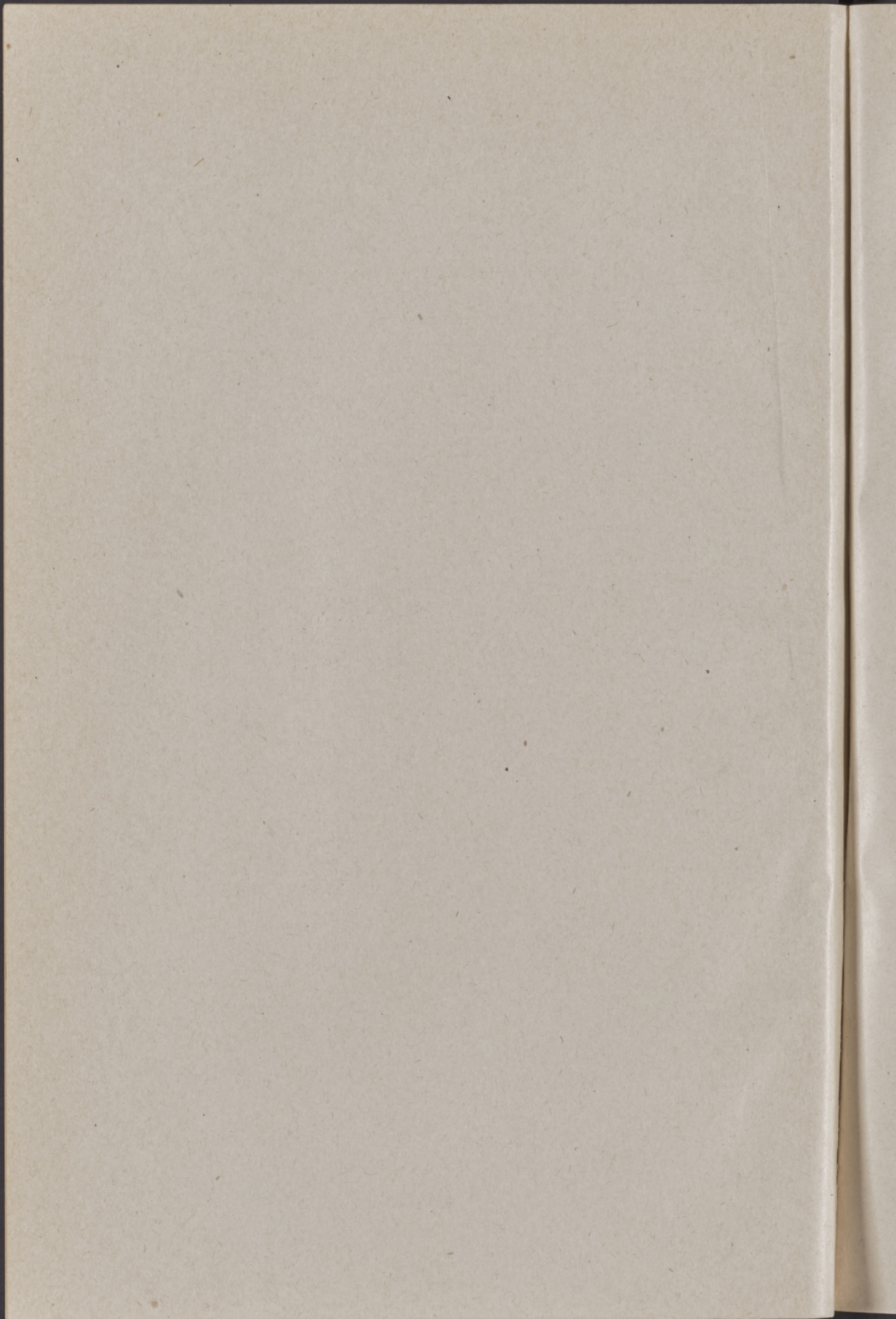


## INDEX.

---

	PAGE.
Bill of Complaint, .....	I
Order Appointing Receiver in Dissolution, .....	II, 16
Oath of Receiver, .....	13
Order Extending Time for Mailing, .....	14
Summons, .....	14
Proof of Mailing, .....	15
Order to Limit Creditors, .....	32
Proof of Publication and Mailing, .....	34
Order Barring Creditors, .....	38
Petition, .....	39
Order to Show Cause, .....	59
Acknowledgment of Service, .....	60
Order to Accept Offer, .....	71
Order, .....	73
Memoranda, .....	75
Notice of Appeal, .....	77
Petition of Appeal, .....	79
Answer to Petition of Appeal, .....	81



# NEW JERSEY

## Court of Errors and Appeals

---

IN CHANCERY OF NEW JERSEY.

BETWEEN

FRIENDSHIP TELEPHONE COMPANY,  
A CORPORATION,

*Complainant,*

AND

NEWARK TELEPHONE COMPANY, A  
CORPORATION, AND OTHERS,

*Defendants.*

---

BILL OF COMPLAINT.

10

*(Filed February 18th, 1916.)*

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

The complainant, Friendship Telephone Company, a corporation organized and existing under and by virtue of the laws of the State of New York, respectfully shows that:

(1) The complainant is a stockholder and creditor of Newark Telephone Company.

(2) Said Newark Telephone Company was organized under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled

20

"An Act to incorporate and regulate telegraph companies," which act was approved on or about the 9th day of April, 1875; said Newark Telephone Company was incorporated on or about the 7th day of August, 1895, with an authorized capital stock of \$300,000 divided into 30,000 shares of the par value of \$10 each, the object of the corporation being in general to conduct a telephone business.

(3) There are issued and outstanding 29,847½  
10 shares of the authorized capital stock, all of the same being full paid, of which shares of stock the complainant owns 26,628½ shares, the certificates for which are held by the complainant endorsed in blank, the shares standing of record in the names of others.

(4) There are also outstanding 623 shares of capital stock sold on installments, on account of which payments have been made amounting to \$1,646.50, leaving a balance due on said last mentioned stock of \$4,583.50.

(5) Succeeding the organization of said corpora-  
20 tion it entered into the prosecution of the business for which it was incorporated and has continued to conduct the same.

(6) By the terms of the certificate of incorporation of said Newark Telephone Company, a true copy of which attached hereto as Exhibit A is hereby made a part hereof, its corporate existence expired on the 7th day of August, 1915, and by the expiration of the corporate existence said corporation became dissolved.

(7) Upon the expiration of the existence of said  
30 Newark Telephone Company by the limitation of its certificate of incorporation as aforesaid, pursuant to the statute in such case made and provided, the directors of said corporation, namely, James B. Curtis, Edward W. Jones, Hiram F. Stevens, Henry M. Cross, William Shirden, Stephen C. Ormsbee and Dudley G. Browning, became trustees with power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts.

(8) Newark Telephone Company is indebted to complainant upon first mortgage bonds of said Newark Telephone Company of the par value of \$276,000, secured by a mortgage dated July 1, 1896, by which said Newark Telephone Company mortgaged to The State Trust Company, a corporation of the State of New York, as Trustee, all of the property, real and personal, of said Newark Telephone Company, including its corporate rights, privileges, franchises and immunities, and including also property which might 10 thereafter be acquired by said Newark Telephone Company; which said mortgage was recorded on the 20th day of October, 1896, in the office of the Register of the County of Essex in Book Y. 12 of Mortgages for said county, on pages 586, &c; said The State Trust Company has been duly succeeded by Guaranty Trust Company, a corporation of the State of New York, as Trustee of said mortgage. The matured interest coupons attached to said bonds amount to the sum of \$290,940, and there is additional interest due upon 02 said bonds upon coupons attached thereto and not yet matured; the total authorized issue of said bonds is \$300,000, but the only bonds outstanding are those above mentioned held by the complainant; said bonds are dated July 1, 1896, mature on July 1, 1916, and carry interest at 6 per cent. Newark Telephone Company is further indebted to complainant upon certain demand notes in the sum of \$47,656.25, the interest on same to February 1, 1916, amounting to \$10,099.40.

(9) Thomas A. Nevins & Son on January 1, 1900, 30 recovered a judgment of \$86,881.46 against said Newark Telephone Company, and Mamie McCarrick, on March 3, 1900, recovered a judgment against said Newark Telephone Company amounting to \$2,500; both of said judgments have been assigned to and are now held by the American Independent Telephone Company, a corporation of the State of Delaware.

(10) In addition to the indebtedness of the Newark

Telephone Company above mentioned, said company is liable to said American Independent Telephone Company upon bills payable in the sum of \$18,543.28, together with a large amount of interest thereon, and is liable upon accounts payable in the sum of \$3,532.25. All of said last mentioned indebtedness, with the exception of a very small portion thereof, is due to New York Telephone Company, a corporation of the State of New York. Newark Telephone Company is further  
**10** liable to said New York Telephone Company for rental of facilities in a sum approximating \$30,000.

(11) The property of Newark Telephone Company at the present time is briefly described as follows:

*Underground Plant.*

Trench feet .....	51,936.1
Duct feet .....	252,402.8
Manholes .....	95.
Cable feet .....	44,163.
Wire in cable feet .....	8,020,450.

**20**

*Overhead Plant.*

A few loops on poles of the New York Telephone Company.

*Franchises.*

Franchise granted by the City of Newark by ordinance of the Board of Street and Water Commissioners passed December 5, 1895.

(12) At the time of the expiration of the corporate existence of said Newark Telephone Company the said James B. Curtis was president, the said William Shir-  
**30** den was vice-president, and the said Stephen C. Ormsbee was secretary and treasurer. The resident agent of said corporation was Miss Margaret R. Doupe, and her office was at No. 224 Market Street, Newark, New Jersey.

(13) Whenever any corporation shall be dissolved in any manner whatsoever, this Court, by virtue of the statute in such case made and provided, has jurisdiction on application of any creditor or stockholder at any time to either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of said corporation to take charge of the estate and affairs thereof, and to collect the debts and property due and belonging to the corporation with power to prosecute or defend in the name of the corporation, or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them to do all other acts which might be done by said corporation if in being, that may be necessary for the final settlement of its unfinished business, and continue the powers of such trustees or receivers as long as the Court shall think necessary for such purposes; and by such statute, so as aforesaid made and provided, this Court shall have jurisdiction on such application of all questions arising in the proceedings thereon, and may make such orders and decrees therein as justice and equity shall require; and by such statute, so as aforesaid made and provided, the said trustees or receivers shall pay ratably as far as its moneys and property shall enable them, all of the creditors of the corporation who shall prove their debts in the manner directed by this Court, and if any balance remain after the payment of such debts and necessary expenses, shall distribute the same among the stockholders.

Complainant is without adequate remedy in the courts of law and therefore prays:

a. That the said Newark Telephone Company and the said James B. Curtis, Edward W. Jones, Hiram F. Stevens, Henry M. Cross, William Shirden, Stephen C. Ormsbee and Dudley G. Browning, as trustees on dissolution of said Newark Telephone Company, which company and persons last named are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made;

b. That this Court may either continue the said directors, hereinabove named as trustees, for the creditors and stockholders of said Newark Telephone Company, or appoint one or more persons to be receiver or receivers thereof, to take charge of the estate and effects of said Newark Telephone Company and collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purposes aforesaid, to appoint an agent or agents under him or them, to do all acts which might be done by such corporation that may be necessary for the final settlement of its unfinished business, and that the powers of such trustees or receiver or receivers may be continued as long as this Court shall think necessary for such purpose; and that the said trustees or receiver or receivers may pay ratably, as far as its money and property shall enable them, all the creditors of the corporation who have proved their

10

20

debts in manner directed by this Court, and that if any balance remains after the payment of such debts and necessary expenses, the same may be distributed among the stockholders of said corporation;

c. That a writ of subpœna may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

PITNEY, HARDIN & SKINNER,  
*Solicitors for and of Counsel with Complainant.*

30

AFFIDAVIT.

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK. } ss.

William J. Farquhar, being duly sworn according to law, upon his oath says:

I am Secretary and Treasurer of Friendship Telephone Company, a corporation of the State of New

York, the complainant in the above-entitled cause; I have read the foregoing bill of complaint and the allegations of same are true; in particular the complainant is a stockholder and creditor of Newark Telephone Company; said Newark Telephone Company was organized as in said bill of complaint set forth, and the issues of stock of said last-mentioned company are as set forth in said bill; by the terms of the certificate of incorporation of said Newark Telephone Company, a true copy of which, marked Exhibit A, is annexed 10 hereto, its corporate existence expired on August 7, 1915; at the time of the expiration of the existence of said Newark Telephone Company its directors and officers were the persons named in paragraphs 7 and 12, respectfully, of said bill of complaint; the indebtedness of said Newark Telephone Company, as far as known to deponent, is correctly stated in said bill of complaint, and the property of said Newark Telephone Company is correctly described therein.

I believe that the affairs of the said Newark Telephone Company cannot be properly wound up and its debts paid as satisfactorily by the statutory trustees as by a receiver appointed by this Court, acting under the authority of the Court, with power to compel presentation of claims, limit the time within which such claims may be presented, and otherwise control and direct the settlement of the affairs of the said corporation. 20

WM. J. FARQUHAR.

Subscribed and sworn to before me, a notary of 30 public, in and for the County of New York and State of New York, as witness my hand and notarial seal this seventh day of February, 1916.

LINCOLN JONES,

*Notary Public, Kings County, certificate filed in New York County, No. 17.*

*Notary Public of the County and State of New York.*

## EXHIBIT A.

CERTIFICATE OF INCORPORATION OF THE NEWARK  
TELEPHONE COMPANY.

We, Ernest J. Foord, P. Justus Atkinson and George H. Atkinson being desirous of becoming a body politic and corporate, pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act to incorporate and regulate telegraphic companies," Approved April 9th, 1875, and  
10 the act supplementary thereto and amendatory thereof, with all the powers and subjects to all the provisions of the Act concerning corporations, including the Act supplementary thereto and amendatory thereof, do hereby certify under our hands and seals as follows:

*First.*

That we have and do hereby subscribe for one-third of the Capital Stock necessary to be issued for the construction of the lines of telegraph and telephone hereinafter described and which we propose  
20 building and constructing.

*Second.*

That the Title or Corporate name of the Company is the "Newark" Telephone Company," which name we have assumed to designate such Company and to be used in its business and dealings.

*Third.*

That the total amount of the Capital Stock of said Company is \$300,000.00, and the number of shares in which the same is divided is 30,000, and the value  
30 of each share is \$10.00. The amount with which said Company will commence business is \$100,000.00, being one-third of said Capital Stock.

*Fourth.*

The description of the line proposed to be built and constructed by the said Company, and the localities it is intended to traverse, are briefly described as follows: A line of telegraphic or telephonic communication are either or both consisting of sub-marine and underground cables where requisite, and elsewhere of poles and posts set into the ground, with such cross-arms, fixtures and appliances as may be necessary to sustain the said wires, cables and other electrical conductors, as may be required or necessary for the purpose of conducting the telegraph or telephone business, or both, of said Company hereby organized, in and through the streets, alleys and public ways of the Cities of Newark and Orange, the Townships of East Orange, South Orange, Clinton, Belleville, Franklin, Bloomfield, West Orange, Livingston, Milburn, Caldwell and Verona, the Town of Montclair, the Villages of Irvington and South Orange, and the Boroughs of Vailsburg, Caldwell and Glen Ridge, being all the separate localities within the territory of the County of Essex, and State of New Jersey, and the Town of Harrison and Kearny and the Borough of East Newark, in the County of Hudson, in said State.

*Fifth.*

The objects for which this Company is formed are to build and construct a line of telegraph and telegraphic or telephonic communications, or either or both as aforesaid, within the Counties of Essex and Hudson, as aforesaid, and to use the same for telegraphic or telephonic business, or either or both, across the said cities, towns, boroughs and villages of said counties of Essex and Hudson, as aforesaid, through and into, within and to and from, the said cities and townships, towns, boroughs and villages of said counties

of Essex and Hudson, as aforesaid, and the various streets and public ways of the said cities, townships, towns, boroughs and villages, as aforesaid, and in and through other convenient localities for the business as aforesaid, within each of said localities, and in addition to the use of said line as is hereinbefore described, to establish, lease, let, conduct and manage private or other telephonic or telegraphic lines, or either or both of them, and instruments and other  
10 means of appliances for the use of individuals, firms, corporations, municipalities and all others, to carry on a general telegraphic and telephonic business, or either or both, for all purposes whatsoever, upon the whole of said line and in all the localities aforesaid, alone or in connection with any other telegraph or telephone line or lines within or without the State of New Jersey; and also to purchase, contract, lease, let and use and sub-grant, all patents, licenses and rights now or hereafter existing, for the purpose of the business as  
20 herein contained.

*Sixth.*

The period at which said company shall commence is the seventh of August, eighteen hundred and ninety-five, and the same shall continue for a period of twenty years from said date, to wit, to the seventh day of August, nineteen hundred and fifteen.

*Seventh.*

The names and residences of the stockholders and the number of shares held by each are as follows:  
30 Ernest J. Foord, Jersey City, N. J., five thousand shares.  
P. Justus Atkinson, New York City, twenty-five hundred shares.  
George H. Atkinson, Newark, N. J., twenty-five hundred shares.

ORDER APPOINTING RECEIVER IN DISSOLUTION. 11

In witness whereof we have hereunto set our hands and seals this seventh day of August, A. D. eighteen hundred and ninety-five.

[SEALS.]

ERNEST J. FOORD,  
P. JUSTUS ATKINSON,  
GEORGE H. ATKINSON.

Endorsed: Certificate of incorporation of the Newark Telephone Company.

"Received in the Clerk's Office of the County of Essex on the seventh day of August, A. D. 1895, and 10 recorded in Book 10 of Incop. Bus. Co. for said county, page 386.

JAMES T. WRIGHTSON,  
*Clerk."*

"Filed August 7th, 1895,

HENRY C. KELSEY,  
*Secretary of State.*

---

ORDER APPOINTING RECEIVER IN DISSOLUTION.

*(Filed February 19, 1916.)*

20

IN CHANCERY OF NEW JERSEY.

On reading and filing the bill of complaint filed in the above entitled cause, and the affidavit thereto annexed, from which it appears that the corporate existence of Newark Telephone Company, the corporation defendant in the above entitled cause, expired, by the terms of its certificate of incorporation, on the seventh day of August, 1915, and that by the expiration of the corporate existence said corporation became dissolved; and application now being made for 30 the appointment of a receiver under Section 56 of an

act entitled, "An Act concerning corporations, Revision 1896," by Friendship Telephone Company, a corporation of the State of New York, a creditor of said Newark Telephone Company; and the Court being of the opinion that a receiver should be so appointed;

It is now, on this eighteenth day of February, 1916, on motion of Pitney, Hardin & Skinner, solicitors of the said complainant, ordered that George W. C. McCarter, Esq., be and he hereby is appointed receiver of

**10** said Newark Telephone Company, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to said corporation, with power to prosecute and defend in the name of the corporation, or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under him, and to do all other acts which might be done by such corporation if in being, that may be necessary for the final settlement of its unfinished business; powers of such receiver to con-

**20** tinue for as long as this Court shall think necessary for such purposes.

It is further ordered that, except as this Court shall direct, the directors of said Newark Telephone Company at the time of its dissolution, all of whom are defendants to this suit as trustees on dissolution of said Newark Telephone Company, refrain from making any disposition of the assets of said corporation.

It is further ordered that said Receiver, before he enter upon his duties, give bond to the Chancellor of the

**30** State of New Jersey, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties, to be approved as to the form and the security thereof by one of the Special Masters of this Court.

It is further ordered that copies of this order (which need not be certified) be mailed by the said receiver within five days from the date hereof to the stockholders of the said defendant corporation to their respective post office addresses as ascertained by him

from the books and records of said corporation; and be also mailed to the defendants to this suit, or to their respective solicitor or solicitors.

Respectfully advised,  
 J. E. HOWELL,  
*Vice Chancellor.*

E. R. WALKER,  
*Chancellor.*

I hereby consent to the above order.

J. L. SWAYZE,  
*Solicitor for Defendants.*

10

---

OATH OF RECEIVER.

*(Filed February 19, 1916.)*

IN CHANCERY OF NEW JERSEY.

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

I, George W. C. McCarter, do swear that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as Receiver for the creditors and stockholders of the Newark Telephone Company, and that without favor or affection.

G. W. C. McCarter.

20

Sworn and subscribed to before me this eighteenth day of February, 1916.

IRVING SCHWED,  
*Attorney at Law of New Jersey.*

ORDER EXTENDING TIME FOR MAILING.

(Filed February 24, 1916.)

IN CHANCERY OF NEW JERSEY.

On good cause shown;

It is on this twenty-third day of February, 1916, on motion of Pitney, Hardin & Skinner, solicitors for the complainant, ordered that the time of the receiver for mailing copies of the order appointing a receiver in this cause dated the eighteenth day of February, 1916,  
10 be and the same is hereby extended for three days from the date hereof.

E. R. WALKER,  
Chancellor.

Respectfully advised,  
FREDERICK W. STEVENS,  
Vice Chancellor.

---

SUMMONS.

(Returnable March 2, 1916.)  
(Filed February 28, 1916.)

IN CHANCERY OF NEW JERSEY.

20 New Jersey, to wit, the State of New  
[L. s.] Jersey to Newark Telephone Company and  
James B. Curtis, Edward W. Jones, Hiram  
F. Stevens, Henry M. Cross, William Shirden, Stephen  
C. Ormsbee and Dudley G. Browning, as trustees on  
dissolution of said Newark Telephone Company,

Greeting: Whereas a bill of complaint has lately  
been exhibited against you in our Court of Chancery  
by Friendship Telephone Company, a corporation, to  
be relieved touching the matters therein contained.

30 Therefore, we command you, if you intend to make

a defense, that you file an answer to said bill in the office of the Clerk of our said Court at Trenton, on or before the expiration of twenty days from and after the second day of March, 1916, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

Witness, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the twenty-fourth day of February, in the year of our Lord one thousand nine hundred and sixteen.

10

ROBERT H. McADAMS,  
*Clerk.*

PITNEY, HARDIN & SKINNER,  
*Solicitors.*

Service of the within subpoena is hereby acknowledged this twenty-fifth day of February, 1916.

JOHN L. SWAYZE,  
*Solicitor for Defendants.*

---

PROOF OF MAILING.

(Filed February 28, 1916.)

20

IN CHANCERY OF NEW JERSEY.

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

Bernhard J. Firner, being duly sworn upon his oath says: I am a clerk in the office of Messrs. McCarter & English, the Solicitors of the Receiver of the defendant in this cause. On the twenty-fifth day of February, 1916, I deposited in a United States mail chute in the Prudential Building in the City of Newark, N. J., copies of the order appointing the receiver in this cause, a true copy of which order is hereunto annexed, in duly sealed envelopes with postage prepaid

30

16 ORDER APPOINTING RECEIVER IN DISSOLUTION.

thereon, addressed to each and all of the persons at the addresses given in Schedules A and B, referred to in the affidavit of James L. Hamar hereunto annexed, and also to John L. Swayze, Esquire, 15 Dey street, New York City, he being the Solicitor for all the defendants in this cause.

BERNHARD J. FIRNER.

Sworn and subscribed to before me this twenty-sixth day of February, 1916.

10

[SEAL.]

DANIEL B. SMITH,

*Notary Public for New Jersey.*

ORDER APPOINTING RECEIVER IN DISSOLUTION.

On reading and filing the bill of complaint filed in the above entitled cause, and the affidavit thereto annexed, from which it appears that the corporate existence of Newark Telephone Company, the corporation defendant in the above entitled cause, expired, by the terms of its certificate of incorporation, on the seventh day of August, 1915, and that by the expiration of the corporate existence said corporation became dissolved; and application now being made for the appointment of a receiver under Section 56 of an act entitled, "An Act concerning corporations, Revision 1896," by Friendship Telephone Company, a corporation of the State of New York, a creditor of said Newark Telephone Company; and the Court being of the opinion that a receiver should be so appointed;

20

It is now on this eighteenth day of February, 1916, on motion of Pitney, Hardin & Skinner, solicitors of the said complainant, ordered that George W. C. McCarter, Esq., be and he hereby is appointed receiver of said Newark Telephone Company, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to said corporation, with power to prosecute and defend in the name of

80

the corporation, or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under him, and to do all other acts which might be done by such corporation if in being, that may be necessary for the final settlement of its unfinished business; powers of such receiver to continue for as long as this Court shall think necessary for such purposes.

It is further ordered that, except as this Court shall direct, the directors of said Newark Telephone Company at the time of its dissolution, all of whom are defendants to this suit as trustees on dissolution of said Newark Telephone Company, refrain from making any disposition of the assets of said corporation. 10

It is further ordered that said receiver, before he enter upon his duties, give bond to the Chancellor of the State of New Jersey, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties, to be approved as to the form and the security thereof by one of the Special Masters of this Court. 20

It is further ordered that copies of this order (which need not be certified) be mailed by the said receiver within five days from the date hereof to the stockholders of the said defendant corporation to their respective post office addresses as ascertained by him from the books and records of said corporation; and be also mailed to the defendants to this suit, or to their respective solicitor or solicitors.

E. R. WALKER, 30  
*Chancellor.*

Respectfully advised,  
J. E. HOWELL,  
*Vice Chancellor.*

I hereby consent to the above order.

J. L. SWAYZE,  
*Solicitors for Defendants.*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.

James L. Hamar, being duly sworn according to law upon his oath says: That he is auditor of Friendship Telephone Company, the complainant in the above entitled cause; that he has full access to the books and records of the defendant corporation, Newark Telephone Company, for the purpose of inspecting and auditing the same; that the list hereto attached, marked **10** Exhibit A, comprises the names and last known post office addresses of all the stockholders of the Newark Telephone Company, other than installment stockholders, according to the books and records of the defendant corporation; that the list hereto attached, marked Exhibit B, comprises the names and last known post office addresses of all the installment stockholders of the Newark Telephone Company, according to the books and records of the defendant corporation; that deponent is acting as agent for the receiver herein for the purpose of making the foregoing affidavit.

JAMES L. HAMAR.

Subscribed and sworn to before me, a notary public in and for the County of New York and State of New York, as witness my hand and notarial seal at New York, in the county and State aforesaid, this twenty-first day of February, 1916.

[SEAL.]

WM. J. FARQUHAR,

*Notary Public, County of Nassau. Certificate filed in New York County. No. 35.*

**30**

*Notary Public in and for the County and State aforesaid.*

EXHIBIT A.

STOCKHOLDERS OF THE NEWARK TELEPHONE COMPANY.

Newark, N. J., February 21st, 1916.

225 Atwater, F. C., P. O. Box 168, Manchester, Iowa, .....

393	Atwater, Fred C., Jr., P. O. Box 168, Manchester, Iowa, .....	6	
404	Atwater, Elizabeth C., P. O. Box 168, Manchester, Iowa, .....	4	
244	Amberg, Jos. O., 262 Morris Ave., Newark, N. J., .....	25	
257	Almond, David, 193 Littleton Ave., Newark, N. J., .....	50	
313	Adams, John L., 415 Clinton Ave., Newark, N. J., .....	2	<b>10</b>
299	Appel, S., 84 Belleville Ave., Newark, N. J.	1	
416	Adams, Russell V., 760 Broad St., Newark, N. J., .....	2	
374	Boice, R. C., 10 Lafayette St., Newark, N. J., .....	45	
213	Baker, Robert, 393 Summer Ave., Newark, N. J., .....	1	
216	Buchanan, Paul, 380 Bergen St., Newark, N. J., .....	100	
237	Barry, James, Newark, N. J., .....	10	<b>20</b>
258	Bowers, James, 143 Blecker St., Newark, N. J., .....	50	
281	Bradshaw, James, 69 N. J. R. R. Ave., Newark, N. J., .....	15	
293	Boice Co., R. C., 143 Lafayette St., Newark, N. J., .....	10	
348	Burkhardt, A. H., 246 Ferry St., Newark, N. J., .....	10	
323	Blue, Miss L. W., 24 Marshall St., Newark, N. J., .....	5	<b>30</b>
331	Brierly, Joshua, Deceased, 374 Broad St., Newark, N. J., .....	10	
338	Brockie, John, 8 Railroad Pl., Newark, N. J., .....	30	
207	Bradley, James, Market and Plane Sts., Newark, N. J., .....	10	
220	Baumann, C. V., 43 William St., Newark, N. J., .....	10	

	234 Benisch, Chas., 180 South St., Newark, N. J., .....	10
	237 Bornemann, H., 78 Shipman St., Newark, N. J., .....	15
	265 Beatty, W. I., 31 Clinton St., Newark, N. J.	6
	278 Brady, Peter, Newark, N. J., .....	10
	299 Brady, Francis J., 150 S. 10th St., New- ark, N. J., .....	2
10	357 Beach, Lewis, 582 Orange St., Newark, N. J., .....	10
	364 Blenderman, D., Newark, N. J., .....	8
	366 Buttel, H. B., 73 S. 10th St., Newark, N. J., .....	1
	368 Bechler, E. W., 9 Schley St., Newark, N. J., .....	5
	375 Bailey, Jas. S., 281 8th St., Jersey City, N. J., .....	3
	371 Bateman, Elizabeth A., Newark, N. J., ...	10
	399 Bower, Frank, 95 N. J. R. R. Ave., New- ark, N. J., .....	5
20	415 Browning, Dudley G., Metuchen, N. J., ...	1007
	263 Crane Carriage Hdw. Co., 165 Mulberry St., Newark, N. J., .....	10
	277 Conlan, John, Newark, N. J., .....	20
	299 Coppleson, Wm., 84 Belleville Ave., New- ark, N. J., .....	1
	302 Crozier, Robert C., Newark, N. J., .....	15
	206 Clark, C. C., Westwood, N. J., .....	1
	221 Cullen, Wm. H., Ossining, N. Y., .....	25
80	229 Craig, Mary, 13 Bowery St., Newark, N. J.	26
	232 Cavanaugh, J., Palace Hotel, Market St., Newark, N. J., .....	25
	17 Curtis James B., 115 Broadway, New York, .....	3155
	229 Coe, James A., 106 Mulberry St., Newark, N. J., .....	25
	416 Conley, J. B., 244 Madison St., Brooklyn, N. Y., .....	3200

343	Cryer, T. B., 249 High St., Brooklyn, N. Y., .....	10	
11	Compton, Chas. W., 216 Market St., Brook- lyn, N. Y., .....	10	
203	Cross, H. M., 19 Barclay St., New York, .	80	
263	Casselmann, Fred, Deceased, 372 Spring- field Ave., Newark, N. J., .....	5	
111	Connelly, W. B., 377 Frelinghuysen Ave., Newark, N. J., .....	25	
383	Camfield, Carrie L., 506 Washington St., Newark, N. J., .....	6	10
404	Coe, Ernest E., 742 Broad St., Newark, N. J., .....	2	
416	DeRonde, Walter, Lyons Farms, N. J., .	1184	
294	Drake & Co., 36 Clinton St., Newark, N. J.,	10	
242	Dimond, A. J., 307 W. Kinney St., New- ark, N. J., .....	4	
391	Dimond, A. J. & Co., 307 W. Kinney St., Newark, N. J., .....	4	
337	Duffy, Margaret A., 223 No. 7th St., New- ark, N. J., .....	10	20
213	Disbrown, Wm. S., Orchard St. and Tiche- nor, Newark, N. J., .....	10	
345	Dinniston, Thos J., 73 South St., Newark, N. J., .....	10	
116	Deas, A. W., 81 Willoughby St., Brooklyn, N. Y., .....	100	
243	Eaton, Edward C., 11 Centre Market, New- ark, N. J., .....	5	
290	Ehman, Mary, 849 Summer Ave., Newark, N. J., .....	5	30
290	Ehman, Henry, 849 Summer Ave., New- ark, N. J., .....	5	
292	Ecker, Catherine L., 153 Mulberry St., Newark, N. J., .....	1	
318	Elverson, Edward, 30 Centre St., Newark, N. J., .....	3	
217	Edwards, D. P., Newark, N. J., .....	10	

	353	Eagles, Robert D., 46 Halsey St., Newark, N. J., .....	4
	354	Eppel, John, 123 Bergen St., Newark, N. J.	5
	371	Edger, Percy, 794 Broad St., Newark, N. J.	12
	265	Faitoute, J. B., 22 Clinton St., Newark, N. J., .....	14
	277	Flynn, Anna M., 74 4th Ave., Newark, N. J., .....	3
<b>10</b>	300	Fischer, Mrs. Kate, 26 William St., New- ark, N. J., .....	15
	361	Fantl, Emanuel, 539 Springfield Ave., New- ark, N. J., .....	1
	228	Fewsmith, Dr. J., 47 Central Ave., New- ark, N. J., .....	10
	243	Finch, Chas., 6 Snedeker Ave., Brooklyn, N. Y., .....	30
	250	Farley, John, 35 Beecher St., Newark, N. J.	10
	285	Farley, Richard, So. Orange, N. J., .....	10
	324	Farlie, William, 492 Broad St., Newark, N. J., .....	10
<b>20</b>	250	Fischer, C. R., Camden, N. J., .....	10
	214	Finkbeiner, C., 84 Richmond St., New- ark, N. J., .....	1
	255	Finley, F. J., 780 Broad St., Newark, N. J.	1
	118	Foster, W. J., 31 Nassau St., New York, ..	1
	375	Fricke, Adolph, 577 S. 10th St., Newark, N. J., .....	2
	320	Fenwich, F. F., 43 Whittlesey Ave., E. O.,	10
<b>30</b>	240	George, Henry Jr., 100 W. 84th St., New York, .....	100
	259	Goodman, C. H., 61 Crosby St., New York,	10
	285	Gruet, W. H., Deceased, 143 Belleville Ave., Newark, N. J., .....	10
	327	Graves, James, 64 Richmond St., Newark, N. J., .....	6
	419	Gergen, Jacob, 49 Park St., Orange, N. J.,	1
	323	Goren, John, 258 Springfield Ave., New- ark, N. J., .....	10

274	Gold, Herman, 68 Mulberry St., Newark, N. J., .....	1	
276	Gahre, August, Newark, N. J., .....	10	
401	Gerber, Morris, care F. D. Dunbar, Wash- ington Nat'l Bank, Pittsburgh, Pa., .....	20	
406	Guerin, John S., 333 So. 18th S., Newark, N. J., .....	25	
264	Hunt, Georgianna R., 900 Broad St., Newark, N. J., .....	5	
356	Hoagland, Samuel G., 273 Market St., Newark, N. J., .....	5	10
217	Hedden, James S., 100 Pacific St., Newark, N. J., .....	20	
241	Hall, Bolton, 23 Broadway, New York, ...	5	
322	Hermann, John C., 296 Market St., New- ark, N. J., .....	42	
208	Holgate, W. H., Newark, N. J., .....	5	
241	Hollberg, Max, 214 Bank St., Newark, N. J., .....	10	
294	Hudson, Milton, 633 Broad St., Newark, N. J., .....	10	<b>20</b>
339	Hausling, Jacob, 22 Arlington St., New- ark, N. J., .....	10	
413	Haushalter, Annie, Waverly and 18th Aves., Newark, N. J., .....	4	
18	Hord, Horace B., 38 Park Row, New York, .....	1601	
420	Houghton, W. L., So. Orange, N. J., .....	10	
242	Iwertz, George, 20 N. Canal St., Newark, N. J., .....	4	<b>30</b>
246	Jacoby, Victor, 882 Broad St., Newark, N. J., .....	5	
266	Joss, Chas., Newark, N. J., .....	10	
115	Jones, E. W., 29-33 Sullivan St., New York, .....	4700	
411	Jones, Fred, 79 Clendenny Ave., Jersey City, N. J., .....	93	
269	Kneuer, M., 185 Ferry St., Newark, N. J.,	5	

	251 Kaltenbach, Engelbert, 128 Belmont Ave., Newark, N. J., .....	10
	284 Kienle, Jacob F., 182 Chestnut St., Newark, N. J., .....	5
	353 Kastner, Theo. A., 176 Clinton Ave., Newark, N. J., .....	10
	377 Katz, Jacob W., 320 Jefferson St., Newark, N. J., .....	7
	388 Kridel, F., 59 Beacon St., Newark, N. J., .....	3
<b>10</b>	389 Kidd, Walter J., 21 Nelson Pl., Newark, N. J., .....	80
	405 Koller, C. J., 193 Sussex Ave., Newark, N. J., .....	1
	324 Lehman L., 464 Broad St., Newark, N. J., .....	10
	341 Lewis Bros., 138 Monroe St., Newark, N. J., .....	10
	215 Lehman, E., 35 New St., Newark, N. J., ..	10
	245 Ledig, R., 628 S. 14th St., Newark, N. J., ..	10
	304 Lynagh, John, 109 Summit St., Newark, N. J., .....	10
<b>20</b>	342 LeRoy, H., 116 Walnut St., Lancaster, Pa., ..	5
	316 Lerman, Christian, S. Orange Ave. and Centre St., South Orange, .....	50
	366 Lawshe, T. T., 283 E. Kinney St., Newark, N. J., .....	10
	378 Levy, J., 52 Belleville Ave., Newark, N. J., ..	10
	408 Lelong & Bro., L., 345 Halsey St., Newark, N. J., .....	10
	377 Morton A. W., 207 Market St., Newark, N. J., .....	8
<b>30</b>	220 Moriarity, P. Augustin, care E. L. Ryder, Ossining, N. Y., .....	15
	291 Miller, David W., Orange, N. J., .....	10
	337 Mayo, Benj. J., 788 Broad St., care Franklin F. Mayo, Newark, N. J., .....	10
	343 Moore, P. J., 56 Astor St., Newark, N. J., ..	9
	356 Mundy, J. S., 22 Prospect St. (Mrs. Dressler), Newark, N. J., .....	20

421 McIntire, Mrs. E. K., Franklin Ave., West Orange, N. J., .....	10	
271 Montgomery, Thos. E., 239 14th Ave., Newark, N. J., .....	5	
310 McFeeley, E. J., 86 3d St., Newark, N. J.,	5	
343 McGivney, P., 127 Grand St., Hoboken, N. J., .....	5	
378 McLaughlin Catherine E., 523 Market St., Newark, N. J., .....	5	
382 Morrissey, James, 78 Mulberry St., Newark, N. J., .....	2	<b>10</b>
408 McCleary, Chas. A., 194 Chambers St., New York, .....	25	
417 McDowell, M. M., care Cameron Piano Co., Easton, Pa., .....	400	
202 Musgrave, Wm., 486 Orange St., Newark, N. J., .....	10	
418 McCord, C. F., 70 Park Pl., Newark, N. J.,	10	
289 Nelson, Henry, 119-121 Wooster St., New York, .....	10	<b>20</b>
325 Noyes, W. H., 160 First St., Newark, N. J.	5	
381 Naab, Katie, 28 Lillie St., Newark, N. J.,	3	
388 Nickols, John, 108 Market St., Newark, N. J., .....	2	
395 Newhoff, Henry, New York City, .....	10	
226 O'Reilly, Miles W., Newark, N. J., .....	8	
295 Oppenheimer, Otto H., 382 Frelinghuysen Ave., Newark, N. J., .....	10	
230 O'Brien, Dan, Newark, N. J., .....	10	
353 Orben, J. C., 59 Littleton Ave., Newark, N. J., .....	10	<b>30</b>
267 Orben, P. J., 113 Central Ave., Newark, N. J., .....	11	
8 Osborne, W. H., 800 Broad St., Newark, N. J., .....	10	
297 Odell, Reuben, Jr., 78 Springfield Ave., Newark, N. J., .....	5	

	Ormsbee, S. C., 1243 President St., Brooklyn, N. Y., .....	5
302	Osborne, John C., 947 W. 5th St., Plainfield, N. J., .....	10
362	Osborne, J. D., 1034 Broad St., Newark, N. J., .....	20
396	Oschwald, Joseph, 118 Market St., Newark, N. J., .....	43
391	Orben, Chas S., 36 Clinton St., Newark, N. J., .....	6
<b>10</b>		
313	Prout, John H., Belleville, N. J., .....	10
239	Pfeiffer, Mrs. L., 101 Darcy St., Newark, ark, N. J., .....	5
288	Preen, S., 125 Washington St., Newark, N. J., .....	10
307	Post, Cornelius N., 227 Halsey St., Newark, N. J., .....	10
206	Pound, George H., 1167 Broad St., Newark, N. J., .....	10
<b>20</b>	412 Pedrick, Albert C., Prudential Bldg., Newark, N. J., .....	5
210	Reilly, John, 40 Avenue C., Newark, N. J.,	10
102	Ryder, Edgar L., Newark, N. J., .....	250
245	Risley, W. S., 436 Market St., Camden, N. J., .....	250
110	Rice, J. F., Newark, N. J., .....	10
319	Reitzel, Jacob, 537 S. Orange Ave., Newark, N. J., .....	10
305	Reeve, Geo. F., 88 Front St., Newark, N. J.	10
<b>30</b>	336 Roden, Anna J., 345 Washington St., Newark, N. J., .....	10
222	Rothe, Chas. W., 336 Harrison Ave., Harrison, N. J., .....	5
267	Rathgeber Dey & Co., 71 Commerce St., Newark, N. J., .....	10
273	Reid, John W., Kearny, N. J., .....	10
298	Runge, Dr. W., 130 Union St., Newark, N. J., .....	14

359	Rivers, Chas. Emerson, Newark, N. J., ..	5	
383	Revitt & Perry, 457 Washington St., Newark, N. J., .....	10	
385	Rashkowetsky, Samuel, Newark, N. J., ...	10	
387	Ripley, Chas. O., 84 Johnson Ave., Newark, N. J., .....	10	
407	Rosenweig & Seiler, 1210 Franklin Ave., New York, .....	5	
414	Rockwell, Wm. Locke, 326 Prudential Bldg., Newark, N. J., .....	13	<b>10</b>
202	Steelman, A. G., Baltimore, Md., .....	5	
208	Seymour, G. H., Newark, N. J., .....	5	
218	Schmidt, Gustav, 655 S. 18th St., Newark, N. J., .....	25	
240	Stillger, Max J., 94 Hunterdon St., Newark, N. J., .....	10	
295	Schwitzgable, Lena, 95 Badger Ave., Newark, N. J., .....	10	
308	Scherff, J. P., Bloomfield, N. J., .....	10	
334	Simonson & Co., M. W., 118 Frelinghuysen Ave., Newark, N. J., .....	10	<b>20</b>
236	Schmidt, Christian, 64 West St., Newark, N. J., .....	2	
242	Steenbock, Martin, 492½ Clinton Ave., Newark, N. J., .....	10	
247	Steffens, J., Jr., Newark, N. J., .....	5	
284	Strauss, Moses, 35 Vesey St., Newark, N. J., .....	10	
332	Schmidt, Geo. P., 582 S. 19th St., Newark, N. J., .....	3	<b>80</b>
342	Schober, John, 290 Devoe St., Brooklyn, N. Y., .....	15	
210	Sullivan, Cornelius, 135 Myrtle Ave., Jersey City, N. J., .....	10	
219	Shies, Geo. W., care Salvage Corps, Newark, N. J., .....	10	
219	Scharfenberg, Andrew, 150 Sylvan Ave., Newark, N. J., .....	10	

	231 Schneider, Henry, Newark, N. J., . . . . .	10
	352 Schmidt, J. J., 88 Canal St., Newark, N. J., . . . . .	10
	270 Schoenewolf, Lewis R., 80 Richmond St., Newark, N. J., . . . . .	2
	301 Schweikert, Geo., 139 Bergen St., Newark, N. J., . . . . .	5
	302 Stivers, Letitia M., 139 Pennsylvania Ave., Newark, N. J., . . . . .	8
	360 Schlosser, Christian, 38 Columbia Ave., Newark, N. J., . . . . .	20
<b>10</b>	363 Sayre, Wm. Henry, Deceased, 588 Orange St., Newark, N. J., . . . . .	5
	365 Simpson, Augustus, 291 Belleville Ave., Newark, N. J., . . . . .	1
	369 Schroeder, Max, Newark, N. J., . . . . .	2
	385 Smith, A. C., Newark, N. J., . . . . .	6
	390 Sandford, Mrs. David, 29 New St., New- ark, N. J., . . . . .	10
	398 Smith, Mary A., 198 So. 9th St., Newark, N. J., . . . . .	35
<b>20</b>	403 Steiger, Fred J., Newark, N. J., . . . . .	1
	119 Shirden, Wm., 196 Halsey St., Brooklyn, N. Y., . . . . .	6906 $\frac{1}{2}$
	418 Snider, Leonard, 60 Broadway, N. Y., . . . . .	746
	Stevens, H. F., Greenwich, Conn., . . . . .	10
	335 Tully, Francis P., 183 Thomas St., New- ark, N. J., . . . . .	25
	282 Trimmer & Co., S., 89 N. J. R. R. Ave., . . . . .	10
	225 Tausig, Mabelle, 52 South Franklin St., Lancaster, Pa., . . . . .	1
<b>30</b>	358 Trivett, Richard, 329 New St., Newark, N. J., . . . . .	7
	117 Taylor, A. Norton, Plymouth Ave., South Orange, . . . . .	2335
	409 Tench, J. E., Douglas Manor Inn, Douglas- ton, L. I., . . . . .	10
	418 Taylor, Wm. F., 313 Chestnut St., Newark, N. J., . . . . .	30

418	Taylor, Jos. Q., Tauton, Mass., . . . . .	720	
375	Vogt, A. G., 323 Belleville Ave., Newark, N. J., . . . . .	10	
291	Volz, Herman, 82 Pacific St., Newark, N. J., . . . . .	1	
320	Vollweiler, Emil, 262 Central Ave., New- ark, N. J., . . . . .	5	
332	Vaughn, Mrs. E. J., Newark, N. J., . . . . .	5	
373	Vreeland, H. L. T., 9 River St., Chicago, Ill., . . . . .	2	<b>10</b>
114	Vance, H. C., Deceased, 758 DeGraw Ave., Newark, N. J., . . . . .	100	
221	Vliet, Elisha B., 49 8th Ave., Newark, N. J., . . . . .	10	
201	Wilson, Samuel Wightman, 48 Wall St., New York, . . . . .	10	
214	Ward, S. R., 951 Broad St., Newark, N. J.,	10	
227	Wotiz, Joseph, 179 Norfolk St., Newark, N. J., . . . . .	3	
315	Warren, Wm. H., 181 Verona Ave., New- ark, N. J., . . . . .	10	<b>20</b>
342	Walsh, Philip C., Jr., Passaic St. and Car- lisle Place, Newark, N. J., . . . . .	75	
230	Westervelt, Mrs. B., 213 Washington St., Newark, N. J., . . . . .	5	
239	Westervelt, Mrs. Julia, 54 Miller St., New- ark, N. J., . . . . .	5	
251	Whitty, Fred J. S., 199 Market St., New- ark, N. J., . . . . .	10	
254	Woefle, Wm. F., 572 Central Ave., New- ark, N. J., . . . . .	15	<b>30</b>
318	Whitty, Mary C., 80½ Thomas St., New- ark, N. J., . . . . .	10	
221	Wolf, Chas., Newark, N. J., . . . . .	10	
232	Wilkins, Geo., 367 Park Ave., Newark, N. J., . . . . .	15	
243	Ward, Wm. R., 21 Munn Ave., East Or- ange, N. J., . . . . .	240	

	352 Wagner, Mrs. Fred., South Orange, N. J.,	10
	275 Whitehead & Hoag Co., First St. and Sussex Ave., Newark, N. J.,	10
	303 Wagner, Eva, 269 Charlton St., Newark, N. J.,	10
	358 Walters, Geo., 141 Hudson St., Newark, N. J.,	6
	114 Walker, C. I., 544 Putnam Ave., Brooklyn, N. Y.,	89
<b>10</b>	372 Warter, Mary, 18 Linden St., Newark, N. J.,	9
	238 Yardley, Samuel S., 912 Broad St., Newark, N. J.,	5
	215 Yardley, Chas. B., Jr., 912 Broad St., Newark, N. J.,	1
	206 Zeitler, Robert, 266 Halsey St., Newark, N. J.,	5
	278 Zimmerman, Henrietta, 291 Market St., Newark, N. J.,	5
<b>20</b>	278 Zimmerman, C. P., 291 Market St., Newark, N. J.,	10
	404 Zergiebel, M. F., 572 Orange St., Newark, N. J.,	15
	Total,	29,847½

## EXHIBIT "B."

## NEWARK TELEPHONE COMPANY.

LIST OF INSTALLMENT STOCKHOLDERS PER LEDGER,  
FEBRUARY 21, 1916.

- 30** Bambridge, G. F., 276 Washington St., Newark, N. J.  
 Baker, W. S., 258 Mulberry St., Newark, N. J.  
 Bellai, Eugene, 45 Congress St., Newark, N. J.  
 Betz, Josephine, 332 W. 17th St., New York.  
 Bergen, John J., 90 Jackson St., Newark, N. J.  
 Bond, E. E., 791 Broad St., Newark, N. J.  
 Butler, F. W., 245 High St., Newark, N. J.

- Brodski, Simon, 40 Belleview Ave., Newark, N. J.  
 Conditt, T. M., 41 N. 11th St., Newark, N. J.  
 Conklin, James J., Pelham Ave., Fordham, N. Y.  
 Chandler, D. D., 843 Broad St., Newark, N. J.  
 Clark, I. T., 813 Summer Avenue, Newark, N. J.  
 Oelkers, John B., 24 Mechanic St., Newark, N. J.  
 Littell, W. H., 290 Washington St., Newark, N. J.  
 Dobbins, C. H., 218 Parker St., Newark, N. J.  
 Douglas, F. A., 15 New St., Newark, N. J.  
 Epstein, Samuel, 195 Orange St., Newark, N. J. 10  
 Ersinger, C. S., 153 Walnut St., Newark, N. J.  
 Moore, W. E., 370 Central Ave., Newark, N. J.  
 Hills, G. A., 110 Roseville Ave., Newark, N. J.  
 Helbig, W. A., Roseville Hotel, 590 Orange St., Newark, N. J.  
 Montgomery, Thos. E., 189 Mechanic St., Newark, N. J.  
 Vreeland, Laura A., 506 Washington St., Newark, N. J.  
 Schmidt, H. W., 28 17th Ave., Newark, N. J. 20  
 Hedden, I. C., 5th Ave. and Canal Bridge, Newark, N. J.  
 Grub, F. P., 520 Springfield Ave., Newark, N. J.  
 Greenfield, H. L., 24 Hamilton St., Newark, N. J.  
 Fischer, Adolph, 123 S. 6th St., Newark, N. J.  
 Lever, John, 188 Washington Ave., Newark, N. J.  
 Higgins, S. K., 423 Fourth Ave., Newark, N. J.  
 Hancock, Abram, 49 Cherry St., Rahway, N. J.  
 Thielman, H. I., 69-71 Norfolk St., Newark, N. J.  
 Gaven, John W., 143 Bowery St., Newark, N. J. 80  
 Lee, John, 29 Schalk St., Newark, N. J.  
 Gaven, Theo. A., 17 Lentz Ave., Newark, N. J.  
 Lunge, F. M., 427 Washington St., Newark, N. J.  
 Parker, John H., 150 Monmouth St., Newark, N. J.  
 Geisel, M. E., South Orange Ave., South Orange, N. J.  
 Gruber, A., 621 High St., Newark, N. J.  
 Finger, L. N., 13 Centre Market, Newark, N. J.  
 Vreeland, James, 506 Washington St., Newark, N. J.

- Wolf, Geo. I., 183 S. Orange Ave., Newark, N. J.  
 Nothnagle, Chas., 126 Market St., Newark, N. J.  
 Lawrence, C. T., 35 Austin St., Newark, N. J.  
 Vossmyer, L. C., 121 Hamburg Pl., Newark, N. J.  
 Scherer, Jacob J., 523 S. Orange Ave., Newark, N. J.  
 Finger & Co., 109 Mulberry St., Newark, N. J.  
 Metzger, A. R., 164 Mulberry St., Newark, N. J.  
 Hunt, Mrs. C. T., 414 Broad St., Newark, N. J.  
 Keatley, John H., 947 Broad St., Newark, N. J.  
 10 Keller, Geo., Jr., 206 Belmont Ave., Newark, N. J.  
 Stectenfeld, Gustave, 82 Market St., Newark, N. J.  
 Wertheim, Abraham, Rutherford, N. J.  
 Moore, W. E., 370 Central Avenue, Newark, N. J.  
 Lane, William, 188 Washington St., Newark, N. J.  
 Otten, Joseph J., 205 Newark St., Newark, N. J.  
 Patterson, E. R., 472½ Broad St., Newark, N. J.  
 Wood, George, 93 Front St., Newark, N. J.  
 Gorden & Kraskow, Bank and Wickliffe Sts., Newark,  
 N. J.  
 20 Hulse, S. V., 810 Broad St., Newark, N. J.  
 Laible, Jacob, 64 S. Orange Ave., Newark, N. J.  
 Jackson Awning Co., 120 Market St., Newark, N. J.  
 Ruhe, Edward, 32 Avon Pl., Newark, N. J.

---

ORDER TO LIMIT CREDITORS.

(Filed March 8, 1916.)

IN CHANCERY OF NEW JERSEY.

Upon this matter being opened to the Court by Pitney, Hardin & Skinner, of counsel with the complainant in the above entitled cause;

- 30 It is on this seventh day of March, nineteen hundred and sixteen, ordered, that the creditors of Newark Telephone Company do present to George W. C.

McCarter, Esq., Receiver of said corporation on dissolution thereof, appointed by this Court, and prove before him under oath or affirmation, or otherwise, as he may direct, to the satisfaction of the said Receiver, the several claims and demands of said creditors against the said corporation within sixty days from the date of this order, or that they be excluded from the benefit of such dividends as may be hereafter made and declared by this Court or paid by said Receiver upon the proceeds of the effects of said corporation; and for the better ascertaining the creditors of the said corporation and what is due to them respectfully, the said creditors are to be examined as the said Receiver shall direct and may deem necessary or expedient, and produce books and papers before him, on oath or affirmation, which said oath or affirmation said Receiver is hereby authorized to administer, as well as to examine, under oath or affirmation, all such witnesses as shall be produced before him touching the demands of the said creditors. 10

It is further ordered that the said Receiver do cause proper advertisement to be published in the "Newark Evening News," a newspaper published in this State, for the creditors of said corporation to come in before said Receiver and prove their claims and demands as in this order directed, and that such publication be made within ten days from the date hereof and be continued in such paper, as aforesaid, for the space of four weeks, once at least in each week, making five insertions in all. 20

It is further ordered that the said Receiver also mail a notice of this order, with the postage prepaid to the post office address, if the same can be ascertained, of any creditor of said corporation, known to said Receiver, within ten days from the date hereof. 30

E. R. WALKER,

*Chancellor.*

Respectfully advised,

JOHN E. FOSTER,

*Vice Chancellor.*

5 TEL

PROOF OF PUBLICATION AND PROOF OF  
MAILING OF NOTICE OF ORDER TO  
LIMIT CREDITORS.

(Filed May 17, 1916.)

IN CHANCERY OF NEW JERSEY.

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

10 Erwin L. Rall, of full age, being duly sworn according to law, on his oath saith, that he is a clerk in the office of the "Newark Evening News" and that a notice, of which the annexed is a true copy, was published on the eighth day of March, A. D. 1916, in the said "Newark Evening News," a public newspaper, printed and published at Newark, in this State, and continued therein for four weeks successively there-  
20 thereof being on the fifth day of April, 1916, making five insertions in all.

ERWIN L. RALL.

Sworn and subscribed this fifth day of April, 1916,  
before me.

[SEAL.]

CHAS. F. DODD,  
Notary Public.

*To Creditors of the Newark Telephone Company:*

30 In pursuance of an order of the Court of Chancery of the State of New Jersey, made on the day of the date hereof, in a cause wherein Friendship Telephone Company is complainant, and Newark Telephone Company is defendant, notice is hereby given to the creditors of Newark Telephone Company to present to George W. C. McCarter, Esquire, Receiver of the company aforesaid, at his office, Room 526, of 765 Broad street, in the City of Newark, County of

Essex and State of New Jersey, their several claims and demands against the said company duly verified under oath or affirmation, within sixty days from the date hereof, or they will be excluded from the benefit of such dividends as may hereafter be made and declared by the said Court from the assets of the said Company.

Dated March 7th, 1916.

G. W. C. McCARTER,

*Receiver of the Newark Telephone Company.*

10

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

Bernhard J. Firner, being duly sworn according to law, on his oath says: I am a clerk in the office of George W. C. McCarter, Esquire, the Receiver of Newark Telephone Company. On the seventh day of March, 1916, I deposited in a United States mail chute in the Prudential Building in the City of Newark, notices, a true copy of which is hereunto annexed, in envelopes duly sealed and with postage prepaid thereon, and addressed to each of the creditors appearing and at the addresses given on the list hereunto annexed, which list is referred to in the affidavit of James L. Hamar, verified March 1st, 1916, which affidavit is hereunto annexed.

20

BERNHARD J. FIRNER.

Sworn and subscribed to before me this ninth day of March, 1916.

DANIEL B. SMITH,

[SEAL.]

*Notary Public for New Jersey.*

30

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, }*ss.*

James L. Hamar, being duly sworn according to law, upon his oath says, that he is auditor of Friendship Telephone Company, the complainant in the above

entitled cause, that he has full access to the books and records of the defendant corporation, Newark Telephone Company, for the purpose of inspecting and auditing the same; that the list hereto attached comprises the names and last known post office addresses of all the creditors of the Newark Telephone Company so far as deponent has been able to ascertain the same after due inquiry therefor; that deponent is acting as agent for the Receiver herein for the purpose of making the foregoing affidavit.

JAMES L. HAMAR.

Subscribed and sworn to before me, a notary public in and for the County of New York and State of New York, as witness my hand and notarial seal at New York, in the County and State aforesaid, this first day of March, 1916.

[SEAL.]

WM. J. FARQUHAR,

*Notary Public in and for the County and State aforesaid.*

20

*Notary Public, County of Nassau. Certificate filed in New York County. No. 35.*

*Mortgagee.*

Guaranty Trust Company, Trustee (successor to the State Trust Company), 140 Broadway, New York, N. Y.

30

*Bondholder.*

Friendship Telephone Company, 15 Dey street, New York, N. Y.

*Judgment Creditor.*

American Independent Telephone Company, care of James B. Curtis, Esq., 115 Broadway, New York, N. Y.

*Creditors.*

Friendship Telephone Company, 15 Dey street, New York, N. Y.

American Independent Telephone Company, care of James B. Curtis, Esq., 115 Broadway, New York, N. Y.

New York Telephone Company, 15 Dey street, New York, N. Y.

Public Service Electric Company, Broad and Bank streets, Newark, N. J. 10

Public Service Gas Company, Broad and Bank streets, Newark, N. J.

M. Plum, 19 Clinton street, Newark, N. J.

*To the Creditors of the Newark Telephone Company:*

In pursuance of an order of the Court of Chancery of the State of New Jersey, made on the day of the date hereof, in a cause wherein Friendship Telephone Company is complainant, and Newark Telephone Company is defendant, notice is hereby given to the creditors of Newark Telephone Company to present to George W. C. McCarter, Esquire, Receiver of the company aforesaid, at his office, Room 526, of 765 Broad street, in the City of Newark, County of Essex and State of New Jersey, their several claims and demands against the said company duly verified under oath or affirmation, within sixty days from the date hereof, or they will be excluded from the benefit of such dividends as may hereafter be made and declared by the said Court from the assets of the said Company. 20 30

Dated March 7th, 1916.

G. W. C. McCARTER,

*Receiver of the Newark Telephone Company.*

## ORDER BARRING CREDITORS.

(Filed May 17, 1916.)

## IN CHANCERY OF NEW JERSEY.

It appearing by an order of this Court made on the seventh day of March, nineteen hundred and sixteen, that the creditors of Newark Telephone Company were ordered and directed to present to the Receiver here-  
10 tofore appointed in this cause, and to prove before him, under oath or affirmation, or otherwise, as the said Receiver should direct, their several claims and demands against the said corporation within sixty days from the date of said order, or be excluded from the benefit of such dividends as might be thereafter made and declared by this Court, or paid by said Receiver upon the proceeds of the effects of said corporation, and that the said Receiver should cause proper  
20 advertisement to be published in the "Newark Evening News," a newspaper published in this State, directing the creditors of said corporation to come in before said Receiver and prove their claims and demands as in said order directed, and that such publication be made within ten days from the date of said order and be continued in such newspaper as aforesaid for the space of four weeks, once at least in each week, making five insertions in all, and that said Receiver should also within ten days from the date of  
30 said order mail a notice of said order to all the creditors known to said Receiver at their last known post office addresses, respectively, if the same could be ascertained, all of which will more fully appear by reference to said order; and it further appearing that the time limited in and by said order for said creditors of said defendant corporation to present their said claims to said Receiver has expired, and that the said notice has been published and mailed to each of the

creditors of said company as directed in and by said order;

It is thereupon on this sixteenth day of May, nineteen hundred and sixteen, on motion of Pitney, Hardin & Skinner, solicitors for the complainant, ordered that all creditors of said defendant company who have not brought in their claims to the said Receiver be and they hereby are barred and excluded from the benefit of any dividend that may hereafter be made and declared by this Court from the proceeds of sale of the property and effects of said Newark Telephone Company. 10

E. R. WALKER,  
*Chancellor.*

Respectfully advised,  
J. E. HOWELL,  
*Vice Chancellor.*

---

PETITION.

20

(Filed June 4, 1917.)

IN CHANCERY OF NEW JERSEY.

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

The petition of George W. C. McCarter respectfully shows unto your Honor,

1. Your petitioner is the duly appointed qualified and acting Receiver in dissolution of Newark Telephone Company, a corporation of New Jersey, whose corporate existence has expired. 30

2. The physical assets of Newark Telephone Company which have come into your petitioner's hands consists of conduits, exchange poles, central office equipment, exchange pole lines, exchange underground cable, office furniture and fixtures, general tools and implements, and materials and supplies with which

the Newark Telephone Company heretofore conducted a telephone business in the City of Newark, New Jersey, under a franchise granted by an ordinance of the Board of Street and Water Commissioners of the City of Newark. For a more particular statement of the physical property formerly belonging to Newark Telephone Company which has come into your petitioner's hands, your petitioner begs leave to refer to the inventory and appraisal now on file in the office of the Clerk of Chancery with the papers in this cause.

10 3. The said physical property has been appraised by two competent and impartial appraisers at the total value of \$66,343. The details of the appraisal appear in and by the inventory and appraisal referred to in paragraph 2 hereinabove.

4. Your petitioner has received from the New York Telephone Company, a corporation, the following offer:

20 "The New York Telephone Company hereby offers to purchase from you as Receiver of the Newark Telephone Company all the physical property and plant, including conduits, wires, cables, apparatus and equipment, of the Newark Telephone Company, but not including the franchise, or in any way subject to the franchise, granted to said company by the City of Newark, and free from any mortgage or other lien, for the sum of \$75,000.00, in cash, payable on the delivery of a proper conveyance.

30 "This offer is made subject to its confirmation by the Court of Chancery, after notice to all parties in interest, including the City of Newark."

5. The only lien upon the said physical property is that created in and by a mortgage by the Newark Telephone Company to State Trust Company, as trustee, dated July 1st, 1896. Guaranty Trust Company is now the successor trustee of the State Trust Company under the aforesaid mortgage. Guaranty Trust

Company has written to your petitioner that it is willing to execute a release of the physical plant and property covered by the said mortgage upon the following conditions:

a. That all of the bonds and coupons, except 438, alleged to be missing, be presented to Guaranty Trust Company to be stamped with a proper statement showing that the holders of the bonds and coupons have consented to the release of the property in question.

b. Proper evidence that the Newark Telephone Company has been dissolved or its existence legally terminated. **10**

c. Request of the Receiver of the Newark Telephone Company, supported by a proper order of the Court, asking that the Guaranty Trust Company execute the release in question.

d. With respect to the 438 coupons, that the Friendship Telephone Company execute an indemnity bond to Guaranty Trust Company, agreeing to hold it harmless from all liability and damage, costs and expenses, which might be suffered or incurred by the Trust Company by reason of the execution of such release. **20**

6. Friendship Telephone Company, a corporation, is the owner and holder of all of the outstanding bonds of the Newark Telephone Company secured by the said mortgage and of all unpaid coupons thereto appertaining, except not to exceed 438 coupons. Friendship Telephone Company, to the end that the offer of New York Telephone Company may be accepted, either has presented, or will shortly present, to Guaranty Trust Company all of the bonds and coupons, except the 438 missing coupons, to be stamped in accordance with condition a. hereinabove. Friendship Telephone Company has executed and delivered an indemnity bond to Guaranty Trust Company in compliance with condition d. *supra*. Your petitioner has requested Guaranty Trust Company to execute the release in question. **30**

6 TEL

7. Your petitioner has cash on hand amounting to approximately \$839.78, having collected all of the moneys due Newark Telephone Company, except a few small accounts of problematical value.

8. Attached hereto, marked Exhibit A, and made a part hereof, is a copy of the ordinance of the Board of Street and Water Commissioners of the City of Newark granting the franchise to the Newark Telephone Company under which it did business.

10 9. No other assets of any other nature or description of Newark Telephone Company have come into your petitioner's hands as Receiver, and your petitioner charges that no other assets exist.

10. Creditors of Newark Telephone Company have filed claims with your petitioner which have been allowed by him, amounting in all to the sum of ~~\$26,000.00~~ ~~995.61~~. An order barring creditors has heretofore been made in this cause.

11. Your petitioner believes it to be for the best interest of the estate of the Newark Telephone Company in his hands as Receiver as aforesaid, that the offer aforesaid of New York Telephone Company be accepted. He believes that if the said physical property should be sold piecemeal that it would bring not more than the total appraised value of \$66,343. He believes that it will be impossible to find another buyer for the property as a whole, or any buyer for the property as a whole together with the franchise, because of certain conditions in the ordinance, Exhibit A, which are unfavorable to the holder of the said franchise. New York Telephone Company already has another franchise, or franchises, under which it can operate in the City of Newark, and can, therefore, purchase and use the said physical property without also purchasing the franchise formerly held by Newark Telephone Company. Friendship Telephone Company will not consent to the cancellation of the mortgage aforesaid unless the offer of New York Tele-

phone Company be accepted, so that any other purchaser would have to purchase subject to the mortgage.

Wherefore, your petitioner prays that notice of this application may be given to the Mayor and Common Council of the City of Newark and to all stockholders and creditors of Newark Telephone Company, and that your petitioner may be ordered to accept the said offer of New York Telephone Company and may have such other relief in the premises as to your Honor may seem just. 10

And your petitioner will ever pray, &c.

G. W. C. McCARTER,

McCARTER & ENGLISH,

*Petitioner.*

*Solicitors of Petitioner.*

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

George W. C. McCarter, being duly sworn according to law, on his oath deposes and says: I am the petitioner in the foregoing petition named. I have read the same, and the matters and things therein contained are true to the best of my knowledge and as I verily believe. 20

Sworn and subscribed before me this first day of June, 1917.

DANIEL B. SMITH,

*Notary Public for New Jersey.*

30

EXHIBIT A.

An ordinance granting permission to the Newark Telephone Company, a corporation organized under the Laws of the State of New Jersey, its successors and assigns, to lay and maintain underground conduits, cables, wires and manholes for electrical conductors in certain streets and avenues in the City of

Newark, to be used for telephone purposes and the other uses and purposes of its business.

Be it ordained by the Board of Street and Water Commissioners of the City of Newark, as follows:

Sec. 1: That the Newark Telephone Company, its successors and assigns, be and it is hereby authorized and empowered to construct and maintain, for the uses and purposes of its business, a system of subways or underground conduits, including the necessary man-  
**10** holes and street openings, beneath the surface of the streets and avenues of the City of Newark herein-after named, and to place and maintain and operate therein wires, cables or other electrical conductors necessary for such purposes.

Sec. 2: That the aforesaid subways or underground conduits included within this ordinance shall extend through Ferry street, from the Passaic river to Market street; through Market street, from Ferry street to Springfield avenue; through Springfield ave-  
**20** nue, from Market street to the Clinton township line, with branches therefrom through Bowery street; from Ferry street to Market street; through New Jersey Railroad avenue, from Broad street to the Passaic river; through East Fair street, Oak alley and Oak street, from New Jersey Railroad avenue to Mulberry street; through Front street, from Centre street to Bridge street; through Ogden street, from Bridge street to Third avenue; through Carlisle place, from Ogden street to Passaic street; through Passaic street,  
**30** from Carlisle place to Third avenue; through South Canal street, from Market street to Railroad place; through River street, from Railroad place to Mulberry street; through Niagara street, from Ferry street to Amsterdam street; through Ann street, from Hamburg place to Elm road; through Merchant street, from Ferry street to Elm street; through Elm street, from Lang street to Mulberry street; through Van Buren street and South street, to Ferry street; through Adams

street, from South street to Ferry street; through Jefferson street, from South street to Market street; through Pacific street, from Thomas street to Elm street; through Ferry street, from the intersection with Market street at Mott street to its intersection with Market street at New Jersey Railroad avenue; through Hasley street, from Lincoln Park to Washington place; through Lincoln Park, from Clinton avenue to Spruce street; through Washington street, from Spruce street to Market street; through High street, from **10** Clinton avenue to Bloomfield avenue; through Belmont avenue, from Madison avenue to Springfield avenue; through Lincoln Park, from Broad street to Pennsylvania avenue; through Pennsylvania avenue, from Lincoln Park to Brunswick street; through Brunswick street, from Pennsylvania avenue to Miller street; through Miller street, from Brunswick street to Elizabeth avenue; through Elizabeth avenue, from Miller street to Bigelow street; through Bigelow street, from Elizabeth avenue to the Clinton township **20** line; through Hillside avenue, from Peddie street to Clinton avenue; across Clinton avenue and through Charlton street, from Clinton avenue to Avon avenue; through Avon avenue, from Charlton street to Belmont avenue; and through Broad street, from New Jersey Railroad avenue to Belleville avenue; through Clay street, from Broad street to Mount Pleasant avenue; through Mount Pleasant avenue, from Clay street to Harvey street; with branches through South Orange avenue, from Springfield avenue to the South **30** Orange township line; through Thirteenth avenue, from Springfield avenue to South Twelfth street; through Market street, from Springfield avenue to High street; through Brientnall place, from High street to Bank street; through Bank street, from Brientnall place to Wallace place; through Wallace place, from Bank street to Warren street; through Warren street, from Wallace place to Orange street;

across Orange street and through the old road to Orange to the East Orange township line; through Central avenue, from Halsey street to the East Orange township line; through Morris and Essex Railroad avenue, from Broad street to Clifton avenue; through Clifton avenue, from Morris and Essex Railroad avenue to Sussex avenue, from Clifton avenue to Warren street; through Belleville avenue, from Broad street to Washington avenue; through Washington avenue, 10 from Belleville avenue to the Belleville township line; through Bloomfield avenue, from Belleville avenue to the Belleville township line; through East Kinney street, from New Jersey Railroad avenue to Broad street; through West Kinney street, from Broad street to Morris avenue; through Morris avenue, from West Kinney street to Springfield avenue; through Arlington avenue, from Belleville avenue to Woodside avenue; through Woodside avenue, from Arlington avenue to Verona avenue; through Astor street, from 20 Clinton avenue to Sherman avenue; through Frelinghuysen avenue, from Sherman avenue to Peddie street; through Parkhurst street, from Clinton avenue to Broad street; through Pennsylvania avenue, from Thomas street to Poinier street; through Poinier street, from Broad street to Sherman avenue; through Sherman avenue, from Poinier street to Peddie street; through Hill street, from Broad street to Washington street; through Court street, from Washington street to Springfield avenue; through South Canal street, from New Jersey 30 Railroad avenue to Broad street; through Bank street, from Broad street to Brientnall place; through Cottage street, from Mulberry street, to New Jersey Railroad avenue. Provided, however, that in case any of the above-mentioned streets through which conduits are to be laid under this ordinance, or any part of such streets, shall not be opened or lawful public streets or highways, the said company shall obtain the consent, in writing, of the property owners along such

street, or part thereof, before proceeding to lay their conduits therein, and nothing herein contained shall be construed to imply any obligation on the part of the City of Newark to open any of the said streets, or parts thereof, not heretofore opened and lawful public streets or highways; and provided further, that the city shall not incur any obligation toward property owners along such streets, or parts thereof, not heretofore opened as aforesaid, in respect to the use thereof by the said company; and provided further, that when the Board of Street and Water Commissioners of the City of Newark shall determine to pave or repave any street, or part thereof, through which permission is hereby granted to said company to lay the said conduits, the said company, if it has not at that time already laid its conduits in such street, or part thereof, shall proceed to do so within ten days after service upon it, or any of its officers, agents or employees, of a notice, in writing, by the General Superintendent of Works, so to do, and in case the said company shall fail to comply with the terms of said notice, the right to lay its conduits through such street, or part thereof, shall cease and be forfeited at the option of the Board of Street and Water Commissioners of the City of Newark.

Sec. 3: That the said subways or underground conduits shall be made of creosoted wood or other material, to be approved by the Board of Street and Water Commissioners, and shall be laid out not less than eighteen inches beneath the surface of the street, and not less than one foot outside of the curb line, and not less than two feet from any and all water mains laid or to be laid in any of the above-mentioned streets or highways, or any part thereof, except when it shall be necessary to cross over or under the same, of which necessity the General Superintendent of Works shall be the judge, his judgment to be expressed in writing, and signed by him; the said distance of

two feet to be measured laterally from said water main, and in no case shall such subway be laid over or under any such water main, except when necessary to cross the same; and the said subways shall not occupy a space to exceed three feet in width and six feet in depth, unless a greater depth be necessary to overcome obstructions, of which necessity the General Superintendent of Works of this board shall be the judge. The manholes shall be located beneath

**10** the surface of the street at such points along the line of the subways or underground conduits as may be necessary or convenient for placing and operating the electrical conductors which the said company may from time to time place in said subways or underground conduits, and shall be so constructed as not to interfere with the passage of the public over and along said streets, and, so far as practicable, shall not be located within the lines of the intersection of any streets or highways, and in no case without a written permit from this board

**20** or the General Superintendent, fixing the exact location of each manhole, which permit, to be effective, must first be countersigned by the Mayor of the City of Newark. The said company shall restore any street or avenue which may be disturbed by it in the construction or maintenance of said subways or conduits and manhole to the condition in which it was at the commencement of the work thereon, free from any cost or expense whatever to the City of Newark, and not more than five hundred feet in any one street shall

**30** be open at any one time. The electrical conductors and conduits therefor shall be so placed so not to do any injury to any shade trees or the property of any person or persons or to any public or private sewer, water or gas pipes, or the wires and conduits of the police, fire, or any other departments of the city, or any other company. At least forty-eight hours before opening any street, avenue, alley or public place, the said company shall notify, in writing, the Mayor of

the City of Newark, and the President of the Board of Street and Water Commissioners, or in the absence of said President, then the Chairman of the Committee on Streets and Highways of said board, of the desire of said company so to open such street, avenue, alley or public place, stating the place and purpose of each proposed opening, and no such street, avenue, alley or public place shall be opened by said company without a written permit for that purpose from the General Superintendent of said board, countersigned by the Mayor, stating with precision what part of any such street, avenue, alley or public place is to be opened under such permit, which permit shall remain in possession of the person in charge of such work and be by him exhibited upon demand to any officer or employee of this board, or of the police or engineer's department of the City of Newark; and the said company and its servants and employees, in the laying of any wires or conduits, in excavating and replacing the earth in any street, and of the pavement thereon, shall be under the supervision of the Board of Street and Water Commissioners or its duly authorized officials, and shall promptly comply with any order of said board or its duly authorized servants in reference thereto. The earth removed in making any excavation shall be restored, and puddled or rammed to the satisfaction and under the direction of the General Superintendent of Works, and the pavement taken up to be relaid by the said company in a thorough and workmanlike manner, and in such manner as to prevent any future sinking of the pavement, and in as good condition as before the making of such excavation or taking up such pavement, and thereafter be maintained in as good condition as the surrounding pavement until such street, avenue or highway shall be repaved by the city, and in such case the said company shall pay to the City of Newark its proportionate part of the cost of such repaving and of keeping that

10

20

30

portion of such repaving covering its subways in repair thereafter. In case the said company fail or neglect to restore the earth removed in making any excavation, or to relay the pavement taken up, in manner aforesaid, before the expiration of twenty-four hours after notice in writing to proceed with the work of laying a conduit of said company in such manner and with such speed that the laying thereof shall not in any wise interfere with the paving or repaving of such street,  
10 or any part thereof shall have been served by the General Superintendent of Works upon the said company, or its officers, agents, servants or employees in charge of such work, then such work shall be done by the said General Superintendent of Works at the expense of said company, the cost thereof to be paid forthwith by the said company upon presentation to it of the bills therefor, certified as correct by the President of the board.

20 The cost of restoring the earth or otherwise, and the cost of laying and maintaining the pavement and repairs thereto caused by the opening of any such street or avenue, and the cost of repaving the same as aforesaid, shall be paid by the said company, and the said company shall likewise pay the cost of an inspector or inspectors to be appointed by the Board of Street and Water Commissioners of the City of Newark to supervise all of said work. The expense of such supervision and the cost of such inspector or inspectors shall be paid by the said company on the presentation of bills therefor, certified by the President of the  
30 said board, and any and all expense to which the Board of Street and Water Commissioners of the City of Newark shall be put by the neglect of the said company, or its employees, in the doing of any work or in the digging of the same in an unworkmanlike manner, or the digging of ditches or holes, or the restoring of the earth, or of any excavations or of repaving, or of relaying or replacing any pavement, shall in like man-

ner be paid by the said company. In case the work, or any part thereof, shall not be done to the satisfaction of the Board of Street and Water Commissioners, or the General Superintendent of Works, the said board may, without waiving any of its other rights hereunder, cause the said work to be performed or materials to be supplied to its satisfaction, and the said company agrees on presentation of bills therefor, certified by the President of the board, to at once pay the expenses connected therewith, including the cost of 10 both inspection and labor and materials.

Sec. 4: That before opening any street, avenue, alley or public place under this ordinance, the said company shall file with the City Surveyor a map or plan showing the exact location of the said subways or conduits in such places, which said location shall not become operative until it has been approved by the Engineer of the Street Department of the said City of Newark and General Superintendent of Works, which approval shall be in writing, endorsed on said 20 map or plan. No electrical conductor, pole or fixture, shall be placed by said company, its successors or assigns, above the streets and avenues hereinbefore named, without the written consent of the abutting property owners, and a permit in writing signed by the General Superintendent of Works, countersigned by the Mayor, which permit shall state the nature of such conductor, pole or fixture, and fix with precision the place and manner in which such conductor, pole or fixture shall be placed. 30

Any or all conductors, poles and fixtures so placed, shall at any time be removed by said company, at its own expense, upon service upon it or any of its officers, agents or employees, of a copy, certified by the Clerk, of a motion adopted for that purpose by the Board of Street and Water Commissioners. In case said company shall fail or neglect to remove such conductor, pole or fixture, within thirty days after serv-

ice of such motion in the manner aforesaid, the work shall be done by the General Superintendent of Works, and the cost thereof shall be paid by said company forthwith upon presentation to it of the bills therefor, certified as correct by the President of said board.

Sec. 5: That said company shall indemnify the Mayor and Common Council of the City of Newark against and assure all liability and damage which may at any time arise from or occur to the City of Newark

**10** from any injury to persons or property from the doing of any work herein mentioned, or the neglect of the company or its employees to comply with the provisions of any ordinance of the City of Newark or of this board relative to the use of streets or other public places, especially as to the putting of lights or barriers at or around excavations, and from any effect the construction or maintenance of the subways or underground conduits to be constructed or maintained

**20** under this ordinance may have to release any contractor or contractors for the paving or repaving of any of the above-mentioned streets from his or their obligation to guarantee the same for any specified term of years, or to maintain the same in proper condition for any term and in any manner provided in such contract, and the acceptance by the company of this ordinance shall be an agreement by it to pay to the Mayor and Common Council of the City of Newark any sum of money for which the city may become liable from

**30** or by reason of such injury and damage, or the effect of the operations of said company under this ordinance, upon any such contract or obligation as aforesaid.

Sec. 6: That the said The Newark Telephone Company shall provide, without cost or expense to the City of Newark, sufficient space in said subways or underground conduits to accommodate the telegraph or telephone wires or conductors operated from time to time by the police, fire and other departments of the

City of Newark, and will furnish telephones whenever required to the number of fifty, also without cost or expense whatever to the City of Newark, connected with the wires to be laid under the above-mentioned streets, and service thereon to all departments of the city government.

Sec. 7: That the said Company shall not charge for the use of their telephones by other persons, firms or corporations for calls within the City of Newark more than thirty-six dollars a year, or three dollars a 10 month, for telephones in private residences, and not more than forty-eight dollars a year, or four dollars a month, for telephones in factories or business houses. The said company shall have installed and in use in the City of Newark within one year from the date of the passage of this ordinance at least seven hundred telephones, and within two years from the date aforesaid at least fourteen hundred telephones, and within three years from the date aforesaid, at 20 least twenty-one hundred telephones. If such tele- phones are not installed and maintained in use as aforesaid, then and in that case this ordinance shall be void at the option of the Board of Street and Water Commissioners expressed by resolution passed for that purpose by the said board, either at the time of such failure or at any time thereafter.

Sec. 8: That nothing in this ordinance contained shall be construed to grant unto the said Newark Telephone Company an exclusive right, or to prevent the 30 grant of similar privileges to other individuals or companies for like purposes on the streets and highways herein named, or to prevent the City of Newark from compelling the said company to remove its conduits and subways and to place its wires and conductors and cables in such subways, if any, as may hereafter be laid and established by the said City of Newark, and in such case the said company shall upon demand pay the cost and expense of the removal of such subways

and conduits and the restoration of such streets to their condition at the time of removal of the conduits and subways by the said company as aforesaid.

Sec. 9: That the said company be and is hereby required, when they shall have commenced the work of construction of said subways and underground conduits, to proceed diligently and continuously to the completion of such subways and underground conduits, and in case such work shall be suspended, the  
10 subways theretofore constructed, or in case any of the said subways or conduits, or parts thereof, shall be abandoned and shall not be used for telephone purposes by the said Newark Telephone Company or its successors for three months, then and in that case the subways, or parts thereof, so constructed or abandoned shall, without any action on the part of the Board of Street and Water Commissioners, or of the Mayor and Common Council of the City of Newark, become the property of and shall pass to and under the  
20 complete control of the Board of Street and Water Commissioners on behalf of the said City of Newark.

Sec. 10: In consideration hereof the said Newark Telephone Company agrees to pay to the City of Newark, in addition to such taxes as may be assessed upon its personal and real estate, a sum equal to two per cent. of its gross receipts, such payments to be made semi-annually on the first days of February and August, and as of the first days of January and July of each year, to the Comptroller of the City of Newark.  
30 ark. At the time of making each of such payments the said company shall file with the said Comptroller a statement of the gross receipts of said company for the period for which such payment is made, such statement to be sworn to by the President or Treasurer or other financial officer of said company. In case the accuracy of any such statement is challenged by the Mayor or Comptroller, or the Finance Committee of the Common Council of the City of Newark,

the said company shall permit a full and careful examination of all of its papers, vouchers and books of accounts bearing thereon to be made by the said Comptroller, Mayor or Finance Committee, or their agents appointed or designated for that purpose.

Sec. 11: That the company shall pay upon demand to the Board of Street and Water Commissioners the amount of the cost and expense of the city of all official publications of this ordinance.

Sec. 12: In case the privileges and franchises hereby granted shall be hereafter assigned or transferred by the said Newark Telephone Company to any other person, persons or corporations, the privileges and franchises so assigned or transferred shall be held and enjoyed by such assignee or transferee subject to all the conditions, restrictions, limitations and payments hereinbefore referred to or hereinafter referred to; and in case such assignee or transferee shall at the time of such assignment or transfer enjoy or be vested with any similar privileges and franchises granted under any other ordinance of the City of Newark, or of this board heretofore passed, or hereafter to be passed, all such privileges and franchises at that time belonging to such assignee or transferee shall, after such assignment of transfer, be held and enjoyed subject to all the conditions, restrictions, limitations and payments aforesaid. 10 20

Sec. 13: The conduits to be laid under this ordinance shall, within the limits of space in the third section of this ordinance specified, be of sufficient size and so constructed that other telephone or telegraph companies which may hereafter obtain from this board location of routes and rights and privileges similar as to those conferred by this ordinance shall be able to use the same upon such terms and for such compensation as shall be agreed upon by said company, and upon failure to so agree, the terms and compensation shall be determined by the Board of Street and Water 30

Commissioners, and in case such power cannot be legally exercised by the Board of Street and Water Commissioners, then such terms and compensation shall be fixed by the Court of Chancery, to which Court, by the acceptance of this ordinance, the Newark Telephone agrees it shall be so referred and by it determined.

Sec. 14: That if at any time the continuance of the rights or privileges and location of routes herein-  
**10** before granted the said City of Newark, by its law-  
fully authorized agents, shall determine to lay under-  
ground or alter or repair in the streets above named,  
or any of them, or any part thereof, any water pipe,  
sewer, underground conduits, or pipes, subways, ap-  
pliances or structures of any description, which shall or  
may be interfered with or obstructed by the wires  
and conduits of the said Newark Telephone Company,  
the said company shall and will, from time to time, as  
required, at its own expense, upon request and under  
**20** the direction and supervision of the General Superin-  
tendent of Works of this board, remove, alter or ad-  
just its said wires and conduits in such way as not to  
interfere with the work as aforesaid determined upon  
by the said city, and in case the said company shall  
fail to comply with the provisions of this section, the  
Board of Street and Water Commissioners of the City  
of Newark shall have power to cause such removal,  
alteration or adjustment of the said wires and con-  
duits of the said company to be laid, and the said  
**30** Newark Telephone Company shall forthwith, upon  
presentation of the bills for such removal, alteration  
or adjustment, certified as correct by the President of  
said board, pay the amount thereof to the Comptroller  
of the said City of Newark.

Sec. 15: The telephones to be furnished to the departments of the city government and to private subscribers shall be a battery telephone upon direct special metallic circuits, provided with the best and

most modern appliances, and as improvements are introduced in the receiver, transmitter or other appliances of the telephone, such improved instruments shall be substituted for the instruments theretofore installed by the said telephone company.

Sec. 16: The rights and privileges and locations of routes hereby granted shall cease and be determined at the expiration of fifty years from passage of this ordinance, unless at or before that time the Board of Street and Water Commissioners, or other board or body then having charge and control of the public streets and highways of said City of Newark, shall renew the same; and except in case of such renewal, all of the subways, cables, wires, conduits and other property or appliances of said telephone company then within the streets or public places of the City of Newark shall become the property of the City of Newark, and the title thereto shall pass to and vest in the Mayor and Common Council of the City of Newark without any action on its part and without any compensation to the said telephone company or to its successors, assignees or mortgagees, and free and clear of all charges, liens and encumbrances whatsoever. **10**  
**20**

Sec. 17: In case any action at law or in equity shall be brought against the said telephone company, its successors or assignees, on account of the use of any telephone or parts thereof, covered or claimed to be covered by letters patent of the United States, said company, its successors or assigns, shall offer and tender any bond or security which may be required by the order or decree of any such Court in order that said company may be allowed to continue the use of such telephone pending such litigation, and said company shall protect and save harmless the Mayor and Common Council of the City of Newark, its boards and officers, from all actions at law or in equity growing out or in any way connected with the use of telephone instruments or appliances furnished or installed **30**

by the said telephone company, its successors or assigns.

Sec. 18: That said company shall file with the Clerk of the Board of Street and Water Commissioners in acceptance of this ordinance within twenty days of the date on which it shall take effect.

10 Sec. 19: At the time of filing the acceptance of the provisions of this ordinance by the Newark Telephone Company as hereinbefore provided, the said company shall also enter into and file with the Board of Street and Water Commissioners of the City of Newark a bond to said city in the penal sum of twenty-five thousand dollars, to be approved as to form by the City Counsel, with sufficient surety or sureties to be approved by this board, conditioned for the faithful performance of each and every provision contained in this ordinance.

Sec. 20: That this ordinance shall take effect immediately.

20 Passed December 5, 1895.

HARRISON VAN DUYNÉ,

*President of the Board of Street and Water Commissioners.*

A. M. LINNETT,

*Clerk of the Board of Street and Water Commissioners.*

The foregoing ordinance having been duly passed by the Board of Street and Water Commissioners, 30 presented to the Mayor, and not having been returned by him within the time prescribed by law, is therefore a law and will take effect as if it had been approved according to the provision of the thirteenth section of the Charter of the City.

A. M. LINNETT,

*Clerk of the Board of Street and Water Commissioners.*

## ORDER TO SHOW CAUSE.

(Filed June 4, 1917.)

## IN CHANCERY OF NEW JERSEY.

Upon reading and filing the duly verified petition of George W. C. McCarter, Receiver in dissolution of Newark Telephone Company, a corporation, the defendant above named, praying leave to accept the offer of the New York Telephone Company, a corporation, to purchase all the physical property and plant of the said Newark Telephone Company, but not including the franchises, or in any way subject to the franchises granted to the said Newark Telephone Company by the Mayor and Common Council of the City of Newark, free from any mortgage or other lien, for \$75,000 cash, 10

It is on this fourth day of June, 1917, on motion of Messrs. McCarter & English, solicitors of the petitioner, ordered that the Mayor and Common Council of the City of Newark, the creditors and stockholders of the said Newark Telephone Company, do show cause before the Chancellor, at the Chancery Chambers in the City of Newark, on Tuesday, the 12th day of June, 1917, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the prayer of the said petition should not be granted, and the petitioner be ordered to accept the offer aforesaid of New York Telephone Company. 20

And it is further ordered that a true copy of this order, and of the petition upon which it is based, which copies may be uncertified, be served upon the Mayor and Common Council of the City of Newark within three days from the date hereof, and that within the same time true, but uncertified, copies of this order be mailed to each of the stockholders of Newark Telephone Company, and each of its creditors who have 30

filed proofs of claim with the Receiver, to the last known address of each stockholder and creditor, with postage prepaid thereon.

Respectfully advised,

MERRITT LANE,  
*Vice Chancellor.*

E. R. WALKER,  
*Chancellor.*

10

ACKNOWLEDGEMENT OF SERVICE.

(Filed June 12, 1917.)

IN CHANCERY OF NEW JERSEY.

Service is hereby acknowledged for and on behalf of the Mayor and Common Council of the City of Newark, of a copy of the petition of the Receiver in  
 20 the above entitled cause, filed June 4th, 1917, and of the order to show cause made thereon, returnable June 12th, 1917.

Dated June 4th, 1917.

SPAULDING FRAZER,  
*City Counsel.*

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

30 Harry Buntin, being duly sworn, on his oath deposes and says: I am a clerk in the office of George W. C. McCarter, Esquire, Receiver of the defendant above named. On Thursday, the seventh day of June, 1917, I deposited in the United States mail chute in the Prudential Building, in the City of Newark, true copies of the order to show cause made in this cause on June 4th, 1917, which copies were printed upon duly stamped postal cards, a true copy of which order, printed upon one of the postal cards mailed, is hereunto annexed. The said postal cards were addressed

to each of the persons named at the addresses given in the list hereunto annexed.

HARRY BUNTIN.

Sworn to and subscribed before me this seventh day of June, 1917.

[SEAL.] DANIEL B. SMITH,  
*Notary Public for New Jersey.*

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

10

George W. C. McCarter, being duly sworn according to law, on his oath deposes and says: I am the Receiver of the defendant company above named. On the seventh day of June, 1917, I deposited in the mail chute in the Prudential Building in the City of Newark, a true copy of the order to show cause made herein on June 4th, 1917, upon postal cards duly stamped and addressed to Friendship Telephone Company, 15 Dey street, New York City; New York Telephone Com- 20  
pany, 15 Dey street, New York City, and American Independent Telephone Company, 15 Dey street, New York City, the said three companies being all of the creditors of Newark Telephone Company who have filed their claims with me.

The list of names and addresses hereunto annexed and referred to in the affidavit of Harry Buntin hereunto annexed is a true list of the names and addresses of the stockholders of Newark Telephone Company as far as they are known to me. 30

G. W. C. McCARTER.

Sworn to and subscribed before me this seventh day of June, 1917.

[SEAL.] DANIEL B. SMITH,  
*Notary Public for New Jersey.*

- Atwater, F. C., P. O. Box 168, Manchester, Iowa.
- Atwater, Fred C., Jr., P. O. Box 168, Manchester, Iowa.
- Atwater, Elizabeth C., P. O. Box 168, Manchester, Iowa.
- Amberg, Jos. O., 262 Morris Ave., Newark, N. J.
- Almond, David, 193 Littleton Ave., Newark, N. J.
- Adams, John L., 415 Clinton Ave., Newark, N. J.
- Appel, S., 84 Belleville Ave., Newark, N. J.
- 10 Adams, Russell V., 760 Broad St., Newark, N. J.
- Boice, R. C., 10 Lafayette St., Newark, N. J.
- Baker, Robert, 393 Summer Ave., Newark, N. J.
- Buchanan, Paul, 380 Bergen St., Newark, N. J.
- Barry, James, Newark, N. J.
- Bowers, James, 143 Bleecker St., Newark, N. J.
- Bradshaw, James, 69 N. J. R. R. Ave., Newark, N. J.
- Boice Co., R. C., 143 Lafayette St., Newark, N. J.
- Burkhardt, A. H., 246 Ferry St., Newark, N. J.
- Blue, Miss L. W., 24 Marshall St., Newark, N. J.
- 20 Brierly, Joshua, Deceased, 374 Broad St., Newark, N. J.
- Brockie, John, 8 Railroad Pl., Newark, N. J.
- Bradley, James, Market and Plane Sts., Newark, N. J.
- Bauman, C. V., 43 William St., Newark, N. J.
- Benisch, Chas., 180 South St., Newark, N. J.
- Bornemann, H., 78 Shipman St., Newark, N. J.
- Beatty, W. I., 31 Clinton St., Newark, N. J.
- Brady, Peter, Newark, N. J.
- Brady, Francis J., 150 S. 10th St., Newark, N. J.
- 30 Beach, Lewis, 582 Orange St., Newark, N. J.
- Blenderman, D., Newark, N. J.
- Buttel, H. B., 73 S. 10th St., Newark, N. J.
- Bechler, E. W., 9 Schley St., Newark, N. J.
- Bailey, Jas. S., 281 Eighth St., Jersey City, N. J.
- Bateman, Elizabeth A., Newark, N. J.
- Bower, Frank, 95 N. J. R. R. Ave., Newark, N. J.
- Browning, Dudley G., Metuchen, N. J.

- Crane Carriage Hdw. Co., 165 Mulberry St., Newark, N. J.
- Conlan, John, Newark, N. J.
- Coppleson, Wm., 84 Belleville Ave., Newark, N. J.
- Crozier, Robert C., Newark, N. J.
- Clark, C. C., Westwood, N. J.
- Cullen, Wm. H., Ossining, N. Y.
- Craig, Mary, 13 Bowery St., Newark, N. J.
- Cavanaugh, J., Palace Hotel, Market St., Newark, N. J. 10
- Curtis, James B., 115 Broadway, New York.
- Coe, James A., 106 Mulberry St., Newark, N. J.
- Conley, J. B., 244 Madison St., Brooklyn, N. Y.
- Cryer, T. B., 249 High St., Brooklyn, N. Y.
- Compton, Chas W., 216 Market St., Brooklyn, N. Y.
- Corss, H. M., 19 Barclay St., New York.
- Casselmann, Fred, Deceased, 372 Springfield Ave., Newark, N. J.
- Connelly, W. B., 377 Frelinghuysen Ave., Newark, N. J. 20
- Camfield, Carrie L., 506 Washington St., Newark, N. J.
- Coe, Ernest E., 742 Broad St., Newark, N. J.
- DeRonde, Walter, Lyons Farms, N. J.
- Drake & Co., 36 Clinton St., Newark, N. J.
- Dimond, A. J., 307 W. Kinney St., Newark, N. J.
- Dimond, A. J. & Co., 307 W. Kinney St., Newark, N. J.
- Duffy, Margaret A., 223 No. 7th St., Newark, N. J.
- Disbrown, Wm. S., Orchard St. & Tichenor, Newark, N. J. 30
- Dinniston, Thos J., 73 South St., Newark, N. J.
- Deas, A. W., 81 Willoughby St., Brooklyn, N. Y.
- Eaton, Edward C., 11 Centre Market, Newark, N. J.
- Ehman, Mary, 849 Summer Ave., Newark, N. J.
- Ehman, Henry, 849 Summer Ave., Newark, N. J.
- Ecker, Catherine L., 153 Mulberry St., Newark, N. J.
- Elversón, Edward, 30 Centre St., Newark, N. J.

- Edwards, D. P., Newark, N. J.  
 Eagles, Robert D., 46 Halsey St., Newark, N. J.  
 Eppel, John, 123 Bergen St., Newark, N. J.  
 Edger, Percy, 794 Broad St., Newark, N. J.  
 Faitoute, J. B., 22 Clinton St., Newark, N. J.  
 Flynn, Anna M., 74 4th Ave., Newark, N. J.  
 Fischer, Mrs. Kate, 26 William St., Newark, N. J.  
 Fantl, Emanuel, 539 Springfield Ave., Newark, N. J.  
 Fewsmith, Dr. J., 47 Central Ave., Newark, N. J.  
**10** Finch, Chas., 6 Snediker Ave., Brooklyn, N. Y.  
 Farley, John, 35 Beecher St., Newark, N. J.  
 Farley, Richard, South Orange, N. J.  
 Farlie, William, 492 Broad St., Newark, N. J.  
 Fischer, C. R., Camden, N. J.  
 Finkbeiner, C., 84 Richmond St., Newark, N. J.  
 Finley, F. J., 780 Broad St., Newark, N. J.  
 Foster, W. J., 31 Nassau St., New York.  
 Fricke, Adolph, 577 S. 10th St., Newark, N. J.  
 Fenwich, F. F., 43 Whittlesey Ave., E. O.  
**20** George, Henry, Jr., 100 W. 84th St., New York.  
 Goodman, C. H., 61 Crosby St., New York.  
 Gruet, W. H., Deceased, 143 Belleville Ave., Newark,  
 N. J.  
 Graves, James, 64 Richmond St., Newark, N. J.  
 Gergen, Jacob, 49 Park St., Orange, N. J.  
 Goren, John, 258 Springfield Ave., Newark, N. J.  
 Gold, Herman, 68 Mulberry St., Newark, N. J.  
 Gahre, August, Newark, N. J.  
 Gerber, Morris, care F. D. Dunbar, Washington Nat'l  
**30** Bank, Pittsburgh, Pa.  
 Guerin, John S., 333 So. 18th St., Newark, N. J.  
 Hunt, Georgianna R., 900 Broad St., Newark, N. J.  
 Hoagland, Samuel G., 273 Market St., Newark, N. J.  
 Hedden, James S., 100 Pacific St., Newark, N. J.  
 Hall, Bolton, 23 Broadway, New York.  
 Herman, John C., 296 Market St., Newark, N. J.  
 Holgate, W. H., Newark, N. J.  
 Hollberg, Max., 214 Bank St., Newark, N. J.

- Hudson, Milton, 633 Broad St., Newark, N. J.  
 Haussling, Jacob, 22 Arlington St., Newark, N. J.  
 Haushalter, Annie, Waverly and 18th Ave., Newark,  
 N. J.  
 Hord, Horace B., 38 Park Row, New York.  
 Houghton, W. L., South Orange, N. J.  
 Iwertz, George, 20 N. Canal St., Newark, N. J.  
 Jacoby, Victor, 882 Broad St., Newark, N. J.  
 Joss, Chas., Newark, N. J.  
 Jones, E. W., 29-33 Sullivan St., New York. 10  
 Jones, Fred, 79 Clendenny Ave., Jersey City, N. J.  
 Kneuer, M., 185 Ferry St., Newark, N. J.  
 Kaltenbach, Engelbert, 128 Belmont Ave., Newark,  
 N. J.  
 Kienle, Jacob F., 182 Chestnut St., Newark, N. J.  
 Kastner, Theo. A., 176 Clinton Ave., Newark, N. J.  
 Klatz, Jacob W., 320 Jefferson St., Newark, N. J.  
 Kridel, F., 59 Beacon St., Newark, N. J.  
 Kidd, Walter J., 21 Nelson Pl., Newark, N. J.  
 Koller, C. J., 193 Sussex Ave., Newark, N. J. 20  
 Lehman, L., 464 Broad St., Newark, N. J.  
 Lewis Bros., 138 Monroe St., Newark, N. J.  
 Lehman, E., 35 New St., Newark, N. J.  
 Lynagh, John, 109 Summit St., Newark, N. J.  
 LeRoy, H., 116 Walnut St., Lancaster, Pa.  
 Lerman, Christian, So. Orange Ave. and Centre St.,  
 South Orange, N. J.  
 Lawshe, T. T., 283 E. Kinney St., Newark, N. J.  
 Levy, J., 52 Belleville Ave., Newark, N. J.  
 LeLong & Bro., L., 345 Halsey St., Newark, N. J. 30  
 Morton, Al. W., 207 Market St., Newark, N. J.  
 Moriarity, P. Augustin, care E. L. Ryder, Ossining,  
 N. Y.  
 Miller, David W., Orange, N. J.  
 Mayo, Benj. J., 788 Broad St., care Franklin F. Mayo,  
 Newark, N. J.  
 Moore, P. J., 56 Astor St., Newark, N. J.

- Mundy, J. S., 22 Prospect St. (Mrs. Dressler), Newark, N. J.
- McIntire, Mrs. E. K., Franklin Ave., West Orange, N. J.
- Montgomery, Thos. E., 239 14th Ave., Newark, N. J.
- McFeeley, E. J., 86 3d St., Newark, N. J.
- McGivney, P., 127 Grand St., Hoboken, N. J.
- McLaughlin, Catherine E., 523 Market St., Newark, N. J.
- 10** Morrissey, James, 78 Mulberry St., Newark, N. J.
- McCleary, Chas. A., 194 Chambers St., New York.
- McDowell, M. M., care Cameron Piano Co., Easton, Pa.
- Musgrave, Wm., 846 Orange St., Newark, N. J.
- McCord, C. F., 70 Park Pl., Newark, N. J.
- Nelson, Henry, 119-121 Wooster St., New York.
- Noyes, W. H., 150 First St., Newark, N. J.
- Naab, Katie, 28 Lillie St., Newark, N. J.
- Nickols, John, 108 Market St., Newark, N. J.
- 20** Newhoff, Henry, New York City.
- O'Reilly, Miles W., Newark, N. J.
- Oppenheimer, Otto H., 382 Frelinghuysen Ave., Newark, N. J.
- O'Brien, Dan., Newark, N. J.
- Orben, J. C., 59 Littleton Ave., Newark, N. J.
- Orben, P. J., 113 Central Ave., Newark, N. J.
- Osborne, W. H., 800 Broad St., Newark, N. J.
- Odell, Reuben, Jr., 78 Springfield Ave., Newark, N. J.
- Ormsbee, S. C., 1243 President St., Brooklyn, N. Y.
- 30** Osborne, John C., 947 W. 5th St., Plainfield, N. J.
- Osborn, J. D., 1034 Broad St., Newark, N. J.
- Oschwald, Joseph, 118 Marlet St., Newark, N. J.
- Orben, Chas. S., 36 Clinton St., Newark, N. J.
- Prout, John H., Belleville, N. J.
- Pfeiffer, Mrs. L., 101 Darcy St., Newark, N. J.
- Preen, S., 125 Washington St., Newark, N. J.
- Post, Cornelius N., 227 Halsey St., Newark, N. J.
- Pound, George H., 1167 Broad St., Newark, N. J.

- Pedrick, Albert C., Prudential Bldg., Newark, N. J.  
 Reilly, John, 40 Avenue C., Newark, N. J.  
 Ryder, Edgar L., Newark, N. J.  
 Risley, W. S., 436 Market St., Camden, N. J.  
 Rice, J. F., Newark, N. J.  
 Reitzel, Jacob, 537 So. Orange Ave., Newark, N. J.  
 Reeve, Geo. F., 88 Front St., Newark, N. J.  
 Roden, Anna J., 345 Washington St., Newark, N. J.  
 Rothe, Chas. W., 336 Harrison Ave., Harrison, N. J.  
 Rathgeber, Dey & Co., 71 Commerce St., Newark, 10  
 N. J.  
 Reid, John W., Kearny, N. J.  
 Runge, Dr. W., 130 Union St., Newark, N. J.  
 Rivers, Chas. Emerson, Newark, N. J.  
 Revitt & Perry, 457 Washington St., Newark, N. J.  
 Rashkowietsky, Samuel, Newark, N. J.  
 Ripley, Chas. O., 84 Johnson Ave., Newark, N. J.  
 Rosenweig & Seiler, 1210 Franklin Ave., New York.  
 Rockwell, Wm. Lock, 326 Prudential Bldg., Newark,  
 N. J. 20  
 Steelman, A. G., Baltimore, Md.  
 Seymour, G. H., Newark, N. J.  
 Schmidt, Gustave, 655 S. 18th St., Newark, N. J.  
 Stillger, Max J., 94 Hunterdon St., Newark, N. J.  
 Schwitzgable, Lena, 95 Badger Ave., Newark, N. J.  
 Scharff, J. P., Bloomfield, N. J.  
 Simonson & Co., M. W., 118 Frelinghuysen Ave.,  
 Newark, N. J.  
 Schmidt, Christian, 64 West St., Newark, N. J.  
 Steenbock, Martin, 492½ Clinton Ave., Newark, N. J. 30  
 Steffens, J., Jr., Newark, N. J.  
 Strauss, Moses, 35 Vesey St., Newark, N. J.  
 Schmidt, Geo. P., 582 So. 19th St., Newark, N. J.  
 Schober, John, 290 Devoe St., Brooklyn, N. Y.  
 Sullivan, Cornelius, 135 Myrtle Ave., Jersey City, N. J.  
 Shies, Geo. W., care Salvage Corps, Newark, N. J.  
 Scharfenberg, Andrew, 150 Sylvan Ave., Newark, N. J.  
 Schneider, Henry, Newark, N. J.

- Schmidt, J. J., 88 Canal St., Newark, N. J.  
 Schoenewolf, Lewis R., 80 Richmond St., Newark,  
 N. J.  
 Schweikert, Geo., 139 Bergen St., Newark, N. J.  
 Stivers, Letitia M., 139 Pennsylvania Ave., Newark,  
 N. J.  
 Schlosser, Christian, 38 Columbia Ave., Newark, N. J.  
 Sayre, Wm. Henry, Deceased, 588 Orange St., New-  
 ark, N. J.
- 10** Simpson, Augustus, 291 Belleville Ave., Newark, N. J.  
 Schroeder, Max, Newark, N. J.  
 Smith, A. C., Newark, N. J.  
 Sandford, Mrs. David, 29 New St., Newark, N. J.  
 Smith, Mary A., 198 So. 9th St., Newark, N. J.  
 Steiger, Fred J., Newark, N. J.  
 Shirden, Wm., 196 Halsey St., Brooklyn, N. Y.  
 Snider, Leonard, 60 Broadway, New York.  
 Stevens, H. F., Greenwich, Conn.  
 Tully, Francis P., 183 Thomas St., Newark, N. J.
- 20** Trimmer & Co., S., 89 N. J. R. R. Ave., Newark, N. J.  
 Tausig, Mabelle, 52 S. Franklin St., Lancaster, Pa.  
 Trivett, Richard, 329 New St., Newark, N. J.  
 Taylor, A. Norton, Plymouth Ave., South Orange, N. J.  
 Tench, J. E., Douglas Manor Inn, Douglaston, L. I.  
 Taylor, Wm. F., 313 Chestnut St., Newark, N. J.  
 Taylor, Jos. Q., Taunton, Mass.  
 Vogt, A. G., 323 Belleville Ave., Newark, N. J.  
 Volz, Herman, 82 Pacific St., Newark, N. J.  
 Vollweler, Emil, 262 Central Ave., Newark, N. J.
- 30** Vaughn, Mrs. E. J., Newark, N. J.  
 Vreeland, H. L. T., 9 River St., Chicago, Ill.  
 Vance, H. C., Deceased, 758 DeGraw Ave., Newark,  
 N. J.  
 Vliet, Elisha B., 49 8th Ave., Newark, N. J.  
 Wilson, Samuel Wightman, 48 Wall St., New York.  
 Ward, S. R., 951 Broad St., Newark, N. J.  
 Wotiz, Joseph, 179 Norfolk St., Newark, N. J.  
 Warren, Wm. H., 181 Verona Ave., Newark, N. J.

Walsh, Philip C., Jr., Passaic St. and Carlisle Pl., Newark, N. J.

Westervelt, Mrs. B., 213 Washington St., Newark, N. J.

Westervelt, Mrs. Julia, 54 Miller St., Newark, N. J.

Whitty, Fred. J. S., 199 Market St., Newark, N. J.

Woefle, Wm. F., 572 Central Ave., Newark, N. J.

Whitty, Mary C., 80½ Thomas St., Newark, N. J.

Wolf, Chas, Newark, N. J.

Wilkins, Geo., 367 Park Ave., Newark, N. J.

Ward, Wm. R., 21 Munn Ave., East Orange, N. J. **10**

Wagner, Mrs. Fred., South Orange, N. J.

Whitehead & Hoag Co., First St. and Sussex Ave., Newark, N. J.

Wagner, Eva, 269 Charlton St., Newark, N. J.

Walters, Geo., 141 Hudson St., Newark, N. J.

Walker, C. I., 544 Putnam Ave., Brooklyn, N. Y.

Water, Mary, 18 Linden St., Newark, N. J.

Yardley, Samuel S., 912 Broad St., Newark, N. J.

Yardley, Chas. B., Jr., 912 Broad St., Newark, N. J.

Zeitler, Robert, 266 Halsey St., Newark, N. J. **20**

Zimmerman, Henrietta, 291 Market St., Newark, N. J.

Zimmerman, C. P., 291 Market St., Newark, N. J.

Zergiebel, M. F., 572 Orange St., Newark, N. J.

Bambridge, G. F., 276 Washington St., Newark, N. J.

Baker, W. S., 258 Mulberry St., Newark, N. J.

Bellai, Eugene, 45 Congress St., Newark, N. J.

Betz, Josephine, 352 W. 17th St., New York, N. Y.

Bergen, John J., 90 Jackson St., Newark, N. J.

Bond, E. E., 791 Broad St., Newark, N. J. **30**

Butler, F. W., 245 High St., Newark, N. J.

Brodski, Simon, 40 Belleview Ave., Newark, N. J.

Conditt, T. M., 41 No. 11th St., Newark, N. J.

Conklin, James J., Palham Ave., Fordham, N. Y.

Chandler, D. D., 843 Broad St., Newark, N. J.

Clark, I. T., 813 Summer Ave., Newark, N. J.

Oelkers, John B., 24 Mechanic St., Newark, N. J.

Littell, W. H., 290 Washington St., Newark, N. J.

- Dobbins, C. H., 218 Parker St., Newark, N. J.  
 Douglas, F. A., 15 New St., Newark, N. J.  
 Epstein, Samuel, 195 Orange St., Newark, N. J.  
 Ersinger, C. S., 153 Walnut St., Newark, N. J.  
 Moore, W. E., 370 Central Ave., Newark, N. J.  
 Hills, G. A., 110 Roseville Ave., Newark, N. J.  
 Helbig, W. A., Roseville Hotel, 590 Orange St., Newark, N. J.  
 Montgomery, Thos. E., 189 Mechanic St., Newark, N. J.  
**10** Vreeland, Laura A., 506 Washington St., Newark, N. J.  
 Schmidt, H. W., 28 17th Ave., Newark, N. J.  
 Hedden, I. C., 5th Ave., and Canal Bridge, Newark, N. J.  
 Grub, F. P., 520 Springfield Ave., Newark, N. J.  
 Greenfield, H. L., 24 Hamilton St., Newark, N. J.  
 Fischer, Adolph, 123 South 6th St., Newark, N. J.  
 Lever, John, 188 Washington Ave., Newark, N. J.  
**20** Higgins, S. K., 423 Fourth Ave., Newark, N. J.  
 Hancock, Abram, 49 Cherry St., Rahway, N. J.  
 Thielman, H. I., 67-71 Norfolk St., Newark, N. J.  
 Gaven, John W., 143 Bowery St., Newark, N. J.  
 Lee, John, 29 Schalk St., Newark, N. J.  
 Gaven, Theo. A., 17 Lentz Ave., Newark, N. J.  
 Lunge, F. M., 427 Washington St., Newark, N. J.  
 Parker, John H., 150 Monmouth St., Newark, N. J.  
 Geisel, M. E., So. Orange Ave., South Orange, N. J.  
 Gruber, A., 621 High St., Newark, N. J.  
**30** Finger, L. N., 13 Centre Market, Newark, N. J.  
 Vreeland, James, 506 Washington St., Newark, N. J.  
 Wolf, Geo. I., 183 So. Orange Ave., Newark, N. J.  
 Nothnagle, Chas., 126 Mark St., Newark, N. J.  
 Lawrence, C. T., 35 Austin St., Newark, N. J.  
 Vossmyer, L. C., 121 Hamburg Pl., Newark, N. J.  
 Scherer, Jacob J., 523 So. Orange Ave., Newark, N. J.  
 Finger & Co., 109 Mulberry St., Newark, N. J.  
 Metzger, A. R., 164 Mulberry St., Newark, N. J.

Hunt, Mrs. C. T., 414 Broad St., Newark, N. J.  
 Keatly, John J., 947 Broad St., Newark, N. J.  
 Keller, Geo., Jr., 206 Belmont Ave., Newark, N. J.  
 Stectenfeld, Gustave, 82 Market St., Newark, N. J.  
 Wertheim, Abraham, Rutherford, N. J.  
 Moore, W. E., 370 Central Ave., Newark, N. J.  
 Lane, William, 188 Washington St., Newark, N. J.  
 Otten, Joseph J., 205 Newark St., Newark, N. J.  
 Patterson, E. R., 472½ Broad St., Newark, N. J.  
 Wood, George, 93 Front St., Newark, N. J. **10**  
 Gordon & Kraskow, Bank and Wickliffe Sts., Newark, N. J.  
 Hulse, S. V., 810 Broad St., Newark, N. J.  
 Laible, Jacob, 64 So. Orange Ave., Newark, N. J.  
 Jackson Awning Co., 120 Market St., Newark, N. J.  
 Ruhe, Edward, 32 Avon Pl., Newark, N. J.

---

 ORDER TO ACCEPT OFFER.
**20***(Filed June 14, 1917.)*

## IN CHANCERY OF NEW JERSEY.

George W. C. McCarter, Esquire, Receiver of Newark Telephone Company, the defendant above named, having on the fourth day of June, 1917, filed his petition praying leave to accept the offer of New York Telephone Company, a corporation, to purchase all the physical property and plant of the said Newark Telephone Company, but not including the franchise, or in any way subject to the franchise granted to the said Newark Telephone Company by the Mayor and Common Council of the City of Newark, free from any mortgage or other lien for \$75,000 cash, and the Court having on the day aforesaid made an order requiring the Mayor and Common Council of the City of Newark, the creditors and stockholders of the said **30**

Newark Telephone Company to show cause before the Chancellor at the Chancery Chambers in the City of Newark, on Tuesday, the twelfth day of June, why the prayer of the said petition should not be granted and the petitioner be ordered to accept the aforesaid offer of New York Telephone Company, and it appearing to the Court that notice of the said application in accordance with the said order to show cause has been given to the Mayor and Common Council of the City of Newark and to the creditors and stockholders of the said Newark Telephone Company, and application now being made, and no one appearing in opposition, and no cause being shown to the contrary, and the Court being of opinion that the prayer of the said petition should be granted;

It is, on this twelfth day of June, 1917, on motion of Messrs. McCarter & English, solicitors of the petitioner, ordered that George W. C. McCarter, Receiver in dissolution of Newark Telephone Company, a corporation, the defendant above named, be and he is hereby ordered to accept the offer of New York Telephone Company, to purchase from him as Receiver as aforesaid all the physical property and plant, including conduits, exchange poles, wires, central office and other equipment, exchange pole lines, exchange underground cable, office furniture and fixtures, general tools, implements and materials and supplies of the Newark Telephone Company, and all other physical property of every sort and nature whatsoever, but not including the franchise, or in any way subject to the franchise granted to the said company by the Mayor and Common Council of the City of Newark for the sum of \$75,000 in cash, payable upon the delivery of a proper conveyance.

And it further appearing to the Court that the said offer is conditioned upon the said conveyance being free from any mortgage or other lien, and that Guaranty Trust Company, successor trustee for bondholders

under a certain mortgage to State Trust Company, as trustee, dated July 1st, 1896, has expressed its willingness to execute a release of the physical plant and property covered by the said mortgage upon the conditions set forth in the said petition, and it further appearing that all of the said conditions either have been or by the making of this order will have been complied with, it is further ordered that the execution by Guaranty Trust Company of the release of physical plant and property covered by the said mortgage, be **10** and it hereby is approved.

And it is further ordered that upon the payment of the aforesaid sum of \$75,000, the said Receiver, George W. C. McCarter, do execute a good and sufficient conveyance or conveyances of the aforesaid property in and by this order authorized to be by him sold to Newark Telephone Company.

E. R. WALKER,  
*Chancellor.*

Respectfully advised,  
MERRITT LANE,  
*Vice Chancellor.*

**20**


---

ORDER.

*(Filed July 30, 1917.)*

IN CHANCERY OF NEW JERSEY.

An order having been made on June 12th, 1917, in **80** this cause on the application of the Receiver herein, directing, among other things, that said Receiver accept a certain offer of New York Telephone Company to purchase from said Receiver all the physical property and plant, including conduits, exchange poles, wires, central office and other equipment, exchange pole lines, exchange underground cable, office furniture and fixtures, general tools, implements and materials and

IO TEL

supplies of the Newark Telephone Company, and all other physical property of every sort and nature whatsoever, but not including the franchise, or in any way subject to the franchise granted to the said company by the Mayor and Common Council of the City of Newark, for the sum of \$75,000 in cash, payable upon the delivery of a proper conveyance, and notice having been duly given by Spaulding Frazer, Esq., solicitor for and of counsel with the Mayor and Common Council of the City of Newark, of an application on June 26th, 1917, for a modification of said order, and the hearing on said application having been regularly continued to July 10, 1917, and coming on to be heard on that day by the Court in the presence of John R. Hardin, Esq., of counsel for New York Telephone Company, the purchaser, Spaulding Frazer, Esq., of counsel for the Mayor and Common Council of the City of Newark, and George W. C. McCarter, Esq., the Receiver of said Newark Telephone Company, appearing *pro se*, and the arguments of counsel having been heard and the Court being of opinion that said order of June 12, 1917 should not be changed, modified, or altered, in any particular.

It is on this twenty-seventh day of July, nineteen hundred and seventeen, on motion of McCarter & English, Esqs., solicitors of George W. C. McCarter, Esq., the Receiver herein, ordered that the application on behalf of the Mayor and Common Council of the City of Newark to modify said order of June 12, 1917, be and the same is hereby denied.

Respectfully advised,  
MERRITT LANE,  
*Vice Chancellor.*

E. R. WALKER,  
*Chancellor.*

## MEMORANDA.

(Filed October 16, 1917.)

## IN CHANCERY OF NEW JERSEY.

Messrs. Pitney, Hardin & Skinner, for the purchaser.

Messrs. McCarter & English, for the Receiver.

Mr. Spaulding Frazier and Mr. Harry Kalisch, for the City of Newark. 10

LANE, Vice Chancellor (orally)—In the matter of the application of the City of Newark to modify an order made two or three weeks ago directing the Receiver to sell the property of the defendant corporation free, clear and discharged of any obligation under the secondary franchise granted by the City of Newark, under which the telephone conduits were laid, I have concluded to decline to modify the order that I advised, substantially for the following reasons: 20

I find that the ordinance makes a clear distinction between the physical property of the corporation and the secondary franchise. There is no provision which would prevent the corporation at any time during its corporate existence from selling the whole or any part of its physical property, and if it did the person who bought it would not necessarily become subject to the provisions of the franchise unless he used the franchise. There is a provision in the ordinance that at the end of fifty years the physical property then belonging to the corporation should vest in the City of Newark, There is another provision that if at any time the telephone business should be abandoned the proper authorities of the City of Newark might take possession of the physical property. The life of the corporation, Newark Telephone Company, was limited to twenty-five years. These facts, of course, must 30

have been known to the contracting parties at the time of the passage of the ordinance. I cannot conceive that it was intended that if the corporation was prevented by operation of law from exercising either its primary or secondary franchise that the City of Newark might then at the end of twenty-five years step in and take over the physical property. If that was the intention there would have been no necessity and no reason for inserting the specific provision that

**10** at the end of fifty years the city could exercise such privilege. I think that what the corporation might have done prior to its dissolution by operation of law—a Receiver now acting for it may do, and that the Receiver may sell the physical property free from the obligations imposed upon or attempted to be imposed upon the telephone company by the provisions of the ordinance under which it acquired its secondary franchise. What the city is practically asking me to do is to specifically enforce a contract, certain parts of

**20** which I think I have already indicated are to my mind manifestly unfair, a provision which I think this Court would not enforce if the city were seeking specific performance, but would leave the parties to their remedies at law. If the city has any remedy by reason of breach of contract it may enforce it in the proper way.

Mr. Hardin—Then there should be an order entered denying the application.

The Court—I imagine that is so. I might say in

**30** conclusion that if an appeal is taken I want to be notified at once by counsel and I will prepare formal conclusions.

## NOTICE OF APPEAL.

*(Filed September 25, 1917.)*

## IN CHANCERY OF NEW JERSEY.

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

George E. Carpenter, being of full age, being duly sworn, on his oath says that on the twenty-seventh day of August, nineteen hundred and seveteen, he served the annexed notice of appeal on Friendship Telephone Company and the New York Telephone Company, by delivering true copies thereof to Pitney, Hardin & Skinner, Esquires, solicitors of the said Friendship telephone Company, and the New York Telephone Company, at their office in the City of Newark, New Jersey. 10

GEO. C. CARPENTER.

Sworn and subscribed to before me this tenth day of September, 1917. 20

JOHN CERONING,  
*Master in Chancery of New Jersey.*

The Mayor and Common Council of the City of Newark appeals from an order made and entered on July 25th, 1917, refusing to modify a previous order made and entered on June 12th, 1917, ordering George W. C. McCarter, Receiver in dissolution of the Newark Telephone Company, the defendant above named, to accept the offer of the New York Telephone Company, to purchase from him as Receiver as aforesaid, all the physical property and plant, including conduits, exchange poles, wires, central office, and other equipment, exchange pole lines, exchange underground cable, office furniture and fixtures, general tools, implements and materials, and supplies of the Newark 30

Telephone Company and all other physical property of every sort and nature whatsoever, but not including the franchise, or in any way subject to the franchise granted to the said company by the Mayor and Common Council of the City of Newark, and from the whole and every part of said order, to the Court of Error and Appeals in the last resort in all causes.

Dated August 21st, 1917.

HARRY KALISCH,

10 *Solicitor of the Mayor and Common Council of the City of Newark.*

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

HARRY KALISCH,

*Of Counsel with the Mayor and Common Council of the City of Newark.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

FRIENDSHIP TELEPHONE COMPANY, A  
CORPORATION,  
*Complainant-Respondent,*

*vs.*

NEWARK TELEPHONE COMPANY, AND  
OTHERS,  
*Defendants-Appellants.*

On Bill, &c.

10

PETITION OF APPEAL.

*To the Honorable Court of Errors and Appeals of the last resort of all causes:*

The petition of the Mayor and Common Council of the City of Newark, the appellant in the above-stated cause, respectfully shows:

That your petitioner finds itself aggrieved by an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty-fifth day of July, 1917, wherein the said Friendship Telephone Company, a corporation, was complainant, and your petitioner, the Mayor and Common Council of the City of Newark, Newark Telephone Company, and others, were defendants, in this respect, to wit: 20

That in said order is a refusal to modify a previous order made and entered on June 12th, 1917, ordering 30

“George W. C. McCarter, Receiver in dissolution of the Newark Telephone Company, the defendant above named, to accept the offer of the New York Telephone Company to purchase from him as Receiver as aforesaid, all the physical property and plant, including conduits, exchange poles, wires, central office, and other equipment, exchange pole lines, ex-

change underground cable, office furniture and fixtures, general tools, implements and materials, and supplies, of the Newark Telephone Company, and all other physical property of every sort and nature whatsoever, but not including the franchise, or in any way subject to the franchise granted to the said company by the Mayor and Common Council of the City of Newark;”

- 10 and your petitioner humbly appeals from the said order of July 25th, 1917, upon the ground that the said order of June 12th, 1917, should have been modified because the same is erroneous, for that this Court is without power, either in law or equity, to authorize the sale of the personal property formerly belonging to the said Newark Telephone Company, the above-named defendant, free from the obligations of the franchise ordinance and contract of the said the Mayor and Common Council of the City of Newark,
- 20 which conditioned the placing of the property in the streets.

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

HARRY KALISCH,

*Solicitor for and of Counsel with Appellant.*

## NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

FRIENDSHIP TELEPHONE COM-  
PANY, A CORPORATION,  
*Complainant,*

AND

NEWARK TELEPHONE COMPANY,  
A CORPORATION, AND OTHERS,  
*Defendants,*

BETWEEN

THE MAYOR AND COMMON COUN-  
CIL OF THE CITY OF NEWARK,  
*Appellant,*

AND

GEORGE W. C. McCARTER, RE-  
CEIVER OF NEWARK TELEPHONE  
COMPANY, AND NEW YORK  
TELEPHONE COMPANY,  
*Respondents.*On Appeal  
from  
Chancery.

10

## ANSWER TO PETITION OF APPEAL.

*(Filed October 23, 1917.)*

20

The answer of the above-named respondent, New York Telephone Company, to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that an order was, on or about the twenty-fifth day of July, nineteen hundred and seventeen (to wit, on the twenty-seventh day of July, nineteen hundred and seventeen,) made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as

30

to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said order is agreeable to equity and it prays that the same may be affirmed with costs to be adjudged to this respondent.

PITNEY, HARDIN & SKINNER,  
*Solicitors for and of Counsel with Respondent New  
York Telephone Company.*

## New Jersey Court of Errors and Appeals

*Between*

FRIENDSHIP TELEPHONE COM-  
PANY, a corporation,  
*Complainant-Respondent,*

*and*

NEWARK TELEPHONE COM-  
PANY, a corporation, and  
others,  
*Defendants-Appellants.*

*On Bill, etc.*

### **Brief for the Mayor and Common Council of the City of Newark.**

The concrete issue in this case is whether it be possible for the Court of Chancery to authorize the sale of personal property formerly belonging to the Newark Telephone Company free from the obligations of the franchise ordinance and contract which conditioned the placing of the property in the streets.

A number of cases it is true hold that upon the expiration of a franchise period or upon forfeiture of the franchise by failure to comply with its terms, the municipality granting the franchise does not become vested with the title to property within its streets, but that the title to that property remains in the corporation for the benefit of its shareholders. An examination of these cases, however, fails to reveal that any of them are ones where any provision was made in the franchise agreement for the forfeiture of the property itself under certain conditions. In the case at bar the City of New-

ark had the right under certain conditions to declare the property itself forfeited and it was admitted by counsel for the New York Telephone Company at the argument in the Court below that the city, had it elected, might already have forfeited the property to itself for failure on the part of the Newark Telephone Company to comply with the terms of the franchise. It is therefore difficult to see how the rights of stockholders, subject as they were to practical divestment by the mere fiat of the city, can be said to be seriously affected merely because the city up to this time has not seen fit to declare such rights forfeited. The contract entered into by the city and the Newark Telephone Company and constituting the latter's franchise in the city's streets, was framed with the idea of protecting the city's and the public's interest. It provided quite properly that in the event of the abandonment of the conduits or the failure of the Newark Company to use the same for telephone purposes, the property should become vested in the city. It further provided that on any transfer or assignment the assignee should be subject to all of the terms of the original contract. It also contained provisions looking to changes in the lines of the conduits as public convenience should require, imposing the burden of certain street repairs necessitated by such changes or by the use of the conduits in the streets to be paid for by the company and other provisions of like tenor protecting the city from expense growing out of the grant to the Telephone Company. It is now proposed that the property in the city streets be transferred to another company engaged in a similar line of business free from all of the obligations imposed as part of the consideration for the city's grant to the Newark Telephone Company. If

the present order be allowed to stand, the New York Telephone Company will be vested with title to conduits lying in the city's streets and free from all obligations in respect thereof. If the city should direct the removal of the conduits, as it doubtless would have a right to do, since with the failure of the franchise they would be maintained in the public streets without authority, there is nothing to protect the city from the damages arising from the necessary destruction of pavings, the displacement of other public utility conduits, sewers, water mains and the like, nor is there anything should the city permit the conduits to remain in the streets, to enforce the proper maintenance of them nor to permit the city to carry therein its fire and police telegraph wires, as it is now permitted to do. In other words, the city has granted a privilege to a company upon certain definite terms. The company through this Court and its receiver now seeks to dispose of this property and at the same time to relieve the property of the burdens which by the very contract permitting of its present location were imposed upon that property.

It is perhaps well to note in passing, since the sacred right of stockholders has been invoked, that it appears in the proceedings that the stock and bonds of the New York Telephone Company have been purchased by the Friendship Telephone Company, a subsidiary closely connected with the purchaser, the New York Telephone Company, and that the \$75,000 alleged to be paid to stockholders, is to a very large extent a transfer from one pocket to another of the same organization. But even assuming that the sale is for the benefit of the private stockholders, we do not believe that this Court

will affirm a right in private stockholders which grows clearly out of a breach of contract by the company in which they hold shares. As was held in the case of

*Rutherford v. Hudson River Traction Co.*,  
73 N. J. L., 227,

the restrictions and conditions contained in a franchise to lay trolley tracks are obligatory upon the subsequent purchaser of the street railway tracks and franchises, even without an expressed assumption. As the Court says, page 236:

“It is plain from the expressed terms of the ordinance before us that the agreements, restrictions and conditions therein contained to be observed, and performed, on the part of the company, enter into the consideration of the grant or consent given by the municipality.”

Again, at page 238, the Court says:

“It results that when the franchise is granted, subject to conditions and restrictions, and when the traction company proceeds to lay its tracks in the streets and run its cars thereon, that property and those franchises become impressed with a public use that imposes the duty upon every successive holder to serve the public in accordance with the terms of the original grant.”

The whole of the very well considered opinion in this case, written by Mr. Justice Pitney, shows the spirit of our law to be that conditions imposed in municipal grants of this character may not be evaded by any sale or assignment free from a clause assuming the burden thereof. That property and franchise rights may be forfeited between the municipality and

the public utility is supported by text-book authority.

*Pond in his work on Public Utilities*, p. 371, states the rule thus:

“The parties to the agreement contained in the franchise, however, may by expressed stipulation provide that the franchise privileges shall terminate in case the municipal public utility service is not finished within a fixed period or in accordance with stipulated conditions. The municipality may take the precaution of securing the performance of the service to be rendered by such provisions and the terms of some franchise grants expressly stipulate that the property as well as the franchise rights of the corporation shall be forfeited to the municipality in the event of the failure to render the service within a fixed time or in accordance with the stipulated conditions.”

*Dillon in his work on Municipal Corporations*, 5th Ed. Vol. 3, Sec. 1231, pp. 1960-1961, states:

“It has also been generally held that the municipality in giving its consent may exact from the company the deposit of a sum of money to be forfeited to the municipality, or a bond conditioned for the payment to the municipality of a sum of money in the event of a breach by failure to construct within the prescribed period.”

There would seem to be no difference in principle between the forfeiture of a designated sum of money, itself personal property, and the forfeiture of designated personal property within the streets. In either case the defaulting corporation, and through it, its stockholders, are

losers to the extent of the value of the money or other property, and in a foot note on the same page Mr. Dillon cites the case of:

*Tower v. Tower, Etc., R. Co.*, 68 Minn., 500, and specially reported in 38 L. R. A., 541.

In that case the ordinance read as follows:

“This franchise is granted upon condition that the company faithfully fulfill the requirements herein expressed and should the company fail therein or wilfully abandon such road and neglect or refuse to operate it, then this franchise to become null and void; said company agree that they will forfeit said road to the City of Tower in one year after said company ceases to operate said road.”

The Court, in adjudicating upon this provision and holding it to involve the forfeiture not only of the right to operate but of the physical property itself, says:

“In the case at bar the ordinance having been accepted by the railway company, it became its charter and between the parties a contract and from the very nature of the public business to be carried on if it suspended operations for one year its road was to be forfeited,”

and the Court compares the grant of the franchise rights in streets by municipalities to the grant of certain special franchise rights by the State to railway and similar companies. The analogy seems to us a fair one, the municipality being but an arm of the State government for regular administrative purposes. Viewed in this light, the contract of the City of Newark with the Newark Telephone Company is not unlike the

contract of the State of New Jersey with the Morris Canal and Banking Company. We do not believe that anyone would have the temerity to suggest that the Lehigh Valley Railroad Company, as lessee of the canal, might continue an enjoyment of the properties of the canal in violation of the contract obligations of the canal company, as set forth in its charter, nor do we believe that any transfer either by lease or sale of the canal property would affect the State's right to take over the canal in the year 1924, upon compensation to be determined upon, or in the year 1974, without compensation, in accordance with the terms of the charter. We have adverted to this old charter for the reason that the Newark Telephone Company's charter is analogous with it in another respect, namely, that at the expiration of fifty years from the date of the municipal grant, by the terms of that grant the property of the Newark Telephone Company was to become vested absolutely in the city. With the present order we are at a loss to conceive what the city's rights in the property may be when the period of limitation shall have expired.

To summarize then briefly, it is our contention that upon the application by the Newark Telephone Company to the city authorities for leave to lay its conduits in the city's streets and upon the grant by the city of such leave with certain conditions thereto annexed, a contract relation arose between the parties which subjected the property in the city streets to the conditions imposed by the contract; that any sale of such property in the city streets free from the franchise agreement constitutes an impairment of the obligations of a contract wholly without warrant in law and wholly without

justification in equity; that the Court of Chancery has no right to attempt to foreclose the City of Newark of what may be a valuable right reserved for the protection of its citizens and the general public by authorizing a sale of such property free of the franchise; that the authority of this Court extends merely to the disposal of the interest of the Newark Telephone Company in the winding up proceedings now before the Court, and that those proceedings cannot be broadened so as to grant to a purchaser greater rights than the defunct corporation enjoyed.

Respectfully submitted,

HARRY KALISCH,

*Solicitor for and of Counsel with Defendant,  
the Mayor and Common Council of the City  
of Newark.*

## New Jersey Court of Errors and Appeals

*Between*

FRIENDSHIP TELEPHONE COM-  
PANY, a corporation,

*Complainant,*

*and*

NEWARK TELEPHONE COM-  
PANY, a corporation, and  
others,

*Defendants,*

THE MAYOR AND COMMON  
COUNCIL of the City of  
Newark,

*Appellant,*

*and*

GEORGE W. C. McCARTER, Re-  
ceiver of Newark Tele-  
phone Company, and New  
York Telephone Company,

*Respondents.*

*On Appeal  
from  
Chancery.*

### **Brief for Respondent, New York Telephone Company.**

This brief is filed in behalf of the New York Telephone Company, the purchaser at the receiver's sale of certain assets of the Newark Telephone Company, a corporation, the charter of which has expired by its own limitation.

The case involves an appeal from an order of the Court of Chancery dated July 27, 1917, advised by Vice-Chancellor Lane, refusing to modify an earlier order, advised by the same

Vice-Chancellor, dated June 12, 1917, directing George W. C. McCarter, receiver of the Newark Telephone Company, to accept the offer of New York Telephone Company to purchase "all the physical property and plant, including conduits, exchange poles, wires, central office and other equipment, exchange pole lines, exchange underground cable, office furniture and fixtures, general tools, implements and materials and supplies of the Newark Telephone Company, and all other physical property of every sort and nature whatsoever, but not including the franchise or in any way subject to the franchise granted to the company by the Mayor and Common Council of the City of Newark, for the sum of \$75,000 in cash, payable upon the delivery of a proper conveyance." (For copy of order of June 12, 1917, see case, pages 71, 72 and 73; for copy of order of July 27, 1917, refusing to modify, see case, pages 73 and 74.)

Receiver McCarter was not appointed in an insolvency proceeding, but to wind up the affairs of the Newark Telephone Company after the expiration of its charter by limitation contained therein, in accordance with the provisions of *Section 56 of the Corporation Act*.

Newark Telephone Company was incorporated August 7, 1895, under the act of the Legislature of this State for the incorporation and regulation of telegraph and telephone companies. (Case, page 11, line 15.) This legislation will be found in *4 C. S. 5312 et seq.* By the certificate of incorporation its existence was limited to twenty years (case, page 10, line 25). Its charter therefore expired on August 7, 1915. Subsequent to the expiration of the charter, on bill (case, pages 1 to 6) filed by a stockholder and creditor of the Newark Telephone Company, George W. C. McCarter, Esq., was appointed by

the Court of Chancery receiver on dissolution under Section 56, of the Corporation Act above mentioned.

The receiver found the business a going concern when he entered upon his duties. Pursuant to the requirements of the statute he has since discontinued the business, and has proceeded to settle and close the affairs of the corporation by disposing of its property.

The property of the corporation comprised (1) physical assets, consisting of conduits, exchange poles, central office equipment, exchange pole lines, exchange underground cable, office furnitures and fixtures, general tools and implements, materials and supplies, appraised at \$66,343. (Case, Petition of Receiver, beginning on page 39, paragraphs 2 and 3), and (2) a franchise granted by an ordinance of the City of Newark passed December 5, 1895 (a copy of which is set out in the case, pages 43-58).

The receiver took office February 19, 1916 (order of appointment, case, pages 11 and 12).

In June, 1917, he received an offer from the New York Telephone Company, the respondent herein, to purchase all the physical property and plant of the Newark Telephone Company "but not including the franchise or in any way subject to the franchise granted to said company by the City of Newark, and free from any mortgage or lien, for the sum of \$75,000 in cash."

The offer was made subject to confirmation by the Court of Chancery after notice to all parties in interest, including the City of Newark. (For copy of offer see case, page 40, paragraph 4 of receiver's petition.)

The receiver brought the offer before the court by his petition, in which he also set forth that the only lien upon the physical property was

that created by a trust mortgage to the State Trust Company, dated July 1, 1896, that Guaranty Trust Company was the successor trustee of the State Trust Company under the aforesaid mortgage, and that arrangements had been made for the release of the physical plant and property from the lien of the mortgage upon certain conditions, all of which had been fulfilled or could readily be fulfilled provided the offer of the New York Telephone Company received judicial approval. (Receiver's petition, case, page 40, paragraph 5.)

In his petition (case, page 42, paragraph 11) the receiver expresses the opinion that the offer should be accepted, stating his belief that it would be impossible to find another buyer for the property as a whole, or any buyer for the property as a whole together with the franchise, because of certain conditions in the ordinance, and further setting forth that the New York Telephone Company already had another franchise, or franchises, under which it might operate in the City of Newark and could, therefore, purchase and use the physical property without also purchasing the franchise of the Newark Telephone Company.

On the filing of the petition an order to show cause was made directing the Mayor and Common Council of the City of Newark, and the creditors and stockholders of the Newark Telephone Company, to show cause on June 12, 1917, why the prayer of the petition should not be granted, such prayer being that petitioner might be ordered to accept the said offer of the New York Telephone Company (case, page 43). Service was acknowledged on the same day on behalf of the City of Newark of a copy of the order to show cause and also of a copy of receiver's petition (case, page 60). Copies of the order to

show cause were also mailed to all the creditors and stockholders of the Newark Telephone Company (case, pages 60 and 61).

On the return day of the order, June 12, 1917, no one appeared in response to the rule to show cause, and the Vice-Chancellor directed that the offer should be accepted and advised an order accordingly (case, pages 70-73).

Thereafter notice was given on behalf of the City of Newark of an application to open and modify the order of June 12, 1917. The matter was argued and briefs filed. On or about June 27, 1917, the Vice-Chancellor announced his conclusions (case, pages 75-76). On July 27, 1917, an order was entered in accordance with the Court's conclusions denying the application of the city to modify the order of June 12, 1917, (case, pages 73-74).

From the order of July 27, 1917, the present appeal has been taken, on behalf of the Mayor and Common Council of the City of Newark, to this court.

The brief for the appellant, as served, challenges the power and jurisdiction of the court to make the order directing the sale of the physical property and assets of the Newark Telephone Company apart from and free from the franchise granted to said company by the City of Newark.

## I.

### **As to the jurisdiction of the Court of Chancery.**

The jurisdiction of the Court of Chancery to direct its receiver in the disposition of the property of a dissolving corporation cannot be doubted.

Under Section 53 of the Corporation Act all corporations, whether they expire by their own limitation or be otherwise dissolved, are continued bodies corporate for two purposes, (1) to prosecute and defend suits, and (2) to enable them "to settle and close their affairs, to dispose of and convey their property and to divide their capital, *but not for the purpose of continuing the business for which they were established.*"

This legislation was considered by this court in *Grey, Attorney General, v. Newark Plank Road Co.*, 65 N. J. L. 603, in which case it was in effect held that the expiration of the charter of a corporation does not result in the forfeiture of its assets.

By Section 54 upon the dissolution of a corporation its directors are continued as trustees "with full power to settle the affairs, collect the outstanding debts, sell and *convey* the property, and divide the moneys and other property among the stockholders after paying its debts, so far as such moneys and property shall enable them." The directors are given power by the same section to prescribe the terms and conditions of the sale of the property, and to sell *all or any part* for cash, or partly on credit, and to take mortgages and bonds for part of the purchase price for *all or any part* of said property.

By Section 56 jurisdiction is conferred upon the Court of Chancery, when any corporation shall be dissolved, upon the application of any creditor or stockholder, "to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation \* \* \* and to do all other things which might be done by such corporation if in

being that may be necessary for the final settlement of its unfinished business." For the purpose of exercising the jurisdiction thus conferred the Court may continue the directors of the corporation as trustees, or may appoint one or more persons to be receiver or receivers of the corporation, "and the powers of such trustees or receivers may be continued as long as the Court may think necessary for such purposes."

Section 57 provides:

"The Court of Chancery shall have jurisdiction of such application *and of all questions arising in the proceeding thereon*, and may make such orders and decrees therein as justice and equity shall require."

Even if it be discretionary with the Court of Chancery whether it shall exercise this jurisdiction, in the present case that court exercised its jurisdiction and appointed its receiver for the purpose of taking charge of the estate and effects of the Newark Telephone Company. The court has the completest kind of control over the entire situation, its jurisdiction being as broad as "*justice and equity shall require.*"

For a discussion of the plenary power of the Court of Chancery under the applicable sections of the Corporation Act see the opinion of Vice-Chancellor Leaming in *Trustees of Sea Isle Realty Company v. First National Bank*, 99 Atl. 929. The Vice-Chancellor says at page 930:

"In the absence of legislation conferring upon any court other than this court jurisdiction over this statutory trust, it is obvious that this court possesses such jurisdiction in all matters necessary to its proper enforcement and protection by reason of the inherent jurisdiction of this court over trusts; but the several sections of the statute referred to also clearly disclose a legislative

intent that this court should exercise that jurisdiction in all necessary matters relating to the execution of the specific trust."

The jurisdiction of the Court of Chancery on application of the receiver to fix the terms and conditions of the sale of the property, whether the property shall be sold together or in parcels, and all other questions incidental to the disposition of the property, is therefore beyond possibility of doubt.

## II.

### **As to the merits.**

The claim of the City of Newark seems to be that the property of the Newark Telephone Company cannot be disposed of in parcels; that its physical assets are so married to the franchise granted to it by the city that such physical assets cannot be sold divorced from the franchise.

The brief of appellant, top of page 2, erroneously states that it was admitted by counsel for the New York Telephone Company in the court below that the City of Newark might have forfeited this franchise for non-compliance with its terms if the city had elected so to do. No such admission was made, but it was argued, that, whatever might have been attempted in the past, no forfeiture involving the taking over of the corporate property by the city could possibly be accomplished by the city after the charter had expired.

There is nothing in the case to show any failure on the part of the Newark Telephone Company to comply with the requirements of Section 7 of the ordinance (case, page 53), one of the sections presumably referred to as justify-

ing forfeiture of the franchise, and it is not pretended that the Board of Street and Water Commissioners has ever passed any resolution voiding the ordinance for this reason, or for any other reason. The charter of the corporation expired without any such resolution having been passed, and, as we have seen, after such expiration of the charter neither the corporation nor its receiver could continue the business of the corporation. Even the forfeiture of the ordinance would not deprive the company of its physical assets, but certainly no forfeiture of the ordinance can be accomplished after the assets (including the secondary franchise) of the corporation had passed, without any voidance of the ordinance, under the jurisdiction of the court in a winding up proceeding.

The discontinuance of the telephone service was the statutory consequence of the expiration of the charter and was not the affirmative act of the corporation.

Counsel for the city, on page 2 of his brief as served, refers generally to certain provisions of the ordinance, the reference doubtless including Section 9 (case, page 54).

Counsel did not expressly assert that by reason of this section the conduits were the property of the City of Newark, but perhaps this was in his mind. At any rate the claim is not supported by the facts. The corporation did not abandon the property or cease to use the same for telephone purposes. Its charter expired and it lost its right to continue its business. Upon the expiration of its charter the statute appropriated its property in payment of its debts and for distribution to its stockholders.

The receiver's petition shows (case, page 42, paragraph 10) that creditors have filed claims with him, which have been allowed by him, amounting in all to \$626,093.61.

The City of Newark is charged with notice of the charter of the Newark Telephone Company, and if it chose to grant a franchise extending beyond the life of the corporation it cannot accomplish the forfeiture of such franchise and the confiscation of the physical property of the corporation by converting statutory consequences of the expiration of the charter into an abandonment by the corporation of its property.

The Newark Telephone Company was incorporated under "An Act to incorporate and regulate telegraphic companies," approved April 9, 1875, and the acts supplementary thereto and amendatory thereof, and by such incorporation acquired not only the powers especially mentioned in the act under which it was incorporated, but also all the powers and subject to all the provisions of the Corporation Act, and the acts supplementary thereto and amendatory thereof. (For charter see case, page 8.)

By Section 1 of the Act of April 9, 1875 (Revision of 1877, page 1174; 3 G. S. 3457), it is provided that the incorporators, upon taking the steps outlined for incorporation, shall thereby become a body politic and corporate, with power to sue and be sued, "to purchase, hold or convey any personal or real estate as may be necessary for the purposes of this act, with all the powers and subject to all the provisions of the act concerning corporations."

In the year 1900 Section 1 of the act was amended (P. L. 1900, 74; 4 C. S. 5312, Sec. 1). This amendment changed the method of incor-

poration in some particulars and further changed the clause above quoted so that it reads that "the persons so associating \* \* \* shall be and constitute a body corporate by the name set forth in said certificate, to sue and be sued, to purchase and convey such real and personal estate as the purposes of the corporation shall require, with all the powers and privileges contained in the act concerning corporations so far as the same are necessary or convenient to the attainment of the objects set forth in said certificate, and subject to the provisions, restrictions and liabilities contained in said act, so far as the same are appropriate to and not inconsistent with this act."

The language of the general corporation act as to the power to hold and convey real and personal estate will be found in 2 C. S. 1597, Section 1, sub-section IV: "to hold, purchase and convey such real and personal estate as the purposes of the corporation shall require \* \* \*."

There is no doubt that the Newark Telephone Company, had its charter not expired and were it not now in the hands of a receiver on dissolution (who has undoubted power to convey under Sections 53 and 56 of the Corporation Act), would have full power to convey such real or personal property "as the purposes of the corporation shall require."

It is to be noted that there is nothing in any of these enabling statutes which requires the inseparable union for all time of the franchises and the physical assets of the corporation. It may convey such of its real and personal estate as its purposes require.

The appellant does not question that the New York Telephone Company has power to purchase. If, however, examination should become

necessary of the language of the act under which the New York Company was incorporated, it will be found in the *New York Transportation Corporations Law, Art. 9, section 104*, which provides as follows:

“Any corporation organized under this article may lease, sell or convey its property, rights, privileges and franchises or any interest therein, or any part thereof to any telegraph or telephone corporation organized under or created by the laws of this or *any other State*, and may acquire by purchase, lease or conveyance the *property, rights, privileges and franchises, or any interest therein or part thereof*, of any *such* corporation, and may make payments therefor in its own stock, money or property,” etc.

*Nor does the ordinance itself set up or impose any conditions which interfere with the separation, under the circumstances now presented, of the physical assets and the franchise.*

*Section 12* of this ordinance (case, page 55) provides that in case the franchise granted thereby shall be assigned by the Newark Telephone Company to any other person or corporation, the franchises so assigned shall be held and enjoyed by the assignee subject to all the conditions and restrictions of the franchise. The section further provides that in case the assignee is vested with any similar franchises “all such privileges and franchises at that time belonging to such assignee or transferee shall, after such assignment or transfer, be held and enjoyed subject to all the conditions, restrictions, limitations and payments aforesaid.”

*Section 16* of the ordinance (case, page 57) provides that the rights and privileges granted thereunder shall cease and be determined at the expiration of fifty years from passage of the or-

dinance, and provides that at the expiration of that period "all of the subways, cables, wires, conduits and other property or appliances of *said telephone company then* within the streets or public places of the City of Newark shall become the property of the City of Newark, and the title thereto shall pass to and vest in the Mayor and Common Council of the City of Newark without any action on its part and without any compensation to the said telephone company or to its successors, assignees or mortgagees, and free and clear of all charges, liens and encumbrances whatsoever."

Nowhere in the ordinance is there any prohibition of the right of the telephone company to sell its physical assets. The physical assets might be sold and removed from the "streets or public places of the City of Newark" and would in that case be freed from any reverter clause under the ordinance. It is only the physical property *then* in the streets or public places of the City of Newark (namely in 1945) and *then* the property of the Newark Telephone Company which under the provisions of the ordinance are to revert to the City of Newark.

The corporation made no effort in its lifetime to dispose of either its physical assets or its secondary franchise, though both were salable. *The circumstances now presented show the corporation, by the expiration of its charter, incapacitated to further continue its business and enjoy either its physical assets or its franchise.*

The situation that arises therefore is that we have a receiver with undoubted power to sell. We have further certain physical assets under his control and a certain franchise, all subject to the receiver's power of sale. The franchise, however, though it was granted to the Newark

Telephone Company and "its assigns" and therefore survives the dissolution of the corporation and is salable (see the argument above and also *St. Clair County Turnpike Company v. Illinois*, 96 U. S. 63; 24 L. Ed. 651; *People v. O'Brien*, 111 N. Y. 1; 18 N. E. 692, and 3 *Dillon on Municipal Corporations*, Secs. 1265 and 1268) *is rendered practically unsalable by Section 12 of the ordinance above quoted.* The court below expressed the view during the argument that this section of the ordinance is unreasonable and void and referred to this view in his conclusions (case, page 76, lines 20-23). While we agree with this view, its validity is not essential. *No utility company would willingly purchase this franchise with even the possibility that its terms could be affixed by the City of Newark under Section 12 of the ordinance to an existing franchise of the purchaser.*

It is also highly probable that the physical property is entirely unsalable except to a purchaser able to use it under an existing franchise. The field is too fully covered by the New York Telephone Company to tempt new capital, and in these days of State regulation by the Public Utility Commission, public policy is not offended by the purchase of these physical assets by an established company.

*It may therefore be authoritatively asserted, that, only by a sale of the physical assets separate from and not subject to the franchise, can anything at all be realized for any of the assets of the Newark Telephone Company, represented by property within the streets and public places of the City of Newark.*

The only question that arises, therefore, is—can the court approve a sale of the physical assets to a purchaser unwillingly to acquire the franchise?

This matter now being in the custody of the Court of Chancery for the winding up of the affairs of a corporation whose charter has expired the situation must be treated, to quote the statute, "as justice and equity shall require." The legislature conferred this special jurisdiction upon the Court of Chancery doubtless with the thought in mind of the application, to the administration of the assets of dissolving corporations, of equitable rules and principles, and it is not out of place to assert, that, in exercising the jurisdiction, equity should not permit the City of Newark to accomplish a forfeiture after the charter has expired by a present appeal to alleged breaches of franchise conditions prior to such expiration.

Counsel for the City, in the brief as served, stresses *Section 16* of the ordinance (case, page 57), to which reference has already been made. It will be noted that under this section the rights and privileges and locations of routes are to cease and determine at the expiration of fifty years from the passage of the ordinance, unless the ordinance shall be prior to that time renewed. But it is also to be noted that the subsequent reference in the section to subways, cables, wires, conduits, etc., is expressly confined to subways, cables, wires, conduits, etc., of said Telephone Company *then* (that is to say at the end of the fifty years) within the streets and public places of the City of Newark. Two things are therefore requisite to pass the property at the end of fifty years to the City of Newark, that the subways, cables, wires, conduits, etc., referred to must be the property of the Newark Telephone Company and must *then* be within the streets. Nothing in this section marries the physical property, subways, cables, wires, con-

duits, etc., and the franchise indissolubly for fifty years, or for any other period of time.

Counsel for the City in his brief as served (at top of page 7) attempts to draw a parallel between the ordinance now under discussion and the charter provisions of the Morris Canal and Banking Company. The supposed analogy is absent. There has been no expiration of the charter of the Morris Canal and Banking Company in advance of the expiration of its secondary franchise. Its charter is perpetual (P. L. 1824, page 158). Nor is there anything in its charter provisions for the reversion of its property to the State in 1924 or 1974 at all comparable with the language used in the Newark Telephone Company ordinance.

The frequent references in the brief to the impairment of obligations of a contract between the Newark Telephone Company and the City of Newark assume the very point the brief is endeavoring to make, namely, that there is the impairment of the obligation of a contract. If, under the ordinance, there is no indissoluble union of the physical property and the franchise, there can be no impairment of contract obligation in the disposition of the property in such parcels as the Court of Chancery may approve, in the exercise of the jurisdiction conferred upon that court, for the winding up of corporations whose charters have expired and the application of corporate property to the payment of the debts of the corporation and the distribution of the surplus, if any, to the stockholders.

From the brief of appellant as served, with its ironical references to the "sacred rights of stockholders" of the Newark Telephone Company, it would seem that the charter of that

Company expired at the time when the Company had no creditors. The printed case contains duplicate lists of the stockholders (case, pages 18 to 32, pages 62 to 71), but no list of creditors.

It does, however, affirmatively appear by the petition of the receiver (case, page 42, paragraph 10) that creditors of the Newark Telephone Company have filed claims with the receiver which have been allowed by him amounting to the sum of \$626,093.61. It also appears by the petition of the receiver (case, page 40, paragraphs 2 and 3) that the physical property of the corporation has been appraised at \$66,343, and that the details of the appraisal appear in and by an inventory on file in the office of the Clerk of the Court of Chancery with the papers in this cause. It further appears by the receiver's petition (case, page 42, paragraph 9) that other than the said appraised assets and the franchise no other assets of any nature or description have come into the receiver's hands, and the receiver affirmatively alleges that no other assets exist.

It is quite apparent, therefore, that creditors are to be kept in mind in this proceeding as well as stockholders.

The ordinance throughout keeps distinct the physical assets and the franchise, as appears by reference to other sections than those already mentioned.

Thus, Section 12 (case, page 55), expressly contemplates the possible assignment or transfer by the Newark Telephone Company of the *privileges and franchises* to another person or corporation and imposes certain consequences on such transfer, some of which consequences are, as suggested by the court below, so unreason-

able as to be void; but, whether void or not, such consequences do not reach the physical property.

Section 13 (case, page 55), regulates the size of the conduits and affects the physical property, and expressly contemplates that the conduits may be used by other telephone or telegraph companies thereafter obtaining location of routes, rights and privileges from the City "upon such terms and for such compensation as shall be agreed upon by said (Newark Telephone) Company." This section, therefore, contains an express recognition of a partial right of disposition of physical property.

But an even more significant section is section 8 (case, page 53), which expressly provides that nothing in the ordinance should be construed to grant to the Newark Telephone Company an *exclusive* right or to prevent the grant of similar privileges to other persons or companies for like purposes, "or to prevent the City of Newark from compelling the said company to remove its conduits and subways and to place its wires and conductors and cables in such subways, if any, as might thereafter be laid and established by the said City of Newark. And in such case the said company shall upon demand pay the cost and expense of the removal of such subways and conduits and the restoration of such streets to their condition at the time of removal of the conduits and subways by the said company as aforesaid." Under this section, therefore, was there not only no exclusive right given to the Newark Telephone Company, but it was not even assured of a continuance of its own conduits, and could even be made to bear the expense of their removal.

So it might well be, even if the corporate life of the Newark Telephone Company had continued, that at the end of fifty years there might then have been no property in the streets belonging to the said company, or it might well have been that the property placed in the streets by the Newark Telephone Company might have been in the interim disposed of by that company to some other company, with the necessary consequence that at the end of the fifty years there would have been in the streets no property of the said Newark Telephone Company.

There was, therefore, under the ordinance no necessary continuous union of the franchise and of the physical property in the streets. The life of the corporation expired without any forfeiture of the franchise or any appropriation of the property, under any term of the ordinance, to the City. The franchise is, by its terms, assignable and is an asset of the expired company, to be sold and converted into cash if salable. The physical properties of the company, other than the franchise, are likewise assets to be sold and converted into cash. Under the statutory conditions such physical assets cannot be in 1945, at the expiration of the fifty years of the franchise, then the property of the Newark Telephone Company, and Section 16 does not interfere, and no other section interferes, with the disposition of the physical assets as property free of attachment to or affected by the franchise.

The Court of Chancery has plenary power over the administration of the assets of this corporation, and in directing how these physical assets are to be sold. If the franchise is of such a character that nobody can possibly buy it, it is unfortunate for the creditors and stockholders, but it gives the City no right to inter-

ferre with the conversion into cash of such other assets of the corporation as may be so convertible in the course of administration. Probably no purchaser without a present franchise can be found to buy the Newark Company's franchise. It is hardly likely that, even if the provision in the Newark Company's franchise, which attempts to impose upon a purchaser having one franchise from the City all the terms and conditions of the Newark franchise, be void as unreasonable, a company having another franchise would deliberately walk into a law suit with the City as to the possible effect of the provision in the Newark Company's franchise upon the purchaser. But, at any rate, or under any circumstances, there is neither reason nor justice in the attempt of the City to interfere, by reason of provisions applicable to the franchise in the past or possible applicable prospectively, to deprive the physical assets of the Newark Company, other than its franchise, of all salable worth.

Perhaps section 19 (case, page 58), of the ordinance should not be overlooked, which required that at the time of filing the acceptance of the provisions of the ordinance the Newark Telephone Company should enter into and file with the Board of Street and Water Commissioners of the City of Newark a bond, to said City, in the penal sum of \$25,000, conditioned for the faithful performance of each and every provision contained in the ordinance. Presumably this condition was complied with, and if, by reason of dissolution or other cause, this bond has been breached, the City may have a right to prove its claim for damages, up to the penal amount of the bond, with the receiver of the corporation. The very presence of such a provision implies an equitable reason at least, if not

a legal one, why the City should not be permitted to interfere with the operation of the statutes in such case made and provided upon the property of a corporation whose charter has expired.

If the New York Telephone Company is permitted to complete its purchase of the physical assets from the receiver, it may perhaps choose, as to such of same as are in the streets, either to remove same or to make use of them where they are. If it adopts the latter course it must justify its conduct under some franchise of its own (see Receiver's petition, paragraph 11, case, page 42, lines 31-36). The City will thus be fully protected against the consequences of the purchase.

That a corporation such as the New York Telephone Company, already possessing sufficient franchises of its own and thereafter acquiring physical property (formerly subject to other franchises of other corporations) may use the physical property under its own franchises, see *Jersey City v. North Jersey Street Rwy. Co.*, 73 N. J. L. 175, at 183. The opinion is by Chief Justice Gummere speaking for the Supreme Court and was affirmed by this court in an opinion by Mr. Justice Swayze in 74 N. J. L. 774. The opinion in this court, however, does not discuss the particular point that we have in mind in the opinion of the Chief Justice. The latter, after citing the *Newark Plank Road case*, 65 N. J. L. 603, *supra*, to show that at the time it made the lease the Jersey City & Bergen Railroad Company (the charter of which had expired by limitation) still had a corporate existence for the purpose of enabling it to settle and

close its affairs and to dispose of and convey its property, says:

“At the time when it leased its railway to the Consolidated Traction Company, therefore, it had power to consent that the latter company should take possession of its railway and maintain and operate it, and this it did. Its assignment to the Consolidated Traction Company of the powers, privileges and franchises which had been conferred upon it by the legislature was not requisite to enable the latter company to maintain and operate the railway; and the fact that the assignment was fruitless, because such powers, privileges and franchises had already ceased to exist, could not, of course, deprive the latter company of its own powers, privileges and franchises conferred upon it by direct legislative grant. When the Consolidated Traction Company acquired possession of the railway, therefore, it was clothed with full power to maintain and operate it; and when it, in turn, leased the railway to the defendant company, that company—which was also incorporated under the Traction Act of 1893—was clothed with like power by direct grant from the legislature.”

In the above case an attempt was made by the grantor corporation to transfer not only its railway, the physical property, but also its powers, privileges and franchises which had been conferred upon it by the legislature.

The Court held that these franchises of the grantor corporation (namely, its secondary franchises) had already ceased to exist. They were granted to it in its original charter and therefore died with it. The present case is distinguishable in that the secondary franchise of the Newark Telephone Company (granted by the Board of Street and Water Commissioners) is

still in existence and survived the corporate death. Nevertheless the precedent is a valuable one as illustrating the normality of our position.

In *Coler v. Tacoma Rwy. & Power Co.*, 65 N. J. Eq. 347, Mr. Justice Dixon, speaking for this court, considered the separation of the physical property from the secondary franchises. A corporation had attempted to transfer to another corporation not only its physical property, but its secondary franchises, leaving to itself only the primary franchise of being a corporation. It was held on a bill filed by a stockholder that the arrangement was illegal, because it amounted to a dissolution of the corporation without a compliance with the provisions of our statute in regard to dissolution.

Mr. Justice Dixon says at page 349, speaking of a clause in the corporation's certificate of incorporation:

"It authorizes the transfer of property only, while the arrangement in question requires the transfer, not merely of all the property, but also of all the franchises of the company, except the franchise of being a corporation. A corporation which has sold only its property, receiving therefor a valuable consideration, is still able to engage in new enterprises within the scope of its charter; but one which has parted with all its franchises except that of existence, is, for all purposes, outside of the winding up of its affairs, defunct."

The propriety of a sale, under certain circumstances, of physical assets separate from the franchise is thus recognized. The divorcement of the physical assets from the old franchise, which has been ordered in the present case, thus involves nothing new or startling under the precedents established by our courts.

The case of *Rutherford v. Hudson River Traction Company*, 73 N. J. L. 227, in the Supreme Court, cited by counsel at the top of page 4 of his brief, involved not alone the sale of certain physical assets, but also of the secondary franchises of the vendor corporation. *It was held that the conditions and restrictions of the franchise persisted through a judicial sale of the same and affected the franchise in the hands of the purchaser. This is the very situation which the New York Telephone Company here has sought to avoid. Its offer is an entirety and expressly negatives the inclusion of the franchise (case, page 40; lines 23-26). If the franchise must follow the physical assets, then the New York Telephone Company's offer is rejected; it takes nothing. The Rutherford case, therefore, is not at all in point here, and the same is true of the other authorities cited by counsel.*

That physical assets and franchises are not wedded together by an indissoluble bond is abundantly shown by the taxing laws of this State applicable to telephone and other public utility corporations.

The act for the taxation of corporations using the public streets (under which the Newark Telephone Company is taxed) is *Chapter 195 of the Laws of 1900 (P. L. 1900, page 502)*, known as the Voorhees Act. See *4 C. S., page 5298, sections 527 to 535*. The title of the act and sections 1, 4 and 5 have since been amended by *P. L. 1917, pages 42-45*.

In accordance with this act the taxing authorities of the City of Newark have each year assessed the personal physical property of the Newark Telephone Company (it owned no real estate), and collected a tax thereon at the local rate. These taxes were collected in the same

way and at the same time as all other local taxes on personalty.

The company further each year has been assessed the franchise tax of 2% upon its gross receipts, as shown in the annual reports of the State Board of Assessors. This tax is collected entirely separately from the tax assessed locally on the physical property.

The force of the illustration is not weakened because as a result of statutory construction the tax under the act of 1900 is not a property tax but a license tax, and taxes both the primary franchises of a corporation and the special or secondary franchises to use the streets, so that the local taxing authorities cannot again tax the special or secondary franchises as property under the General Tax Act. *North Jersey Street Railway Co. v. Jersey City*, 73 N. J. L. 481 (opinion by Mr. Justice Swayze). Same case on error, 74 N. J. L. 761 (opinion by Mr. Justice Pitney).

See also the opinion of this court in *Public Service Gas Company v. Board of Public Utility Commissioners*, the opinion being by Mr. Justice Parker, 87 N. J. L. 581, at 591, where the decision in *North Jersey Street Railway Co. v. Jersey City* is discussed.

It thus appears that for taxing purposes franchises, although property, are taxed entirely separately from physical assets. The Tax Act of 1866, under the decisions, the Voorhees Act of 1900, and the General Tax Act of 1903, all emphasize the distinction.

Other conspicuous illustrations of the separation of the franchise and other assets for purposes of taxation are found in the Railroad Tax Act of 1884-8, which requires separate valuation of different classes of railroad property, treat-

ing the franchise as taxable property (Comp. Stats. 5260, 445 *et seq.*) and the Street Railroad Tax Act of 1906, imposing separate franchise and property taxes (Comp. Stat. 5283, Sec. 493, *et seq.*).

The original Railroad Tax Act of 1884 (P. L. 1884, 142, Sec. 3, sub-paragraph IV) required the appraisal of the franchise as a separate class and it was valued as a separate item. In the present law the franchise is included in a class with other property, but must none the less be separately valued. The separable character of the franchise for taxation was sustained in the cases involving the constitutionality of the act of 1884 and has never since been challenged. *Central Railroad Co. v. State Board of Assessors*, 48 N. J. L. 146.

### III.

#### Cases in other jurisdictions.

The sale of physical assets of utility corporations, free of the franchises, has been practiced and upheld in several other jurisdictions than New Jersey.

In *City of Vermillion v. Northwestern Telephone Exchange Co.*, 189 Fed 289, the Circuit Court of Appeals for the Eighth Federal Circuit had under consideration the rights of the Northwestern Company under a franchise (resolution of August 16, 1897) granting it the privilege "to occupy the streets, alleys, and public grounds within said City for the purpose of placing therein its poles, wires and fixtures." The Northwestern Company had purchased a telephone plant constructed by the Nebraska Company under an earlier franchise of its own

called the "Cotteral" franchise. The Court said, at page 295:

"In our judgment, therefore, the resolution of August 16, 1897, expresses the consent of the City to the construction and maintenance of a local exchange. Under its terms the appellee (the Northwestern Company) could have erected such an exchange. Instead of doing so, it purchased the one which was already in existence. It has, of course, with respect to the lines so acquired every right which it would have possessed if it had constructed the exchange itself. The wires and poles became its property. If no resolution had been passed, the Northwestern Company, in acquiring the property would have taken it subject to the limitation of the Cotteral franchise. But having itself an unrestricted right to place wires and poles in the streets for a local exchange, it may use the property freed from the restrictions under which it was originally placed in the streets."

In *Saginaw Power Co. v. City of Saginaw*, 193 Fed. Rep. 1008, it was held that, conceding the validity of a condition in the franchise of the Bartlett Illuminating Company, that said company should not sell its property, franchises or privileges to any other corporation engaged or about to engage in a like business, and that a breach of such condition should work a forfeiture to the City of Saginaw of all privileges derived under said franchise, and that such privileges should revert to the city in case of a violation of such condition—conceding, as we have said, the validity of such condition—such forfeiture did not include the physical property, nor affect the right of the purchaser, the Saginaw Power Company, to take and use the same under its own franchise granted in 1908, the

validity of which later franchise, though contested by the city, was sustained by the Court.

See also to same effect:

*Dakota Central Telephone Company v. City of Huron*, 165 Fed. 226, bottom of page 230.

*Abbott v. City of Duluth*, 104 Fed. 833; affirmed, 117 Fed. 137.

The Courts have repeatedly recognized the property rights of public service corporations in and to their plants as distinct and separate from their rights or franchises to maintain and operate such plants in the streets.

*Cleveland El. Ry. Co. v. Cleveland*, 204 U. S. 116, 142; 51 L. Ed. 399.

*Laighton v. City of Carthage*, 175 Fed. 145.

*Detroit Ry. Co. v. Detroit*, 229 U. S. 39; 57 L. Ed. 1056.

*Chicago & N. Y. Ry. Co. v. Fox River Electric Rwy. Co.*, 96 N. W. 541 (Wis.).

Upon the foreclosure of general mortgages covering the property of public service corporations it is the usual practice of the Courts to provide in their decrees of sale, if a better price may in that way be obtained, that the purchaser may purchase the physical property without the franchises or contracts of the corporation or that he may disavow them within a certain time after the sale. And a purchaser at the foreclosure sale is not obliged to perform the obligations of the corporation whose property he buys unless the decree so provides.

*Knickerbocker Trust Co. v. Tarrytown, etc., Ry. Co.*, 139 App. Div. 305; 123 N. Y. S. 954.

33 Cyc. 592.

*Farmers' L. & T. Co. v. Chicago, etc. Ry. Co.*, 44 Fed. 653.

*Hoard v. C. & O. R. Co.*, 123 U. S. 222; 31 L. Ed. 130.

*People v. Rome, W. & O. R. R. Co.*, 103 N. Y. 95; 8 N. E. 369.

In *City of Kenosha v. Kenosha Home Telephone Company*, an unreported case decided by the Circuit Court of Kenosha County, Wisconsin, December, 1910, the Court said:

“The Court holds that the Kenosha Home Telephone Company purchased and acquired, as it had the lawful right to do, only the physical properties of the Citizens' Telephone and Telegraph Company specified in the bill of sale, and did not purchase, acquire or succeed to, in any way, the franchise or contractual dues or obligations of the Citizens' Telephone and Telegraph Company. Kenosha Home Telephone Company did not need the franchise of the Citizens' Telephone and Telegraph Company, purchased only so much of its properties as it wanted, and the purchase of the franchise was expressly excepted from the purchase and sale between said companies.

“The Court holds that Kenosha Home Telephone Company is not the successor of the Citizens' Telephone and Telegraph Company, but entirely and distinctly individual and independent thereof and therefrom, and is under no contractual or other obligation to furnish any free telephone service to City of Kenosha. There was no consolidation of said companies. The Court holds that the free telephone service heretofore furnished City of Kenosha by Kenosha Home Telephone Company was voluntary, that no legal obligation to continue the same exists, and that continuance thereof or discrimination in its tariff rates in favor of the City of

Kenosha is forbidden by Chapter 499, Laws of 1907 (the P. S. C. Law of this State) and is contrary to law."

On appeal to the Supreme Court of Wisconsin, in 135 N. W. Rep. 848, the decision below was affirmed on another point in the case, but the opinion of the Court below as quoted above was not disapproved.

In the case of *Philip E. Lewis, suing on behalf of himself and the private users of telephones in the City of Utica, N. Y., similarly situated, v. New York Telephone Company*, an unreported case decided by the Supreme Court for Oneida County, N. Y., in November, 1913, plaintiff had been afforded telephone service by the Utica Home Telephone Company, which operated under a franchise granted to it by the City of Utica. One of the conditions of the franchise was that the company should charge for the use of its telephones not over \$40 a year for a business telephone and \$24 a year for a residence telephone.

Another condition was that the company, "its successors or assigns shall not assign, lease or sell directly or indirectly to or for the benefit of the owner or owners of any competing telephone system operating in the City of Utica the rights herein granted. Nor shall it purchase any such competing system nor consolidate with any such competing system, and any such assignment or transfer shall operate as a forfeiture of any and all the rights and privileges herein granted. And the rights and privileges herein granted shall be forfeited by the Utica Home Telephone Company should it at any time after the completion of its telephone plant fail for ninety days to operate its system."

ANDREWS, *J.*, said:

“Acting under this franchise the Utica Home Telephone Company placed its wires in the streets of the city and furnished telephones to subscribers, among whom was the plaintiff.

“A competing telephone system in the City of Utica was in 1912 and is now operated by the defendant, the New York Telephone Company. On August 15th, 1912, the Utica Home Telephone Company sold, transferred, granted, conveyed and delivered to the New York Telephone Company all telephone and telegraph lines, plant and property of the said Utica Home Telephone Company including its subscribers' contracts for telephone service, but excluding its corporate and local franchises; all of which franchises remained the property of and were specifically reserved by and to said Utica Home Telephone Company. Thereafter the defendant furnished telephone service to the plaintiff under the contract which he had made with the Utica Home Telephone Company until shortly prior to the commencement of this action, when it cancelled and terminated said contract. But it offered to furnish the plaintiff with telephone service at an increased rate upon the execution by him of a written contract therefor. This the plaintiff refused to do and demands that telephone service be furnished him under the rates specified in the franchises before referred to granted to the Utica Home Telephone Company.

“The Utica Home Telephone Company and the New York Telephone Company are both corporations organized and existing under Article IX of the Transportation Corporation Law. Section 104 of that law permits such a sale from the former to the latter as has taken place. The New York Telephone Company is, therefore, the owner of

all the physical property of the Utica Home Telephone Company. It is not the successor of and is not in any way bound by the restrictions imposed by its franchise upon the Utica Home Telephone Company. It may charge customers to whom it furnishes service any rate which it has the legal right to impose. It is true that it is using the lines erected by the Utica Home Telephone Company under and by virtue of this franchise. But probably it has now the right to operate such lines by virtue of the franchise under which they were not erected, but by virtue of the franchise conferred upon itself by the City of Utica. In any event, however, the rate limitation contained in the franchise to the Home Company was a limitation imposed simply upon it and is effective only as against it. It is not in any way attached to the physical property formerly belonging to the Home Company and does not in any way limit the right to use that property. If, because of non-user for ninety days, or because of the breach of any condition the franchise of the Home Company should be forfeited that in no way would deprive the New York Telephone Company of the right to use its own property under its own franchise.”

If the Court should desire the entire opinions in the above two unreported cases copies can be printed and furnished.

It thus appears that physical property of utility corporations has been repeatedly sold free from and without reference to the franchises of the selling company to occupy or use the streets.

It is respectfully submitted that the Court of Chancery had complete jurisdiction to make the order sought to be set aside; that the order was proper and that it should not have been modified, and that the order refusing the application of the city to modify should be affirmed.

CORWIN HOWELL,  
JOHN R. HARDIN,  
*Of Counsel for Respondent,  
New York Telephone Company.*

