals with this objection. The Supreme Court relies upon the leases made by the Paterson & Hudson River R. R. Co. and the Paterson & Ramapo R. R. Co., both of which leases are alike, but in different language, and both provided that the erections and improvements shall be found by arbitrators and party of the first part shall pay and discharge the amount so valued to the party of the second part or their assigns.

The prosecutor in paragraph three of its answer admits that it operates this railroad running through the City of Paterson.

As the Supreme Court says:

"The dangerous conditions are the result of the operation of the railroad by the Erie Railroad Company."

The answer by the prosecutor, page 323 of its brief, is that these provisions in the leases are very slender reeds so far as the prosecutor is concerned as the lessor companies would have to go into bankruptcy if called upon to pay to the prosecutor the sum of $3,000,000 required for the elimination of the crossings.

Of course, the answer is that it is up to the lessors and to the lessee, they have made their bed and must lie in it, they have made their contract and must stand by it.

The point is that the Erie Railroad Co., the lessee, has anticipated the cost of these improvements by these provisions in the leases and if they haven't obtained security it is their own fault. While this is an answer to the prosecutor's complaint that it will not be reimbursed for these improvements on account of the probable inability of its lessors to observe these provisions of the leases, it is no concern of the State, speaking through its Utility Commissioners. The Utility Commissioners are interested only in the railroad causing the impediment and the danger.

XIV.

The order is attacked on the ground that the railroad company hasn't sufficient funds to meet the enormous cost of complying with the order.

There is a great difference of opinion as to what this cost will be; the railroad company of course making it as much as possible, and saying that it will be at least three million dollars, the

other side making it much less than this; with the probability that in the actual construction the cost will be even less than is contended for by the city.

Paragraph 8 of the Supreme Court opinion deals with this question. It says:

> "After a careful reading of the voluminous testimony on this point, we are unable to say that the board's determination is without sufficient facts to support its conclusion. The prosecutor has eight years in which to comply with the order. Where the work is in itself a reasonable, proper and fair exaction when considered with reference to the object to be attained, the expense is not a reason against its legality." (See cases cited.)

There is nothing to be added to this except to say that this work was to have been begun on August first of last year, 1916. This matter has been pending since just after the statute was passed in 1913, so that the railroad company is having all this time to make preparation; and will probably continue this litigation for a long time to come. It is a matter of common knowledge that the road was never more prosperous than now.

XV.

The order is attacked because the plan is more expensive to the Prosecutor than is necessary for the purpose.

Paragraph 18 of the Supreme Court opinion disposes of this contention. It says:

> "But we think that the propriety of the plan adopted by the board is amply sup-

> ported by evidence. This Court will not disturb such a finding, unless it be unreasonable or based upon some illegal principle or lacks evidential support."

The brief of the prosecutor on page 369, at the bottom of the page, says:

> "The action of the Board in refusing to adopt this proposal was unreasonable, and even if the order be sustained in other respects, the board should be instructed to modify its order so that the company might effect this saving of about $150,000."

It is plain that this objection is largely captious. If the plan adopted could be changed or modified so as to attain the object as well, the board itself would modify its order, which it has power to do upon a proper application.

The prosecutor claims that having Clay Street and Straight Street consolidated it could save over $360,000. It may be said about this that it brings up a question of fact settled by the Utility Commissioners, and not to be reviewed unless no evidence justified it. Besides, it is reasonable to suppose that the Utility Commissioners would be only too glad to change or modify their order that would save this much money to the prosecutor if the object could be just as well obtained by this saving.

XVI.

The order is claimed to be unreasonable because it limits the times of the beginning and ending of the work; because it orders the work done

in divisions; because it does not provide for changes.

The 19th paragraph of the Supreme Court opinion disposes of these contentions:

> "With respect to the first two propositons we are clearly of the opinion that the times fixed, and the division of the work, are entirely reasonable and proper."

As to the third complaint it says:

> "If in the course of executing the order unforeseen contingencies arise, or details are found to require change, or things required become unnecessary by reason of changed conditions or for any other cause, the order made and plan adopted by the board may be modified on application."
>
> "Section 31 of the Public Utility Act provides that the board may at any time modify an order made by it. P. L. 1911, p. 386."

Nothing could be added to this to answer these objections.

CHAPTER III.

Under this chapter reasons are offered attacking said order on the ground that it violates certion provisions of the State and Federal Constitutions.

The argument is set forth under seven heads covering prosecutor's brief from pages 383 to 443.

XVII.

The order is said under this head to be unconstitutional because it takes the property of the prosecutor as the lessee for the private use and benefit of the lessors.

Paragraph 20 of the Supreme Court opinion fully disposes of this contention. The Supreme Court's opinion shows that this is not so but quotes from the lease to the effect that when the leases are terminated all improvements shall be valued by arbitrators and parties of the first part shall pay and discharge the amount so valued to the party of the second part or their assigns.

The Supreme Court says:

> "Such permanent erections or improvements are not therefore taken for the private use of the lessors in the sense contemplated by the Constitution."

The answer to this is made in prosecutor's brief, 390:

> "Under the construction of the leases the prosecutor then looks to the original companies for reimbursement. But in such a case, how would it be paid."

This is positively no concern of anybody else except the lessors and the lessees and a point not to be taken into consideration by the Court.

The brief admits, page 390:

> "It is quite apparent that the improvements required to be made by the prosecutor *would add immensely* to the value of the property of the two lessors without any advantage of return to the prosecutor. This is the taking of property from one person for the benefit of another on a gigantic scale."

If these improvements would add immensely to the value of the property, this would enable the lessors to have something upon which to base a loan for the payment of all erections and im-

provements. It looks simply like a transfer of value.

The brief concludes on page 393:

> "The argument of the Supreme Court might be sound if there was any reasonable relation whatever between the actual costs of the improvements and the capacity of the original lessors to pay for same. But when the difference is so vast as to make it obvious that by no possibility could the lessors make such payment, then we submit the reasoning fails."

This certainly seems sophistical in the light of the fact that the lessors are merely called upon to pay the equivalent in money for things of value actually obtained.

XVIII.

The order, it is claimed, violates the Fourteenth Amendment of the Federal Constitution because it confiscates the property of the Prosecutor.

This is fully answered by paragraph 21 of the Supreme Court opinion.

The Supreme Court opinion of course disposes of this contention by invoking the police power of the State.

The leading cases are cited which fully support the contention of the Supreme Court upon this point.

XIX.

It is claimed that the order violates the Fourteenth Amendment to the Federal Constitution because it is an unreasonable exercise of the police power.

This contention is fully disposed of in the came

paragraph (No. 21) of the Supreme Court opinion.

XX.

The order is attacked because it requires persons or corporations to do things other than those who are included within the description of the term "public utility".

A complete answer to this is that all this work is purely incidental to the main object, and to deny the right of the board to make an order affecting these private parties and corporations because they are not public utilities is to deprive the board of the right to make any order at all.

Prosecutor's brief (p. 400) says:

> "This part of the order is clearly beyond the power of the board for the reason that none of said owners come within the description of the term 'public utility' as defined in section 15 of the act concerning public utilities (chap. 195, P. L. 1911)."
>
> "If section 4 (of the Fielder Act) is construed to apply to these side track owners, that part of the statute is unconstitutional for the reason that the power of the Legislature does not extend to the regulation of the affairs of private companies or individuals."

A casual reading of section 15 of the Utility Act plainly shows by definition, what kind of companies constitute *public utilities,* over which the board is to have general supervision and regulation. Section 4 of the Fielder Act deals with an entirely different company or individual, not necessarily a public utility. It is a power con-

ferred, absolutely necessary to attain the object of the law, a power to order *any* corporation, *any* company or *any* person to "move or change the grade or location of their property or constructions in conformity with the order of said board," to accomplish the object of the law.

XXI.

The order is attacked because it requires the railroad company to make certain changes in the property of the Public Service Railway Company; and because it limits the proportion of the expense to be paid by the street railway.

a. It is said that the Board of Public Utility Commissioners has no authority to require the prosecutor to make changes.

b. That the proportion of expense to be paid by the street railway company is not a fair or reasonable amount considering the danger to public safety and the impediment to public travel created by the said street railway company.

The opinion of Justice Garrison in the case of Public Service Railway Company v. the Board of Public Utility Commissioners completely disposes of this contention.

It may be added that the statute says the street railway company shall pay not exceeding ten per cent. The order makes ten per cent. the charge upon the street railway company. This is strictly in accordance with the statute which permits a certain discretion and the facts justified the percentage charged.

As is shown by Justice Garrison, this is a perfectly legitimate exercise of the police power to make this assessment and it is not in the mouth

of the railroad company to complain of a contribution from another source where the law permits the entire charge to be put upon the railroad company.

The brief of the prosecutor on page 410 actually declares as follows:

> "If the board is correct in its conclusion that all of the crossings must be considered in any general plan for the elimination of any of them, then we submit that the trolley company should be chargeable with ten per cent of the entire cost rather than ten per cent. of such part of the cost as is directly chargeable to the three particular crossings."

The basis of the charge of course against the street railway company is the fact that their tracks run over three of the crossings and this somewhat arbitrary amount is fixed as a proper exercise of the police power and as a justly proportionate share of the entire cost due to the fact that the street railway company contributes to the impediment and the danger; the only difference between that and the railroad company being the difference in the degree of danger and impediment. They are both railway companies, they both run cars on tracks, and they both carry passengers, the difference being that one is run by electricity and the other by steam, and the difference of course in the degree of danger and impediment.

XXII.

The order is said to be in violation of the constitutions of the state and of the United States

because it deprives the prosecutor of its rights and privileges now possessed by it with reference to the switches, side tracks, &c., which are required to be destroyed or eliminated.

This objection is considered in paragraph 25 of the opinion of the Supreme Court. The Supreme Court deals only with the contention that said changes would constitute a violation of the Interstate Commerce Act and says that the question whether or not the police regulation of the state constitutes an unlawful intereference with interstate commerce is distinctly a question for the *ultimate* decision of the highest Federal Court, and adopts the opinion of Mr. Justice Gray in the case of Chicago, M. & St. P. R. R. Co. v. Solan, 161 U. S. 133, to the effect that the matter of raising grade crossings are not in themselves regulations of Interstate Commerce and are strictly within the scope of the local law.

A good part of the argument under this head is devoted to a discussion of the order as it affects other parties to the proceedings not coming within the definition of Public Utilities. The order in this regard says:

> "It is further ordered that the said Erie R. R. Co. and all other parties to this proceeding, and each and every one of them, proceed with due diligence to the execution of this order, &c."

Of course, this order is made purely in the exercise of the police power of the State as has been said before, and the objection made by the Erie Railroad Company to the order as affecting other parties would be more appropriate coming from the other parties themselves.

On this point it may further be said that under the statute and under the law the Board of Public Utility Commission has power to order grade crossings to be raised and that carries with it all that is necessary to be done by parties, whether public utilities or private parties, in order to accomplish the object.

XXIII.

Twenty-three is devoted to an attack upon the order because it imposes a burden upon the interstate traffic of the prosecutor and interferes with it as an interstate carrier of freight and passengers.

As has been said this is disposed of by paragraph 25 of the opinion of the Supreme Court.

The brief of the prosecutor on page 453 undertakes to answer the argument of the Supreme Court. It says:

> "The Supreme Court pointed out that this question of lawful interstate commerce is for the ultimate decision of the highest federal court. This no doubt is correct. But when it clearly appears that there is such an unlawful interference, then we submit it is the duty of the first court which finds such intereference to so declare."

The evidence does not show that this expense would seriously interfere with the railroad as a common carrier of interstate commerce. It is a matter of common knowledge that aside from the expense, the railroad elevated above crossings thru a city like the City of Paterson would be beting the state than as it is now, with crossings at

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ter able to handle passengers and freight cross-grade; that the only point to be made is that the large amount of money required could be spent for other purposes to successfully handle interstate commerce. This seems to be far fetched. It does not seem possible that a great public benefit like this should be stopped by any such [illegible] reason.

CHAPTER IV.

Gives reasons attacking the statute on the grounds that it violates certain provisions of the State and Federal Constitutions.

This chapter contains eight heads running from pages 454 to 540 of the brief of prosecutor, Erie Railroad Company.

XXIV.

Under point 24 it declares the statute to be unconstitutional because it deprives the prosecutor of its property without due process of law, for the reason that said statute requires that the entire expense less ten per cent. be paid by the prosecutor.

The argument is devoted to the question that the police power has been exercised in an unreasonable manner.

Justice Garrison fully meets this contention in his opinion in the Public Service Railway case.

The cases quoted by the defendant, the Public Utilities Commission in its brief deal profoundly with this question and show its powers and limitations.

The case of N. Y. and N. England R. R. Co. v.

Bristol, 150 U. S. 556, completely answers the contention of the prosecutor upon this point. The Bristol case sustains the imposition upon a railroad corporation of the entire expense of a change of grade at a highway crossing, as not violating the Constitution of the United States, if the statute is not merely *arbitrary* and *capricious*.

A long argument is offered to show that it is *arbitrary* and *capricious* whereas the evidence in the case shows to the contrary and the Board of Public Utility Commissioners have so found. Prosecutor's brief, p. 482, quotes as follows from case of Erie Railroad Co. v. Williams, 233 U. S. 685, 700:

> "Cost and inconvenience would have to be very great before they could become an element in the consideration of the right of a state to exert its reserve power or its police power."

XXV.

The statute is declared to be unconstitutional under this head, because it takes the property of the prosecutor for private use; because it takes the property of the prosecutor for public use without just compensation; because it confiscates the property of the prosecutor in violation of the Fourteenth Amendment to the Constitution.

This contention is answered in the reply herein to point XVIII, chapter 3, of the brief of the prosecutor, Erie Railroad Company.

XXVI.

The argument under this head is presented under reply to Point XIX of the prosecutor's brief.

XXVII.

The statute is declared invalid because the subject thereof is not expressed in its title and said statute embraces more than one subject.

The Supreme Court in paragraph 23 disposes of this contention. It says:

> "The statute has, in a constitutional sense, a single object. To attain this object it enacts various methods and matters so related to such objects and to each other as to effectuate a single purpose. The inclusion of such interrelated matters is not the intermixing of things that have no proper relation to each other; hence the statute as a whole has a single object. Payne v. Mahon, 44 N. J. Law, 213."

Prosecutor's brief, p. 503, says:

> "The act of 1913 is the form of a supplement to the original act of 1911. Nothing can be found in the title to *either statute,* which relates to changes in public streets, or which relates at all to municipal corporations."

So far as the statute or the order affects public streets or municipal corporations it is in the exercise of the police power to accomplish the object of the statute.

In considering this point it is well to bear in mind what Chief Justice Beasley said in State v. Hammer, 13 Vr., 435, 438:

> "that it is only in perfectly plain cases that it is proper for the courts to vacate statutes on that ground."

XXVIII.

The statute is attacked because it requires the prosecutor to make certain changes in the properties of the Public Service Railway Company and because it limits the proportion of the expense of the alterations to be paid by the street railway using the same; and for the reason that it delegates arbitrary power to the board to fix maximum proportions to be paid by the street railway without fixing any standard whereby the amount to be thus paid may be determined.

This contention is completely answered by the opinion of Justice Garrison in the case of the Public Service Street Railway Company.

XXIX.

The statute is declared to be invalid because it delegates legislative power to the Board of Public Utility Commissioners and confers on said board arbitrary power to make or to refuse to make an order for the alteration of grade crossings without prescribing any standard whereby the action of said board is to be governed.

This is answered in paragraph 7 of the Supreme Court opinion.

The Supreme Court contends that the language in the statute "that the board *may* make an order" could easily be construed, in line with many decisions, into "*must* make an order". When they make the order, as a matter of fact, it doesn't make much difference whether the word in the statute is *may* or *must*. When the order is made it becomes mandatory and it would be foolish to undertake in a statute to attempt to formulate and davance a set of hard and fast rules by which

each conceivable publication shall be governed.

As the Supreme Court says, further:

> "In order to accomplish the ends of local government it has been found expedient to create various boards and commissions, which are charged with the duty of supervising, directing and controlling a particular subject. It has been held that the granting of such power by the Legislature was not a grant of either legislative or judicial power (citing many cases)."

XXX.

The claim is made that the statute and order both violate the Constitution of the United States in that they impair the obligation of the prosecutor's contracts.

Then follows the statement of a number of contracts with the holders of the prosecutor's stocks; contracts between the State of New Jersey and the prosecutor; contracts between the prosecutor and the Public Service Railway Co.; contracts between the prosecutor and the various switch owners; contracts made by the lessors, the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company.

The opinion of the Supreme Court, paragraph 24, disposes of this contention. The Supreme Court shows conclusively that these contracts were subject to the police power, quoting many cases.

XXXI.

The statute is declared to be in violation of the Constitution of the State of New Jersey because

it impairs the jurisdiction of the Court of Chancery as to the regulation of the use of easements and because it impairs the jurisdiction of the courts of law of the State of New Jersey and would deprive them of their jurisdiction to compel the performance of the duties imposed by law upon the prosecutor.

This contention is fully answered under paragraphs 26 and 27 of the opinion of the Supreme Court.

It may be said as a general reply to the brief of the prosecutor, that if the order in its effect is a proper exercise under the statute of the police power of the state, the briefs of all of the appellants are answered.

The elevation of trunk lines, through populous cities, is necessary to the convenience and the life of the people of these cities.

The constant congestion of travel and the horrible accidents, so often occurring at these grade crossings, make this question imminent and overwhelming.

The furious attack made by this brief of the railroad company and the Public Service upon the police power of the state as overriding the provisions of the constitution of state and nation, can not prevail. In this cause this beneficent and necessary power is invoked, in the highest interests of the people of the City of Paterson

FRANCIS SCOTT,
Of Counsel with the City of Paterson.

NEW JERSEY COURT OF ERRORS AND APPEALS.

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor-Appellant,* *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS AND CITY OF PATERSON, *Defendants-Respondents.*	*On Certiorari.* *On Appeal from Supreme Court.*

Brief for City of Paterson.

Reply to Brief of Public Service Railway Company.

Upon the application of the City of Paterson made September 11, 1913, (amended October 23, 1913) on April 20, 1915, the Board of Public Utility Commissioners made the order to have the Erie Railroad Company remove the fourteen grade crossings in the City of Paterson. Between these dates testimony was taken and the case was made up.

The order requires the Erie Railroad Company to begin the actual work of the construction on or before August 1, 1916, and complete the same within eight years. Work was divided into Sections A, B, C & D which were to be begun and completed within certain dates.

The order requires the Erie Railroad Company to pay ninety per cent of the charges amounting

to between Two and Three Millions of Dollars; and the Public Service Railway Company, which uses the crossings at Park Avenue and Market Street, Broadway, and River Street (four of the principal streets of the city where there is the most traffic) to pay ten per centum of the expense of the alterations directly chargeable to the crossings so used by the said street railway.

The Public Service Railway Company resists this charge of ten per cent and damages.

The statute under which the order was made is chapter 57 of the laws of 1913, page 91. The second section says that a charge not exceeding ten per cent of the expense directly chargeable to the crossing used by the street railway shall be paid by the company operating such street railway.

The law puts it up to the commission to charge ten per cent. or any amount less which the facts would justify. The board by its order makes the charge ten per cent.

The brief of the Hon. Frank Bergen of the Public Service shows (1) that the order under review is an invalid effort to exercise the power of taxation; (2) that it is not an assessment on the property of the company for special benefits.

The opinion of Justice Garrison adopts this view and says: "We agree that this imposition of part of the expense of abolishing dangerous grade crossings is neither a tax or assessment for a public improvement, *but we think that it is a legitimate exercise of the police power.*"

The brief of Mr. Bergen is largely devoted to the argument that it is not a legitimate exercise of the police power. He contends that that can

only be invoked where the thing to be adjusted has become a public nuisance; and that the street railway crossing a steam railroad at grade is not a nuisance. He says (page 23) "a thing that is lawful in itself and is lawfully used is not, nor is its use, a nuisance, and its ownership or use can not be disturbed without compensation." Further, "In a word, property is put out of the protection of the law only when it becomes a nuisance, and the use of property is deprived of the protection of law only when the use creates a nuisance."

He then proceeds to differentiate the case of a steam railroad. He says (page 25), "The case of a steam railroad is entirely different. Such a road can only be placed on a public highway longitudinally by express legislative authority and with the consent of or compensation to the owners of abutting land, and a steam railroad company is permitted to cross a highway at grade only on the ground of necessity." (Quoting cases, p. 25):

Further:

> "No matter how harmless a grade crossing by a steam railroad may be when laid, or for many years after, the company acquires no right to continue to maintain it after it becomes a public nuisance, either by increase of traffic on the highway, or on the railroad, or on both; *** and it is only on the theory that a grade crossing has become a public nuisance by the operation of a railroad that the legislature can compel the railroad company to abate it at its own expense."

He says, further (page 26) quoting from the Supreme Court of the United States in sustaining the judgment of the Supreme Court of Connecticut in the Bristol case:

> "As to this act, the Court, in 58 Connecticut, 552, on this company's appeal, held that grade crossings were in the nature of nuisances which it was competent for the legislature to cause to be abated, and that it could, in its discretion, require any party responsible for the creation of the evil, in the discharge of what were in a sense governmental duties, to pay any part, or all, of the expense of such abatement."
>
> "This view of the matter is confirmed by the important case of Mugler v. Kansas, 123 U. S. 623."

This brief is a powerful argument to the effect that the expense of abating the public nuisance should be entirely put upon the Erie Railroad Company. But the counsel is obsessed by the notion that a street railway at a grade crossing is not and cannot become a nuisance no matter how many tracks cross the railroad crossing, no matter how many cars pass over, or how many people are carried. And he maintains stoutly that his company is not at all responsible, not in the least degree, for the creation of the evil. This I think is where his argument fails.

Justice Garrison disposes of his argument by giving a broader definition to the doctrine of the police power. He says:

> "If such a narrow definition has any place in the doctrine of the police power, it is confined to the appropriatory aspect of

that power, i. e., to such appropriation as is incidental to the destruction of property as a nuisance and has no place in the vastly wider scope of such power that is regulative of energies that are curbed, not that they may be impaired or destroyed, but, on the contrary, that they may be of greater service and beneficence to the public."

The Supreme Court meets fully Mr. Bergen's argument. It says:

"The securing of public safety from anticipated dangers rather than the abatement of consummated nuisances is the essence of the police power in its broader scope. That there are such dangers to be anticipated from the operation at a grade crossing of a steam railroad and a trolley line is not more obvious than that each of these public agencies contributes its element to such danger. The steam road may indeed furnish in greater degree the active element of danger to human life, but the surface road in its operation brings to such place of danger its human feight in extraordinary numbers and under special conditions, which, or so the legislature might determine, greatly increase and accentuate the normal danger and hence justify its elimination by the joint act or at the joint expense of both of the public agencies that contribute in its production. It is matter of common knowledge that during what are termed the rush hours of the day a single surface car of modern con-

> struction carries a hundred or more passengers and that the cars thus crowded follow each other in an almost unbroken procession. The stalling of one of these cars upon a grade crossing by the sudden giving out of the electric current or its propulsion on to the railroad track by the failure of a brake to work properly, or as in the Newark case (State v. Young, 56 Atl. Rep., p. 471), by the failure to sand the track, would imperil the lives of scores, who were brought into such position of peculiar peril by reason of being passengers on a street railway. It is not at all a question of the creating of a common nuisance, but solely of the participation in and contribution to a common source of danger arising from the transportation problem in its relation to grade crossings of common carriers of passengers."

In my judgment the reason for abolishing grade crossings in this case is because they impede public travel and are dangerous; that is, they impede the travel of the public, of the people, and the people's lives become endangered by reason of the crossing. The main end of the government is for the welfare of the people. The purpose of streets crossing the railroad, the purpose of the steam railroad itself and of the Public Service Street Railway is to benefit and advantage the people, for compensation. The contributing causes of the nuisance are in a large degree the big locomotive and its train rushing by at a rapid rate of speed. In a less degree a contributing cause of the nuisance is the trolley car, run by

electricity, not going so fast, containing a number of people closed in, and in a place of danger to which the trolley company largely contributes. The trolley tracks and cars and the operation thereof are distinctly, but in a less degree, a contributing cause to the combination which makes the nuisance, *and a part of the nuisance.*

FRANCIS SCOTT,
Of Counsel with the City of Paterson.

Appendix.

The following is a statement of the Points of the argument of the Board of Public Utility Commissioners and the cases cited under each Point.

POINT 1.

The Fielder Act should not be declared to be void for unconstitutionality, if its unconstitutionality is in anywise doubtful.

(1909) Atty. Gen. v. Magennis, 78 N. J. Law., 346.

(1909) Atty Gen. v. McKelvey, 98 N. J. L., 621.

(1913) Hudspeth v. Swayze, 85 N. J. L., 592.

POINT 2.

The common law imposes upon a railroad corporation the duty to maintain the public highways where they cross the railroad in condition for safe and convenient use at all times and un-

der all circumstances. This duty is continuing and applies alike to highways in existence when the railroad was laid out and those constructed later.

(1900) State ex rel. v. St. Paul & Minn. Transfer Ry. Co., 80 Minn. 108; 83 N. W. 32.

(1906) State ex rel. City of Minneapolis v. St. Paul, M. & M. R. R. Co., 98 Minn., 380; 108 N. W. 261; 28 L. R. A. (N. S.) 298, (annotated).

(1911) Wabash R. Co. v. The Railroad Commission, Indiana, 95 Northeast, 673.

(1913) State ex rel. the City of St. Paul v. Chicago, M. & St. P. Ry. Co., 122 Minn., 280; 142 N. W., 312.

(1915) State ex rel. Village of Clara City, v. The Great Northern Railway Co. (Minn.), 153 N. W., 879.

POINT 3.

The acts incorporating "The President and Directors of the Paterson and Hudson River R. R. Co." (P. L. 1831, p. 24) and the "Paterson and Ramapo R. R. Co." (P. L. 1841, p. 97) each impose the duty "to construct and keep in repair, good and sufficient bridges or passages over and under the said railroad or roads, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on said road shall not be prevented thereby."

See Statutes.

POINT 4.

The duty imposed by these acts of incorporation is continuous and requires that at all times and under all circumstances the public highways where they cross the railroad be kept in a condition fit for safe and convenient use.

An existing crossing may become insufficient, either because of the increased business of the railway company or the increased use of the public easement in the street or both.

(1907) Borough of Metuchen v. Pennsylvania R. R. Co., 73 N. J. E., 359 (Court of Errors and Appeals).

(1907) Newark v. Erie Railroad Company, 72 N. J. E., 447 (Ch.).

Central Railroad Company ads. State, 32 N. J. L., (3 Vr.), 220.

Reed v. Camden, 53 N. J. L., (24 Vr.), 322.

Raritan v. Port Reading Railroad Co., 49 N. J. E., (4 Dick.), 11.

Clark v. Elizabeth, 61 N. J. Law, (32 Vr.) 565.

West Jersey and Seashore Railroad Co. v. Waterford, 64 N. J. Eq., (19 Dick.) 633.

Palmyra v. Pennsylvania Railroad Co., 62 N. J. Eq., (17 Dick.) 601 affirmed 63 N. J. Eq., (18 Dick) 799.

Newark v. D., L. & W. R. R. Co., 42 N. J. Eq., (15 Stew.), 196.

Swift v. Delaware, Lackawanna and Western Railroad Co., 66 N. J. Eq., (21 Dick.) 34. See also S. C., 66 N. J. Eq., (21 Dick.), 452.

(1899) M. & E. R. R. Co. v. Orange, 63 N. J. L., 253, 273.

(1910) Erie Railroad Company v. Paterson, 79 N. J. L., 512, 513.

POINT 5.

These specific charter provisions include highways laid across the railroad at any time.

(1912) West Jersey & Seashore R. R. Co. v. Woodbury, 80 N. J. E., 412.

(1899) M. & E. R. R. Co. v. Orange, 63 N. J. L., 253, 273.

(1910) Erie R. R. Co. v. Paterson, 79 N. J. L., 512, 513.

Further cases on this point may be found under points II and XIII.

POINT 6.

The leases to New York and Erie Railroad Company, confirmed by P. L., 1853, p. 480 (Case 977, at 979) vested the powers, privileges and rights of the lessors in the lessee. These powers, privileges and rights were vested subject to the duties imposed by the acts of incorporation

(1915) West Jersey & S. R. Co. v. Board of Public Utility Com'rs, 94 Atl., 57, 59 (Ct. E. & A.).

(1891) Buffalo Stone and Cement Co. v. D., L. & W. R. R. Co., 130 N. Y., 152.

(1892) Thayer v. Flint & P. M. R. Co., 93 Mich., 150, 53 N. W., 216.

(1907) St. Louis & S. F. R. Co. v. Hale, (Ark.), 100 S. W., 1148.

POINT 7.

Independent of the common law and the specific charter provisions, the general statutes of the State impose upon the railroad companies operating within the State a continuing duty at all times and under all circumstances to keep the public highway where they cross the railroad in a condition fit for safe and convenient use.

Gen. R. R. Act, P. L., 1873 p. 88, sec. 14. P. L., 1882 p. 245, P. L., 1887, p. 226, P. L., 1891 p. 169 Act concerning railroads, Revision of 1903.

(1909) South Amboy v. P. R. R. Co., 76 N. J. E., 57; 77 N. J. E., 244.

(1867) The Central R. R. Co. ads. The State, 32 N. J. L., 220.

(1912) State v. Lackawanna Railroad Co., 84 N. J. L., 289, 293.

POINT 8.

The duty imposed by the General Railroad Act rests alike upon railroad corporations created before and after its enactment.

(1904) Hudson County v. Central R. R. Company of N. J., 68 N. J. E., 500 (Ch.).

Palmyra v. Pennsylvania Railroad Co., 62 N. J. Eq., (17 Dick.), 601.

Palmyra v. Pennsylvania Railroad Co., supra; Montclair v. New York and Green-

wood Lake Railway Co., (18 Stew.), 436 (1889).

POINT 9.

The Fielder Act (P. L. 1913, p. 91) provides a method of enforcing in specific cases the duty imposed specifically upon the company by the provisions of the original acts of incorporation and in general by the General Railroad Act.

POINT 10.

The provisions of the General Railroad Act and of the Fielder Act relating to grade crossings involve merely an exercise by the Legislature of the police power of the State.

a. The police power is the source of the State's authority.

(1874) The Pittsburg & Connellsville Railroad Co. v. The Southwest Pennsylvania Railway Co., 77 Pa. St., 173.

(1899) M. & E. R. R. Co. v. Orange, 63 N. J. L., 252. (Court of Errors & Appeals.)

b. The scope of the police power in effecting the elimination of grade crossings.

(1891) Davis v. County Commissioners of Hampshire County, 153 Mass., 218; 26 N. E. 848.

Boston & A. R. Co. v. County Commissioners, 116 Mass., 73, 76.

(1894) N. Y. & N. E. R. R. Co. v. Bristol 151 U. S., 556.

(1894) In re Selectmen of Norwood et al., 161 Mass., 256; 37 N. E., 199.

(1903) Illinois Central R. Co. v. Copiah County, 81 Miss., 685; 33 So., 502.

(1904) City of Harriman v. Southern Ry Co., 111 Tenn., 538, 82 S. W., 213.

Annotated (1906) State ex rel. Minneapolis v. St. Paul, M. & M. R. Co., 98 Minn., 380; 108 N. W., 261; 28 L. R. A., (No. S.). 298.

(1905) St. Louis & S. F. R. Co. v. City of Fayetteville, 75 Ark., 534; 87 S. W., 1174.

(1906) C. B. & Q. Railway Co. v. Drainage Comm'rs, 200 U. S., 561.

(1909) St. Paul, M. & M. Ry. Co. v. Minnesota, 214 U. S., 497.

Northern Pacific Railway Company v. State of Minnesota ex rel. Duluth, 208 U. S., 583.

(1910) Cincinnati, I. & W. R. Co. v. Connersville, 218 U. S., 336.

Lake Shore & M. S. R. Co. v. Ohio, 173 U. S., 285, 297.

(1914) Chicago, M. & St. P. R. Co. v. Minneapolis, 232 U. S., 430.

Shoemaker v. United States, 147 U. S., 282, 297; 37 L. ed., 170, 184; 13 Sup. Ct. Rep., 361.

(1914) Mo. Pac. Ry. v. Omaha, 235 U. S., 121.

POINT 11.

The Fielder Act, and the order thereunder here under review, being based upon and made in an

exercise of the police power of the State, cannot successfully be attacked on the ground of the expense involved in performing the required work, since the evidence shows that the work is, in itself, a reasonable, proper exaction, when considered with reference to the object to be attained.

(1890) Woodruff et al. Commissioners v. New York & N. E. R. Co., 59 Conn., 63; 20 Atl., 17.

(1895) Health Department of the City of N. Y. v. Rector, etc., of Trinity Church, 145 N. Y., 32; 27 L. R. A., 710; 39 N. E., 833.

(1900) Wisconsin, etc., Rd. Co. v. Jacobson, 179 U. S., 287.

(1907) Atlantic Coast Line Railroad Company v. North Carolina Corporation Commission, 206 U. S., 1.

(1913) Pennsylvania R. Co. v. Ewing, 241 Pa. St., 581; 88 Atl., 775.

(1915) Seabord Air Line R. R. v. R. R. Commission of Georgia, 240 U. S., 234.

POINT 12.

The prescription of police regulation made by the Fielder Act was, as hereinbefore demonstrated, within the legitimate sphere of legislation. An appeal of the judicial power for relief must consequently be vain, though the regulations prescribed are "incommodious or even hurtful."

(1876) Douglas v. Essex Co., 38 N. J. L., 214.

(1903) Hopper v. Stack, 69 N. J. L., 562.

(1908) Meehan v. Excise Commissioners, 75 N. J. L., 557.

(1915) State v. Sutton, 87 N. J. L., 192.

POINT 13.

The powers, privileges and rights under the leases to N. Y. & Erie R. R. Co., confirmed by P. L., 1853, p. 480 (Case 977, 979) are subject by the terms of the confirmatory Act to the State's power "at any time" to "alter, amend or repeal" the act

Confirmatory Act. P. L. 1853, p. 480.

(1915) West Jersey v. Seashore R.R. v. Board of Public Utility Commissioners, 94 Atl., 57, 59.

(1879) Railway Co. v. Phila., 101 U. S., 528.

(1896) Atl. & P. R. Co. v. U. S., 76 Fed. Rep., 186.

(1904) San Antonio Traction Co. v. Altgelt, 81 S. W., 106.

(1905) Same case, 200 U. S., 204.

(1906) Fair Haven R. R. Co. v. New Haven, 203 U. S., 379.

POINT 14.

The contracts embodied in the leases of the railroads and franchises, and the contracts between the railroad companies and the holders of their obligations and securities, were subject to the police power of the State.

Chicago, Burlington & Quincy R. R. Co., v. Iowa, 162.

POINT 15.

Neither the General Railroad Act nor the Fielder Act impaired the obligation of the charter contracts between the State and the railroad companies, nor deprived such companies of property without due process of law, or without just compensation, in violation of either the Federal or State Constitution.

(a) Contracts.

(1893) Minneapolis & St. L. Ry. v. Emmond, 149 U. S., 364.

(1899) M. & E. R. R. Co. v. Orange, 63 N. J. L., 253. (Ct. of E. & A.)

New York and New England Railroad v. Bristol, 62 Conn., 252; 26 Atl., 122; 151 U. S., 556.

Boston and Maine R. Co. v. County Com'rs, 79 Me., 386; S. C., 10 Atl. Rep., 113.

(1908) Northern Pacific Railway Co. v. State of Minnesota ex rel. The City of Duluth, 208 U. S., 583.

Chicago, Burlington & Quincy R. R. Co. v. Nebraska ex rel. Omaha, 170 U. S., 57.

(1908) People ex rel. City of Chicago v. Illinois Central R. Co., 235 Ill., 374; 85 N. E., 606.

(1911) Texas and N. O. R. Co. v. Miller, 221, U. S., 408.

(b) Property.

(1885) Missouri Pacific Railway Co. v. Humes, 115 U. S., 512.

(1885) Minneapolis Railway Co. v. Beckwith, 129 U. S., 26.

(1913) Atlantic Coast Line v. Goldboro, 232 U. S., 548, 549.

POINT 16.

The contracts between the railroad companies and others for switch connections and services, and the rights arising thereout, were subject to the police power of the State.

(1905) Hannigault v. Springs, 199 U. S., 473.

(1904) Swift v. Delaware, L. & W. R. R. Co., 66 N. J. E., 34.

Central Railroad Co. ads. State, 3 Vr., 220 (1867).

Newark v. D., L. & W. R. R. Co., 15 Stew. Eq., 196 (1886).

Read v. Camden, 24 Vr., 322, 326 (1891).

E. & S., &c., R. Co. v. McDevitt, 24 Sup. Ct. Rep., 36. (U. S. Supreme Court, Oct. Term, 1903.)

(1904) Swift v. D., L. & W. R. R. Co., 66 Eq., 452.

(1864) Branson v. City of Philadelphia, 47 Pa. St., 329.

(1879) Knealy v. The St. Louis, Kansas City & Northern Railway Company, 69 Mo., 658.

(1903) Asher v. Hutchinson W. L. & P. Co., 66 Kans., 496, 71 Pac., 813, 61 L. R. A., 52.

(1902) Appeal of New York, N. H. & H. R. Co., 53 Atl., 314, Conn.

Canastota Knife Co. v. Newington

Tramway Co., 69 Conn., 146, 160; 36 Atl., 1107.

State v. Hardford & N. H. R. Co., 29 Conn., 538, 547.

(1913) In re Grade Crossing Com'rs of City of Buffalo, 208 N. Y., 139; 102 N. E., 552.

(1914) Otis Elevator Co. v. City of Chicago, 263 Ill., 419; 105 N. E., 338.

Chicago & N. W. R. Co., v. Chicago, 140 Ill., 309; 29 N. E., 1109.

Chicago v. Chicago Union Traction Co., 199 Ill., 259; 59 L. R. A., 666; 65 N. E., 243.

POINT 17.

The right of public utilities in the public highways are subject to the police power of the State.

The exercise of that power in the legislation and order here attacked, does not operate to unconstitutionally take the property of the public utilities without due process of law, or without just compensation.

(1861) Jersey City v. City of Hudson, 13 N. J. E., 420 (Ch.).

(1883) In re Deering, 93 N. Y., 361.

(1892) Stillwater Water Co. v. Stillwater, 50 Minn., 598; 52 N. W., 893.

(1892) City of Detroit v. Fort Wayne & E. Ry. Co., 90 Mich., 646; 61 N. W., 688.

(1893) Columbus Gaslight & Coke Co. v. Columbus, 50 Ohio St., 65; 33 N. E., 292.

(1900) Natick Gaslight Co. v. Inhabi-

tants of Natick, 175 Mass., 246; 56 N. E., 292.

(1903) New England Tel. & Tel. Co. v. Boston Terminal Co., 182 Mass., 397; 65 N. E., 835.

(1904) Boston Electric Light Co. v. Boston Terminal Co., 184 Mass., 566; 69 N. E., 346.

(1905) New Orleans Gas Light Co. v. Drainage Commission of New Orleans, 197 U. W., 453.

National Water Works Co. v. City of Kansas, 28 Fed. Rep., 921; Chicago Burlington, &c., R. Co. v. Chicago, 166 U. S., 226, 254.

(1906) Anderson v. Fuller, 51 Fla., 380; 41 So., 684.

(1906) Scranton Gas & Water Co., 214 Pa., 586; 64 Atl., 84.

(1911) City of Indianapolis v. Indianapolis Light & Heat Co., Ind., 95 N. E., 246.

(1913) Walker v. North Bergen, 84 N. J. L., 248 (S. C.).

POINT 18.

The imposition of not exceeding ten per cent. of the cost directly chargeable to the elimination of the crossings used by the street railway company upon that company violated no constitutional provision.

(1861) Fitchburg Railroad Co. v. Grand Junction Railroad and Depot Co., 1 Allen, 552.

(1895) People ex rel. Western New York & P. R. R. Co. et al. v. Adams et al., 88 Hun, 122; 34 N. Y. Supp., 579.

(1897) Carolina Cent. R. Co. v. Wilmington St. Ry. Co., 120 N. C., 520; 26 S. E., 913.

(1901) Detroit, Fort Wayne & Belle Isle Ry. v. Osborn, 127 Mich., 219; 86 N. W., 842; 62 L. R. A., 149.

(1903) Detroit, Fort Wayne & Belle Island Ry. v. Osborn, 189 U. S., 383.

(1909) Board of Aldermen of Fitchburg v. Boston & M. R. R. Co., 203 Mass., 304; 89 N. E., 438.

(1914) New Paltz, H. & P. T. Co. v. Central New England Ry. Co., 84 Misc. Rep., 528; 147 N. Y. Supp., 624.

(1914) Mo. Pac. Ry. v. Omaha, 235 U. S., 121.

(1915) Public Service Ry. Co. v. Board of Public Utility Com'rs., 93 Atl., 585 (Ct. of E. & A.).

Bangor Ry. & Electric Co. v. Orono, 109 Me., 292; 84 Atl., 385.

(1898) Hickman v. State, 62 N. J. L., 499, affirmed 63 L. 666.

(1895) Newark v. Mount Pleasant Cemetery Co., 58 N. J. L., 168 (Ct. of E. & A.).

Payne v. Mahon, 15 Vroom, 213.

Stockton v. Central Railroad Co., 5 Dick. Ch. Rep., 52.

POINT 19.

The provision of the Fielder Act under which "The Board may order not exceeding ten per centum of such expense directly chargeable to the

crossing used by the street railway company to be paid by the company operating such street railway," involves as hereinbefore demonstrated, a legitimate exercise of the police power. The burden imposed by it is neither a tax nor an assessment.

(1915) Public Service Railway Co. v. Public Utility Commissioners and City of Paterson, 98 Atl., 28.

(1915) Public Service Ry. Co. v. Board of Public Utility Com'rs, 93 Atl., 585.

POINT 20.

The title of the Fielder Act does not contravene the constitutional requirement.

The object of the act is expressed in the title, and the act does not embrace more than one object.

(1885) Bumsted v. Govern, 47 N. J. L., 368.

Affirmed 48 N. J. L., 612.

POINT 21.

The Fielder Act does not unconstitutionally delegate legislative power to the Board of Public Utility Commissioners.

(1877) In Matter of N. Y. Elevated R. R. Co., 70 N. Y., 327.

(1908) Trustees of Saratoga Springs v. Saratoga Gas. E. L. & P. Co., 191 N. Y., 123; 83 N. E., 693.

In re Janvrin, 174 Mass., 514; 47 L. R. A., 319; 55 N. E., 381.

(1909) State ex rel. Northern Pac. Ry. Co. v. Railroad Commission of Wisconsin, 140 Wis., 145; 121 N. W., 919.

(1911) People v. Roth, 249 Ill., 532; 94 N. E., 953.

(1915) In re Connecticut Company (Conn.) 94 Atl., 992.

(1915) Alton & S. R. R. v. Vandalia R. Co., 268 Ill., 68; 108 N. E., 800.

Fish v. McGann, 205 Ill., 179; 68 N. E., 761.

(1915) W. J. & S. R. Co. v. Board of P. U. C., 94 Atl. 57-60. (Ct. of E. & A.)

POINT 22.

The Fielder Act does not unconstitutionally invade the jurisdiction of the Court of Chancery over the regulation of easement.

Paul v. Gloucester County, 50 N. J. L., 584.

Moreau v. Freeholders of Monmouth, 68 N. J. L., 480.

Ross v. Freeholders, 69 N. J. L., 291.

Paul v. Gloucester County, 21 Vr., 581, 611.

State ex rel. Kenosha Gas & E. Co. v. Kenosha Electric Ry. Co., 145 Wis., 337; 129 N. W., 600.

Iowa L. Ins. Co. v. Eastern Mut. Life Ins. Co., 64 N. J. L., 340.

In the matter of the application for

drainage of lands between Lower Chatham and Little Falls, 35 N. J. L., 497.

Backus v. Lebanon, 1 N. H., 19.

Palmyra v. Pennsylvania R. R. Co., 62 N. J. E., 601.

Paul v. Gloucester, 21 Vroom, 611.

Eckert v. Perth Amboy & Woodbridge R. R. Co., 66 N. J. E., 437.

West Jersey &c., R. R. Co. v. Atlantic City &c., Traction Company, 65 N. J. E, 613.

(1915) Erie R. Co. v. Board of Public Utility Com'rs et al., 95 Atl., 17 (Sup. Ct.)

POINT 23.

The Fielder Act does not deprive the Supreme Court of its power of mandamus.

(1901) Palmyra v. Pennsylvania R. R. Co., 62 N. J. E., 601. Affimred 63 N. J. E., 799.

(1914) Michigan R. R. Com. et al. v. Detroit & M. Ry. Co., (Mich.) 148 N. W., 385.

State ex rel. Skeen v. Ogden Rapid Transit Co., 38 Utah, 242, 112 Pac., 120.

State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., 60 Fla., 465, 54 South., 394.

POINT 24.

The Fielder Act does not unconstitutionally create a burden upon or interfere with the regulation of interstate commerce.

(1888) Smith v. Alabama, 124 U. S., 465.

(1888) Nashville, etc., Ry. v. Ala., 128 U. S., 96.

(1896) Hennington v. Georgia, 163 U. S., 299.

(1898) Chicago M. & C. E. R. Co. v. Solan, 169 U. S., 133.

(1911) Chicago, R. I. & Pac. Ry. Co. v. Arkansas, 219 U. S., 453.

Pittsburgh, C. C. & St. L. R. Co. v. State, 172 Ind., 147; 87 N. E., 1034.

(1913) Simpson v. Sheppard, 230 U. S., 350.

(1915) So. Covington & C. Street R. Co. v. Covington, 235 U. S., 537.

(1916) St. Louis I. M. & S. Co. v. Ark., 240 U. S., 518.

POINT 25.

The fact that the order required the railroad company to make changes in the public highways outside of and beyond the right of way, at its own expense, does not violate any constitutional right of the company, since such changes are fairly incidental to the changes in the crossings at the railroad.

(1894) In re Selectmen of Norwood et al. 161 Mass., 259; 37 N. E., 199.

Davis, Commissioners, 153 Mass., 218, 26 N. E., 848.

POINT 26.

The provision of the Geneva Railroad act and of the Fielder Act are applicable alike to corpor-

ations created before and after the enactment of the statutes.

(1887) Boston & Maine R. Co. v. County Com. of York Co., 79 Me., 386, 10 Atl., 113.

(1900) City of Yonkers v. N. Y. Central & H. R. R. Co., 165 N. Y., 142 (58 N. E., 877).

POINT 27.

The provisions of the General Railroad Act and of the Fielder Act are applicable alike to highways existing at the time of the construction of the railroads and to highways subsequently laid out.

(1886) Worcester, N. & R. R. Co. v. City of Nashua, 63 N. H., 593, 4 Atl., 298.

(1891) New York & N. E. R. Co. v. City of Waterbury, 60 Conn. 1; 22 Atl., 439.

English v. Northampton Co., supra (32 Conn., 240).

New York & N. E. R. Co., 58 Conn., 532; 20 Atl. Rep., 670.

(1904) Illinois Cent. R. Co. v. Swahn, 83 Miss., 631; 36 So., 147.

I. S. R. R. Co. v. Copiah County, 81 Miss., 685; 33 South., 502.

(1908) Northern Pacific Railway Co. v. State of Minnesota ex rel. the City of Duluth, 208 U. S., 583.

See also cases under Point 9.

POINT 28.

The question whether a crossing is within the meaning of the Fielder Act "dangerous to public safety, or that public travel on such highway is impeded thereby," is one of fact to be determined according to the circumstances of each case.

(1907) Mayor, etc., of Newark v. Central R. R. Co., 73 N. J. E., 469.

Newark v. Erie Railroad Co., 72 N. J. Eq., (2 Buch.) 447.

(1909) Newark v. Erie Railroad Co., 76 N. J. E., 317. (Ct. of E. & A.)

(1908) Newark v. Erie R. R. Co., 75 N. J. E., 20.

Newark v. Central R. Co., 73 N. J. Eq., 469.

Newark v. D., L. & W. R. R. Co., 42 N. J. Eq., 196.

People v. N. Y. Central & Hudson River R. Co., 74 N. Y., 302.

Penn. v. Matthews, 36 N. J. L., 534.

N. Y. etc., R. R. Co. v. Leaman, 54 N. J. L., 206.

Penn. R. R. v. Righter, 42 N. J. L., 180.

Swanson v. Cent. R. Co., 63 N. J. L., 605.

N. J. R. ads. West, 32 N. J. L., 91. Affirmed 33 N. J. L., 430.

Keyley v. Cent. R. R. Co., 64 N. J. L., 355.

Corse v. Phila. & R. Ry. Co., 96 Atl., 53.

Wilson v. Cent. R. Co. of N. J., 96 Atl., 79.

Weber v. P. & R. Ry. Co., 96 Atl., 54.

POINT 29.

The order properly ran against the Erie Railroad Company as the company "operating" the railroads.

(1884) Lee v. Smith, 42 Oh. St., 458; 51 Am. Rep., 839.

(1884) Schott v. Harvey, 105 Pa. St., 222.

(1888) Baltimore & Ohio R. Co. v. Walker, 45 Ohio St., 577.

(1891) Buffalo Stone & Cement Co. v. D., L. & W. R. R. Co., 139 N. Y., 152: Jones v. Seligman, 81 N. Y., 190.

(1889) Appeal of Town of Westbrook, 57 Conn. 95; 17 Atl., 368.

POINT 30.

A proceeding under the Fielder Act is not confined to the elimination of one crossing.

(1907) In re Terminal Railway of Buffalo, 106 N. Y. Supp. 655.

POINT 31.

The order under review below was made "after hearing, upon notice."

Fielder Act, Sec. 6, Sec. 16, Subdivision (k).

POINT 32.

The order under review below does not require the construction by the railroad company of structures upon its lands for the use of Fuller's Express Co. and Nelson, Morris and Company in substitution for the structures now occupied by them as lessees, and which will be destroyed or rendered incapable of further use as the result of the work of elimination ordered.

POINT 33.

The order under review below does not require the railroad company to reconstruct private sidings, not its property, and not within the limits of its right of way. Nor does it require the owners thereof to reconstruct the same. It simply suggests a feasible method of reconstruction.

POINT 34.

(a) The court below found that the order made did not command the relocation and reconstruction of stations.

(b) If the order did involve the relocation and reconstruction of stations, it is not on that account invalid.

(1916) Erie R. R. Co. v. Board of P. U. C. & City of Paterson, 98 Atl., 13.

(1897) In re Selectmen of Westboro et al., 169 Mass., 495, 48 N. E., 763.

(1910) Bacon v. Boston & M. R. R., 83 Vt., 421, 76 Atl., 128.

POINT 35.

The petition of the municipality accords with the statute.

If objection was to be made to the form of the petition of the municipality, such objection should have been raised specifically at the outset before the Board of Public Utility Commissioners.

(1907) Newark v. Erie Railroad Co., 72 N. J. E., 447 (Ch.)

(1889) Appeal of Town of Westbrook, 57 Conn., 95; 17 Atl., 368, 369.

(1894) In re Selectmen of Norwood et al., 161 Mass., 259; 37 N. E., 199.

(1895) Boston & A. R. Co. v. Commissioners of Hampden County, 164 Mass., 551; 42 N. E., 100.

POINT 36.

The order of the Board of Public Utility Commissioners is sufficiently specific.

There is a reasonable presumption in favor of the result arrived at and plan adopted by the board.

(1897) In re Selectmen of Westborough et al., 169 Mass., 495; 48 N. E., 763.

Mayor etc., of Worcester v. Railroad Com'rs, 113 Mass., 170-1.

(1895) People ex rel. Lockwaad & Strickland Co. et al. v. Grand Western Ry. Co. et al., 232 Ill., 292; 83 N. E., 839.

Summerfield v. Chicago, 197 Ill., 270-87; 64 N. E., 490-6.

(1891) Davis v. County Com'rs of Hampshire County, 158 Mass., 218; 26 N. E., 848.

(1900) Town of Schaghticoke v. Fitchburg R. Co., 65 N. Y. Supp., 499.

In re Amsterdam, J. & G. R. Co., 89 Hun, 577; 33 N. Y. Supp., 1009.

(1901) in re Boston & A. R. Co., 64 App. Div., 257, 72 N. Y. Supp., 32. (Affirmed 170 N. Y., 619; 63 N. E., 1115)

City of Belleville v. Herzler, 225 Ill., 404, 80 N. E., 269.

(1914) Mo. Pac. Ry. v. Omaha, 235 U. S., 121, 132.

POINT 37.

The railroad company is vested with power adequate to execute the order under review.

(1867) Central R. R. Co. ads. State, 32 N. J. L., 220.

(1873) Greenwich v. Easton & Amboy R. R. Co., 24 N. J. E., 217.

(1874) Easton & Amboy R. R. Co. v. Greenwich, 25 N. J. E., 565.

(1907) Borough of Metuchen v. Pennsylvania R. R. Co., 73 N. J. E., 359.

(1912) State v. Lackawanna R. R. Co. 84 N. J. L., 289-293.

(1886) City of Minneapolis v. St. Paul M. & M. Ry Co., 35 Minn., 131; 28 N. W., 3.

(1895) In re Directors of Old Colony R. Co., 163 Mass., 356; 40 N. E., 1981.

POINT 38.

The Fielder Act vests the municipality with plenary power to carry into effect the requirements of the act and of an order made pursuant thereto.

(1887) Dodge v. Pennsylvania R. R. Co., 43 N. J. E., 351, 45 N. J. E. 366. (Ct. of E. & A.)

(1900) Morris & Cummings Dredg. Co. v. Jersey City, 64 N. J. L., 587. (Ct. of E. & A.)

(1912) Am. Malleable Co. v. Bloomfield, 83 N. J. L., 728. (Ct. of E. & A.)

(1905) Fair Haven & W. R. Co. v. City of New Haven, 77 Conn., 494; 559 Atl., 737.

Cullen v. R. R. Co., 66 Conn., 211, 33 Atl., 910.

Mooney v. Clark, 69 Conn., 241; 37 Atl., 506, 1080.

POINT 39.

The board's power to modify its order.

Sec. 31 of the Public Utility Act.

POINT 40.

The refusal to reopen the proceeding was not arbitrary but was justified.

POINT 41.

The Public Utility Act, to which the Fielder Act is a supplement, is essentially a remedial statute.

Both the original act, and the supplement, should receive a liberal construction.

(1892) In Read v. Camden, 54 N. J. L., 347.

(1900) Morris & Cummings Dredg. Co. v. Jersey City, 64 N. J. L., 587. (Ct. of E. & A.)

Johnson v. Asbury Park, 31 Id., 427, 431.

Hayden's Case, 3 Rep., 7; Magladen College Case, 11 Id., 66.

(1915) In re Connecticut Company (Conn.) 94 Atl., 972.

POINT 42.

The adjudication of the Supreme Court on questions of fact is a finality and not open to review here.

(1896) Moran v. Jersey City, 58 N. J. L., 653.

(1905) Yellow Pine Co. v. Board of Assessors, 72 N. J. L., 182.

(1908) Lehigh & Wilkesbarre Coal Co. v. Borough of Junction, 68 Atl. Rep., 806.