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New Jersey Court of Errors and Appeals.

Between EASTON NATIONAL BANK, *Complainant,* *And* AMERICAN BRICK AND TILE COMPANY, *Defendant.*	*On Petition of* *William M. Davis,* *Receiver, Appellee.* *Appeal of* *Henry A. Potter,* *Respondent and* *Appellant.*

BRIEF OF HENRY A. POTTER, APPELLANT.

In this case the receiver of the American Brick and Tile Company, an insolvent corporation, filed a petition in the Court of Chancery asking that an assessment be levied on its stockholders to satisfy its creditors, claiming that the stock was not fully paid. On the return of a rule to show cause certain of the stockholders, including this appellant, appeared, and filed answers denying liability on these claims and setting up that the stock was full paid. Also a petition was filed appealing from the receiver's allowance of the claims filed, and by consent, both matters were heard together in the Court of Chancery. On the hearing it was proved that all the certificates purported to be for "full paid" stock, that two certificates (Nos. 351 and 352) for one hundred shares each were issued in

the ordinary form and were the only ones so issued (case page 151, lines 7-28), and it was testified that these were paid for at par in cash, $10,000 each by E. P. Wilbur and E. M. Paxson (case pages 198, 233); and it was proved that the remaining shares issued were stamped "issued for property purchased," and it was testified that these were paid for by certain patents under an agreement whereby the bulk of the stock was to be issued for the patents. The point was then made that the stock having been issued as full paid stock under a contract that it was to be paid for by these patents, the stockholders could not be held as on unpaid stock, unless the contract itself were set aside, which could only be done on a bill to set aside the contract. Counsel, however, being desirous that the case be disposed of on the testimony taken, consented to the receiver filing an amended bill provided the contract be therin admitted. An amended pleading was filed, but not until a month after the conclusions were filed, and only one week before the final decree was entered. No notice of the filing of this paper was given, and this appellant had no actual knowledge of it until after the service upon him of the final decree, and no notice of application for or settlement of the decree was given him. The "Petition as Amended" (case page 18) was entitled in the original cause in which the receiver was appointed, and the decree (page 488) was similarly entitled.

Evidence was taken in support of various claims of creditors, none of which are involved in these appeals, except the Easton National Bank (page 61), Henry Short (page 64), Estate of Henry Green (page 67) and Frederick Green (page 72). An attempt was also made to prove another claim of the Estate of

Henry Green (mentioned in the petition as amended, page 19, lines 32-34), but this latter claim was withdrawn on the argument (case page 486, lines 13-15).

It also appeared on the hearing that all the stock certificates were signed by Henry Green as president and by his son Frederick Green as secretary of the company, and that Henry Green was an active party to the contract under which the stock was issued as full paid, he being the principal stockholder and the promoter of the company.

The decree was then entered setting aside the contract for the issue of stock as void, as to the Easton National Bank and Henry Short, and requiring the payment of those two claims and the receivership expenses by such of the original subscribers as still held stock (viz.: E. M. Paxson, E. P. Wilbur, Henry A. Potter and the Estate of Henry Green); and adjudging that Frederick Green and the Estate of Henry Green were not entitled to be paid their claims by the so-called delinquent subscribers, being estopped because of their knowledge of, and acquiescence in, the circumstances attending the issue of the stock.

It also appeared on the hearing that certain of the stockholders, (mentioned in the decree page 491, lines 21-33, page 492, lines 10-19) were not original subscribers but had acquired their stock by transfer, as full paid stock, and the decree dismisses the bill of complaint and the petition as against them. No appeal has been taken by anyone against this portion of the decree.

On this state of the record this appellant makes these points.

1. THE RECEIVER'S PLEADINGS AND THE DECREE ARE IMPROPERLY ENTITLED.

The receiver's petition as amended, and the decree appealed from are entitled in the original cause wherein the American Brick and Tile Co. was adjudged insolvent and the receiver appointed, while the relief decreed could only properly be granted on an original bill, in a cause wherein the receiver was complainant. This point was not waived by the appellant's failure to raise it in the pleadings or on the hearing, because the amended pleading of the receiver was not filed until a month after the hearing was closed and five months after the answer was filed, and this appellant had no notice of it, or of the form of decree, until after the latter had been made and filed. It is submitted that the decree was therefore improperly made and should be reversed.

2. ON THE MERITS THIS APPELLANT IS ENTITLED TO A REVERSAL.

Even if this court considers the title of the papers a matter of form, and capable of amendment in this court, appellant's stock in this corporation is not assessable because it is fully paid.

If directors, in good faith, issue stock for property which they have good reason to believe is worth the par value of the stock issued, then the transaction cannot afterward be attacked, even though the property subsequently proves of less value. And while in the case of property having an easily ascertained value, a material discrepancy between the assumed value and the actual value, as determined afterward, may be evidence of bad faith, this is not so in the case of mines

and *patent rights, the value of which in the nature of things is problematical until fully developed.*

Donald vs. *American Smelting & Refining Co.*, 62 N. J. Eq., 729, at page 733.

> "Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of *actual fraud in the transaction* can impair the right of the holder to hold his stock as full-paid stock, free from further call. The cases of *Bickley* v. *Schlag*, 1 Dick. Ch. Rep., 533, and *Rural Homestead Co.* v. *Wildes*, 9 Dick. Ch. Rep. 668, indicate that the completed transaction was equally secure, even before the statute received its present decisive form."

Bickley vs. *Schlag*, 46 N. J. Eq., 533, at page 535,

> "the valuations of property in making the exchange, either on the one side or the other, cannot be supervised or controlled by the Court of Chancery, for, in the absence of deceit, or some other corrupt constituent, the bargain between the parties cannot be disturbed,"

citing with approval

Coit vs. *Gold Amalgamating Co.*, 119 U. S., 345,

> "Where the charter authorizes capital stock to be paid in property, and the stockholders honestly and in good faith put in property instead of money in payment of their subscriptions, third parties have no ground of complaint * * * where full-paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account."

Bank of Fort Madison vs. *Alden*, 129 U. S., 372, 378-9.

Young vs. *Erie Iron Co.*, 65 Mich., 111.

Woolfook vs. *January,* 131 Mo. 636, 33 S. W. Rep. 432.

Manhattan Trust Co. vs. *Seattle Coal & Iron Co.,* 19 Wash. 493, 53 Pac. Rep. 951.

American Tube & Iron Co. vs. *Hayes,* 165 Pa. State, 469, 30 Atl. Rep. 936.

Schenck vs. *Andrews,* 57 N. Y. 133, at page 147,

> "upon the question of the value of property, and more especially that adapted to mining, mechanical and manufacturing purposes, a very wide difference of opinion may honestly exist among the most intelligent of men familiar with such operations."

Douglas vs. *Ireland,* 73 N. Y., 100.

Lake Superior Iron Co. vs. *Drexel,* 90 N. Y., 87.

The *dictum* in the case of *Donald* vs. *American Smelting and Refining Co., supra,* is based on the statute as it now stands (Corp. Act of 1896, Sec. 49), but intimates that the same rule prevailed under the law theretofore existing.

The case of *Bickley* vs. *Schlag, supra,* was decided under the earlier statute, either Act of 1889, P. L., p. 414, or under the Corporation Act of 1875, Sec. 55. The powers given by all of these statutes in the issue of stock for property are substantially the same, and the power of this corporation to issue stock for patents cannot be questioned.

This rule was conceded in the opinion of the learned Vice Chancellor who decided the case, but he held that it did not here apply because he found there was an intentional overvaluation of the property upon the understanding that a portion of the stock was to be returned for distribution among the directors.

This appellant contends that the case comes within the terms of the rule above established, and that there was no intentional overvaluation.

(a) *The directors did issue appellant's stock (and all the corporation stock, except certificates* 351 *and* 352) *for the patents.*

(I) *This is established by the evidence.*

The minutes of the company do not show this, but it is conceded that the minute book was incomplete. In fact there were almost no minutes entered at all.

It is not necessary that the transaction be carried out in a formal manner. In the case of *American Tube & Iron Co.* vs. *Hayes,* 165 Pa. St. 469, 30 Atl. R. 936, above cited, a very roundabout method was adopted, but the court said,

> "it may have been an irregular and mistaken method, for reaching the purpose in view, but that does not change the fact that the property was agreed to be taken, and was in fact taken, as full payment of the stock subscriptions made by the defendants."

Lake Superior Iron Co. v. *Drexel,* 90 N. Y., 87, above cited, was similar to the case at bar, in that after the issue of the entire stock for patents and other property, a portion was returned by the patentees to be held by the board of trustees of the corporation, but in the Lake Superior case the treasury stock was actually sold for only fifty per cent. of par, yet the subscribers to that fifty per cent. stock were not held liable to creditors, the jury having found that the transaction was in good faith.

The testimony of Judge Paxson (case page 195-199), E. P. Wilbur (case page 232-233), and Henry A.

Potter (case page 339), that the stock was by resolution, ordered issued for the patent rights, is uncontradicted. An attempt is made to discredit it because of the indefinite form of the testimony, but that is natural where the transaction took place seventeen or eighteen years ago, and the witnesses were men of large business interests, and two of them of advanced years, especially as the testimony shows that these witnesses left all the details to Judge Green.

The learned Vice Chancellor in his conclusions (page 479, lines 11-22), quotes only detached bits of the evidence, which bear a very different construction when read in the light of the further testimony.. Judge Paxson (page 199, line 17) explained that the amount of the stock which was to be issued to those who put up money was $40,000. This is an error, the cash stock being only $20,000, but it is very different from "the balance of stock" over that issued to the patentees as intimated in the Vice Chancellor's opinion. Mr. Wilbur (page 233, lines 11-26) testified that 100 shares each were to go to himself and Judge Paxson for the cash they paid in. Mr. Potter (page 339) said that the resolution "provided that all of the stock, the $1,000,000 of stock, excepting what was to be retained in the treasury, and that which was to be issued for cash, was to be issued for the patents."

The principal witness for the receiver, Mr. Frederick Green, was the Secretary and Treasurer of the company from its inception, and signed all the stock certificates, yet he nowhere attempted to dispute the testimony of these three witnesss that all the stock (except the cash certificates 351 and 352) was in fact issued for the patents.

The skilful cross-examination led the witnesses into contradictions and confusion as to the time and manner of the transactions testified to, but counsel was unable to shake the testimony that a decision of the corporation to issue the stock for the patents was arrived at prior to the time the stock was issued. It is frankly admitted that the manner of doing this was informal, but the case of American Tube & Iron Company, above cited, is authority for the proposition that irregularity in the method of issue will not invalidate it.

The testimony that the stock was issued for the patents, is supported by all the documentary evidence. The certificates themselves, except numbers 351 and 352, all purport to be "issued for property purchased." This in itself certainly raises a very strong presumption. All the certificates recite the stock to be "full paid," and as to certificates 351 and 352, the par value of each is $10,000, and the undisputed proof shows that a like sum of $10,000 was paid by the holder of each of those certificates. Their testimony is that the $10,000 was paid for these two certificates (case page 198, lines 9-12, page 233, lines 19-26), and the entries in the cash book of the last instalment of each of these $10,000 payments, made by Frederick Green, the Secretary and Treasurer, contain the words "in full" (case page 128, lines 4-5, lines 30-33). No certificate was issued before the date of the assignment of the patents, September 27, 1887 (Exhibits D 1 and D 2, case page 335, line 3, line 29), and all the certificates issued to the original incorporators (except Henry Green the President, and Potter, who was a member of his family, and who received theirs later) bear date the same day as the as-

signment. The agreement of March 6, 1886, between the patentees and Judge Green (Exhibit D 8, case pages 241-243), under which Green acquired control of the patents, provides for the issue of the entire stock, except eight hundred shares, for the patent rights, of which stock Green was ultimately to control 5,250 shares, and the patentees 3,950 shares, after turning into the treasury 250 shares of their original 4,200. The essential features of this agreement were actually carried out, with certain variations, all of which are explained, and this affords a further presumption that the organization was effected under the agreement. The shares the patentees were to receive were actually received by them, as appears from the Release (Exhibit D 10, case page 245-6), and the certificates drawn in the names of the patentees, Certificates Nos. 3, 4, 5 and 6, foot up 4,200 shares, being the 4,000 provided for in the first part of the agreement, plus 200 shares, also provided for in the agreement. The testimony was that Green after the incorporation bought out part of the patentees' holdings (case page 328, lines 1 to 9), and the certificates 4 and 5, which were cancelled, represent 2,226 shares, substantially the extra number which Green distributed to Potter, Wilbur, Paxson and himself (case page 327, line 36, page 328, line 5), 500 to Potter, 400 each to Wilbur and Paxson and 500 to himself, 1,800, plus the 250 shares the patentees were to turn into the treasury under the agreement of March 6, 1886 (Exhibit D 8, page 241-243). The testimony also shows that the original 800 shares of treasury stock was increased to 1,800 shares (page 314). This testimony is substantiated by the exhibit marked "Original Scheme" (D 9, case pages 244-245), which

shows at the top the division of stock provided for in the agreement of March 6, Wilbur, Potter and Paxson being each credited with part of Green's holdings, and a thousand shares extra being added to the treasury stock; and the same paper, which was evidently prepared before the stock was actually issued, shows at the bottom the new holdings in accordance with the final changes, Wilbur, Paxson, Potter and Green being each credited with 500 additional shares, the total of Wilbur and Paxson, including their cash shares, certificates 351 and 352. It is clear that these certificates 4 and 5 for 1669 and 557 shares, which were assigned and cancelled in the certificate book, form part of the ultimate holdings of Green, Wilbur, Paxson and Potter.

It is also testified that Green afterward bought out the balance of the Simpson and Canfield stock and sold most of it to new parties (case page 332, line 35, to page 333, line 6). This balance, represented by certificates 3 and 6, for 1481 shares and 496 shares, respectively, is exactly the number of shares represented by certificates 9 to 12, 15 and 17 to 21 (17 to 21 being issued in exchange for 13), all of which are of later date than the original issue. The testimony shows that Linderman, W. A. Wilbur, Mayer, Sheafer and Knight bought their stock, represented by these latter certificates, directly from Judge Green (case page 249-256, page 367-8). The checks given in payment for those shares (Exhibits K 5, 6, L 6) and the paper marked "Capital Stock Account" (Exhibit L 1, case page 254-255), further establish the fact that all these certificates are now held by purchase from Judge Green, and that they came from part of the original issue to the patentees themselves. The receipt (D 11,

case page 246) further confirms the testimony as to this second purchase by Green, the number of shares mentioned in this exhibit being identical with the number in the certificate number 6.

An attempt was made to show that the payments on account of a certain assessment of $4.00 a share was an admission of liability. But these payments are not at all inconsistent with the stock having been issued for property, and considered by all the holders as full paid stock. The holders all paid something on account of this assessment, even those who purchased stock which they knew had come from the patentees through Judge Green. Judge Paxson and E. P. Wilbur paid their assessments on the entire amount of their stock, both that marked "issued for property purchased" and that which they claimed to have paid for in full in cash. Paxson, Wilbur and Potter all testified (pages 211-212, 237-238, 333-334, 336-337), that in making the payments they did not make them as an obligation, but as a voluntary assessment. There is nothing unusual in stockholders of a corporation which has fallen into difficulty, assessing themselves voluntarily in an endeavor to straighten out the corporate affairs, and the language of the last part of the resolution for the assessment itself as it appears in the minutes (read by Judge Shipman, case page 209, lines 28-31) and in the answers, (case pages 33, 40 and 51) is the strongest sort of evidence, that the assessment was a voluntary one, and was not made pursuant to any actual or supposed obligation. The resolution reads: "Resolved, that an assessment of four dollars ($4.00) per share upon the outstanding stock of the company be called payable ($1.00) one dollar per share May 1st and the balance as directed by the

executive committee, *and if any stockholders fail to respond to call, the stock in Treasury be pledged as collateral for any sums advanced under said call.*" The natural probabilities are all that the stock was issued for the patents. It was admitted that the issue of stock was authorized by the directors (case page 221, lines 36-39), and no evidence was given that it was issued on any other basis. It is incontrovertible that before the certificate of incorporation was signed, Green controlled the patents, and it cannot be argued that he would have given up that controlling interest without receiving something for it, and the only thing he could receive was the stock. Under the agreement of March 6, Green was entitled to a majority of the stock, and Simpson and Canfield, to a minority. Paxson, Wilbur and Potter all testify (case page 213, line 1-7, lines 22-33, page 237, lines 21-25, page 338, lines 1-26) that their shares outside of those represented by certificates 351 and 352 were to come from Green by virtue of agreements made by Green with them individually. There can be no objection to such a procedure as this, and it has been directly held in New Jersey that one incorporator may by the transfer of property to the corporation, pay the subscription of another incorporator.

Vail vs. Phillips, 14 N. J. L. J., 45.

The issue of stock for patents in this case being the natural and probable course, and the documentary evidence, (except the contested letter hereinafter mentioned) all confirming the probability of such issue, it is submitted that the court cannot conclude the testimony of Judge Paxson, E. P. Wilbur and H. A. Potter, regarding the issue of stock, to be false, and

must find that the entire stock, except certificates 351 and 352, was issued for the patents.

(II) *Even if this were not established by the evidence, it is contended that on these proceedings the receiver cannot dispute it.*

The receiver's amended pleading is in substance a bill to set aside the contract under which the stock was issued to the appellants as full paid stock. It admits in paragraph 13 (case page 29-30) a contract, and the prayer is (case page 30, lines 34-37) "that the contract between the company and its stockholders may be decreed to be fraudulent and void as to the creditors of said company."

The only contract attempted to be shown by the testimony was an agreement that the stock was to be issued for the patents. It is submitted that the receiver having elected to bring suit to set aside this contract cannot in the same proceeding deny the fact of the contract. An attempt to do this would make the suit multifarious, and this identical point was raised in the court below. This appellant contends that he is therefore under no duty to prove that the stock was, by formal action of the board of directors, issued for these patents, but that it is only necessary for him to show that the issue was in good faith, and that the property was actually belived by the directors to be worth the face of the stock issued.

(*b*) *The directors, in issuing the stock for the patents, acted in good faith, and in an honest and well founded belief that the property was worth the par value of the stock issued.*

The directors all testify that they believed the patent rights to be worth a million dollars and that they based their belief on careful tests, (page 201, line 33 to page 204, pages 234-236, page 332). This is not contradicted by any evidence. There is only the attempt to discredit it by an inference from the ultimate worthlessness of the property; but from its very nature, the commercial value of a patent, like a mine, cannot be told until it has been exploited, and an unsuccessful termination is no evidence that the original valuation was unreasonable at the time.

In *Young* v. *Erie Iron Co.*, 65 Mich. 111, above cited, the court said, (p. 120):

> "They honestly supposed they had found value in this mine, and seemed to believe that it *might* become nearly, if not equally, as valuable as the Republic mine, then worth from one to two million dollars. There is no doubt but at first the mine promised to be a very productive and valuable one, nor is it at all certain now that it is a failure. * * (p. 121). It is true they gave away some of their stock, and sold more or less at $5, $8 and $12.50 per share, in order, as they claim, to get people interested in the company, and to procure funds to work the mine; but this action grew out of the necessity of the corporation, not only to get money to work its mine, but to obtain as much influence as possible to reach those who had capital to invest in such enterprises, and is not at all inconsistent with the idea that the Wrights honestly thought that eventually the stock would be worth its face value. * * (p. 123.) In order for the court to find a fraud in law there must be shown either an intentional fraud in fact upon the part of the Wrights, or such reckless conduct in the placing of this value, without regard to its real worth, as would indicate,

> without explanation, an intent to defraud. * * The Wrights testify that they acted in good faith, and believed this lease-hold interest to be of great value; and their actions, and the doings of others, seem to corroborate them. * * (p. 124.) It did not turn out, like many another mining venture, as they supposed and hoped it would. No one made any money by the enterprise, but the Wrights, as well as all the others, sunk what they put in, and all they could get credit for besides. If the mine had proved to be what it evidently promised in the beginning, the promoters of the scheme would have acquired great wealth, and the creditors would have been paid in full."

These directors had secured control of a process which, if successful, would have revolutionized the brick industry of a large part of the country. One of the opposing witnesses admitted (page 399, lines 35-38) it would have been a valuable scheme. One of the directors personally conducted a series of experiments which seemed to show a profit of $10 a thousand brick (page 202, lines 11-25, page 205, lines 13-16, page 206, lines 11-18), and the others had this information before them. The Salmon license (Exhibit W 3, page 463, line 13) provides for a royalty of $1 per thousand brick. It takes no argument to show that a patented process which would do this was worth much more than a million dollars. Moreover, before the stock was in fact issued, the Phillipsburg plant had successfully turned out brick which were used in the Wilbur building, and which were so satisfactory as to lead Mr. W. A. Wilbur and Mr. Linderman to buy stock in the company (page 382).

The opposing witnesses tell of many unsuccessful burnings, and spoiled brick, but it was reasonable, in

the early days of the corporation, to attribute this to the novelty of the process.

The directors testified that in estimating the value of the process, they computed the anticipated royalties from licenses which Judge Green reported were under negotiation, and that these royalties would have paid the interest on a million dollars (page 225, lines 6-9, lines 33-36, page 234, lines 10-25). Most of these negotiations appear ultimately to have fallen through, but others beside these directors seem to have considered the process very valuable. One of the opposing witnesses testified that a Mr. Fuller capitalized a corporation at $600,000, and spent $60,000 on a plant, besides building five miles of track, to operate merely under a license (page 389, line 28 to page 390). Another witness, Salmon, himself spent $35,000 and worked for eighteen months at the process (page 393, lines 23-30, page 397, lines 28-30, page 398, lines 31-37). If practical business men, operating merely under a license, would invest that much money, a valuation of a million for the patent itself cannot be considered excessive.

The fact that Green secured control of the patent from its holders for such a small sum, and that he practically gave Paxson, Wilbur and Potter their "property" stock, is not an argument against the good faith of the valuation put upon it by them, for it is common knowledge that a new process, like a new mine, needs money and business enterprise to make it go, and patentees very often exchange a controlling interest for capital and influence enough to make the enterprise a success, realizing their profit on the minority share retained. Potter's $10,000 was paid to enable his father-in-law, Judge Green, to fulfill the

latter's agreement with Simpson and Canfield to put in $20,000 for the erection of a plant (case page 338, lines 11-14). It was entirely natural that Judge Green should be willing to give his daughter's husband a large interest in the patent rights he had acquired in return for such assistance as he needed to fulfill the agreement under which he acquired the process; and Judge Paxson and Mr. Wilbur, besides being close friends of Judge Green, were each men of great wealth, with such extensive business interests, and influential connections that it was obviously to the advantage of Green to get them interested in the process, even though he had to give them a share in the business substantially equal to his own, for only by bringing in men of influence could he hope to fulfill his agreement with the patentees and make the enterprise a success.

The existence of the prior English patent was unknown to the directors, and they cannot be held negligent in not having discovered it. No man could be expected to go through the entire records of the United States Patent Office, including the records of foreign patents, especially after an American patent had been granted; and there is no evidence to show that the record of the English patent was then in the files of the United States office. Moreover, the directors had secured a legal opinion that their patent was valid.

The fact that the directors were in effect buying from themselves, by reason of their respective agreements with Green to receive a large part of the stock, will of course justify a more careful scrutiny into the good faith of the transaction than if they were buying from outsiders, but their good faith has not been successfully attacked, and the fact that they did not

employ a group of office boys to go through the form of making the contract, is itself an evidence of their good faith.

The subsequent failure of the process is of course irrevelant, except as leading to an inference that the directors could not reasonably have considered valuable a process which ultimately came to grief so dismally. But the only real question is what the directors had before them at the time the stock was issued.

And Exhibit W 11, offered by the receiver, contains reports and testimonials of the most glowing character, showing that when an invention which the receiver claims is the same process as that here in question, was presented to prominent British engineers and builders, they formed as high an opinion of the value of the process as the directors of this corporation did, (case page 288, lines 6-15, page 289, line 23 to end of page 290, page 292, lines 1-11, and others in the same exhibit).

The only serious piece of evidence is the letter from Green addressed to Paxson. (Exhibit E 17, case pages 429-430). This of course is not admissible against this defendant, but being admitted as against Green, may unconsciously influence the court to some extent. But it is to be noted that this letter was written years after the actual event, is only an expression of opinion, and was written in an attempt to get the other stockholders to*help take care of an indebtedness for which Green was liable individually* as an endorser. The payment of the four dollar assessment has already been discussed, and as the testimony shows the payments were made as on a voluntary assessment, is not evidence of any admission of liability,

(page 211, line 9 to page 212, line 15; page 238, lines 9-25; page 337, lines 24-34).

The character of the directors, and the high judicial position of two of them, Paxson and Green, affords strong presumption that the transaction was carried out in good faith, and the fact that the proceedings were entirely informal, when it would have been so easy, by a careful regard for legal forms, to have placed the proceedings beyond the reach of such an attack as this, is also a strong argument that no fraud, either legal or moral, was contemplated. It is therefore submitted that the transaction was not an intentional over valuation either to enable the directors to get their stock without paying value for it, or for any other purpose, but that it was a valid and honest agreement and should be sustained and the petition be dismissed as against this appellant.

3. THIS APPELLANT CANNOT IN ANY EVENT BE LIABLE FOR THE GREEN CLAIMS.

This question is not directly involved in the appeal of Henry A. Potter, which raises an issue only between the appellant and the receiver, but as Henry A. Potter was served with the papers in the appeal of Frederick Green, as executor of Henry Green, and Frederick Green, individually, and as the appeals are to be heard together, it is proper to discuss the question at this point.

(a) *The Green appeals are not properly taken.*

The decree below does not adjudge the Green claims invalid as against the corporation, but only holds them not entitled to contribution for the stockholders. There is therefore no decree at all on the petition of

E. M. Paxson (case page 82) from which an appeal could be taken by the Greens. The decree appealed from is a decree on the complaint of the receiver, holding that certain defendants are liable to pay the receiver for the benefit of Easton National Bank and Henry Short, the amount of the latter's claims, and that those same defendants are not liable to pay the receiver anything on account of the Green claims. Frederick Green in his individual capacity is not a party at all to the proceedings instituted by the receiver, and as executor of Henry Green he is only a party defendant on the receiver's prayer that as such executor he be decreed liable to contribute. So far as the Green claims are concerned, they were represented in the litigation against this appellant solely by the receiver, who brought the suit in their behalf as well as in behalf of the other creditors; and they have no more right to an appeal in their own name than any creditor of an insolvent corporation would have to appeal in his own name from a judgment dismissing a suit by the receiver against an ordinary debtor of the corporation. Their right to have the question taken to the higher court is solely through the receiver. But the receiver has not appealed, nor have the Green's taken an appeal in the name of the receiver. It is therefore submitted that the Green claims have no standing in this court and the Green appeals should be dismissed.

(b) *The Green appeals should be dismissed on the merits.*

The claim of Fred. Green is based entirely, and that of the estate of Henry Green substantially, upon loans made more than six years before the application for

the receiver (case, pages 93-98, 103-109). There is no evidence in the books of the company of any payments of interest within six years (pages 112, 113), and the only payments claimed were by checks drawn by Fred. Green, without authority, except from Henry Green, upon an account made up by checks from Henry Green, loaned for that purpose (pages 114-117). An officer of a corporation, without authority from the directors, cannot make evidence for himself. It is therefore submitted that the claims are barred by the statute of limitations. And entries in the books, of payments on account of principal, would not take the case out of the statute, because this was not a case of mutual accounting between merchants.

It is further submitted that these claims cannot be the foundation for any assessment against the stockholders. The stockholders all hold certificates purporting to be for "full paid stock," and all but certificates 351 and 352 purport to be "issued for property purchased." The claimants not only had full knowledge of this, but all the certificates were issued over the signatures of both the claimants, as president and secretary, respectively of the corporation. Whatever the facts as to the issue of stock, they should be estopped from profiting now at the expense of the holders of these certificates, by alleging that their certificates are false. More over, it has been held that where stock has been issued for property, creditors of a corporation who became such with knowledge of the transaction, could not attack its good faith by alleging that the stock was not fully paid.

Bank of Fort Madison vs. *Alden*, 129 U. S., 378, *supra*. This case is identical with the one at bar, as

regards the Green claims, the officers of the creditor bank being stockholders in the insolvent corporation. This was a creditor's bill and the court said:

> "There was no credit given by the bank to the company upon the representation of a different set of facts than that which actually existed."

Woolfook vs. *January*, 131 Mo., 636, 33 S. W., 432, *supra*. In this case the court said of suits to establish the liability of stockholders for debts:

> "It is essential to establish fraud, and that the creditor must be one who in good faith gave credit in the belief that the stock was full paid, or the stockholders were bound for the unpaid balance."

In *Washburn* vs. *National Wall Paper Co.*, 81 Fed., 17, the court said:

> "One who has sold the good will of his business to a corporation for certain shares of its stock, and has participated in and approved the method and valuation of such good will for the purpose, cannot afterward claim that the good will so bought by the corporation was overvalued."

In the case of *Schenck v. Andrews*, 57 N. Y., 133, *supra*, the court said (page 143):

> "Every person who deals with it has the means of ascertaining whether its capital has been paid, in money or in property, and he is under no obligation to sell it any goods, if he finds that it, or any portion thereof has been paid in property."

As to the claim of the Estate of Henry Green, not only did Henry Green have full knowledge of the agreement whereby the stock was issued for full paid stock, but he was himself one of the parties to that

agreement and in fact was the one who arranged it. Even if the agreement were void as to others it was clearly valid as between the parties themselves who made it.

It is therefore submitted that this appellant cannot be held to contribute toward the claims of Frederick Green or the executor of Henry Green, and that the Green appeals should be dismissed.

Respectfully submitted,

GUILD & MARTIN,
Counsel for Appellant Henry A. Potter.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
THE EASTON NATIONAL BANK,
COMPLAINANT AND RESPONDENT,
AND
THE AMERICAN BRICK AND TILE COMPANY, ET AL., DEFENDANTS AND APPELLANTS.

ON APPEAL OF ELISHA P. WILBUR, EDWARD M. PAXSON, HENRY A. POTTER, ET AL., APPELLANTS FROM DECREE OF THE COURT OF CHANCERY.

BRIEF FOR THE EASTON NATIONAL BANK AND CLARENCE WALTER, RECEIVER, RESPONDENTS.

A.

AS TO THE CLAIM OF THE COMPLAINANT, THE EASTON NATIONAL BANK, AS A CREDITOR.

The claim of the Easton National Bank has been before the Vice Chancellor, by whom the same was fully heard, found to be a valid claim, and speaking of this claim, he says, in his conclusion (Printed Case p. 486):

"As to the claim of the Easton National Bank and Henry Short, no substantial defense was interposed."

There being a large mass of testimony upon the subject of this claim the Vice Chancellor as a matter of fact found in favor of the claim, and in the decree duly advised by the Vice Chancellor it was decreed that the claims of the Easton National Bank and Henry Short "are good and valid claims against the American Brick and Tile Company, and that said claims be and hereby are decreed to be good and sufficient claims against the said Company and entitled to be paid out of and from the moneys due and to be raised from unpaid subscriptions to the capital stock of the said Company." (Case pp. 492-493.) We submit that such finding should have substantially the force and effect of a verdict by a jury, and unless his findings are clearly against the evidence, or the weight of the evidence, the same should be accepted as conclusive on this appeal.

We might be content to rest here, the burden being upon the appellants to clearly show that this finding was unwarranted by any evidence in the case.

That the Vice Chancellor's conclusion allowing the claim was fully justified will abundantly appear from the following considerations derived from the evidence.

The articles of incorporation were received and filed April 6, 1886. (See authenticated copy of certificate in evidence. Case pp. 8-11.)

Shortly after the organization, the corporation entered upon the building of its plant and operating same.

The claim of the Bank originated in 1886, the first loan being a discount of $5,000, the proceeds of which went to the credit of the company and to their benefit. (F. Green's Test., Case, p. 169.)

Other notes were subsequently discounted in the early part of the Company's business, the proceeds credited to the Company, and the Company received the benefit thereof. These notes will be found entered in the cash book and may be there traced. (Case, p. 169.)

The notes were from time to time renewed, and finally, after various combinations and consolidations, took the shape in which they were presented by the Bank in Exhibits C1, C2

and C3. (Case p. 88, line 14.) In reply to a question by the Vice Chancellor, F. Green testified that the proceeds of these notes went to the credit of the American Brick and Tile Company, (Case p. 88, lines 23–34.)

These notes in the series which were regularly continued from 1886 down to 1900, when the last notes presented by the Bank were given, were all signed "The American Brick and Tile Co., by H. Green, President." There were a large number of them, as will appear from the notes themselves, which were produced and exhibited to the Vice Chancellor. (Case pages 174–175.)

The history of these notes will all be found in the three bank books which are testified to by F. Green, the Treasurer, as being all the books of deposit used by the Company in its business with the ~~First~~ Easton National Bank. (Test. p. 168.) The bank books show credits for the notes as renewed from time to time in the shape of new notes, less discount, and the charging up as paid on the other side of the account of the notes immediately preceding the new discounted notes.

It was admitted when all these notes were produced out of the possession of the Receiver, cancelled and bearing the marks of payment, that the notes were regularly discounted and the proceeds carried to the account of the Company and the discount charged up to the Company, and the making of the last of the series, which were proven as the foundation of the Bank's claim (Case p. 180, also Case pp. 174-175) and the overdraft occurring after March 3, 1900, of $198.91. (Also admitted Case p. 175, line 30.)

The objection in the various answers filed seems to be based upon the claim that these notes were signed by the President, and that there was no formal authority to execute the notes or renew the same given by the Board of Directors by formal resolution. It will appear from the testimony that in addition to these many notes and renewals, thus discounted, almost all of the notes of the Company, of which there were a large number discounted in other institutions and renewed from time to time in the same way, were signed in the same manner, proceeds went to the benefit of the Company, and no question with regard thereto appears to have ever been made by the Company or the parties serving as directors, who now appear as defendant stockholders in the present proceeding. The

notes of the E. P. Wilbur Trust Company, of which E. P. Wilbur, one of the respondents, and a director of the American Brick and Tile Company, is president, and which discounted some notes in 1889, were renewed from time to time in the same manner and signed in the same way for a period of a dozen years down to 1898 and 1899. This director was certainly cognizant of this fact, the proceeds went to the benefit of the Company, and no question raised. (E. P. Wilbur's Test., pp. 163-167.) In the same way, notes were endorsed for the accommodation of the Company in the same form, signed in the same way, by H. A. Potter, which were renewed, and each renewal endorsed by him regularly from 1891 to 1900 at the Phillipsburg Nationol Bank. (H. A. Potter's Test., pp. 341-342.) We have also the evidence of the note endorsed by Judge Paxson for $2,000, drawn and signed in the same way as the others, discounted without any objection or question by Judge Paxson or any of the Directors (pp. 180, 467), who were fully cognizant, or should have been, if they had been disposed to examine the books and accounts of the Company with the various banks in which they kept their deposits and transacted their banking business, and the various other books of the Company.

Besides this we have the evidence of numerous other notes (Case pp. 175–179), for accounts and bills of the Company in large number, as specimens of which several were taken at random from a large collection of notes then produced, to wit: Exhibits E5, E6, E7, E8, offered in evidence (pp. 435-436), and all drawn and signed the same way. It appears in the course of the hearing that hundreds of notes were executed and signed in this way, and a large number of them carried along through a period of many years down to about the time of the death of Judge Green in 1900.

It appears that but two or three meetings of the Directors were ever held, and that the affairs of the Company, all its operations, its business of manufacturing, and its financial matters were all managed and carried on by the President as the General Manager of the Company's affairs. This is testified to directly by Judge Paxson (Test. p 208) in which he states that Judge Green was the acting manager of the Company, and that he was made and assumed the whole management of it. This is born out by the course of the testimony, which

shows that none of the other directors, who were elected in 1886, ever attended any meetings of the Board, except the two or three that are recorded and found in the minute book. They rarely visited the plant and never participated in the active management of its affairs.

It was claimed by the present appellants that the Company ceased to do business after the plant was burned in the winter of 1897. However this may be, the Company's banking business was carried on with the Easton National Bank, both before and after that date, deposits made from time to time, notes discounted and renewed, the Company's bank books periodically settled up, and all carried along down to 1900. There is not a particle of evidence in the case that the bank was ever informed that the Company had ceased to carry on business after 1898, or that there was no intention to renew its plant, and re-establish its manufacturing operations, nor is there a particle of evidence in the case that the bank had any knowledge of any financial embarassments or want of ability on the part of the Company to pay its obligations. Indeed, the then owners of the stock, and parties interested in the Company, were all persons of exceptionally large means, and of high and unimpeached standing in the business world.

It is also shown by the testimony that these renewals of the notes were made at intervals of three or four months, and the method pursued was the following: At the time they became due, a new note or notes were given, which, upon application, were authorized to be discounted by the bank's directors, and the net proceeds, after deducting the discount, credited on the books of the bank and in the deposit book of the Company to the Company's account, and the note then maturing charged against their account for the full amount of the note, the note cancelled, and at the settlement of the Company's book, which took place at short intervals, the old notes thus charged up, and cancelled as paid, were delivered to the Company, so that at the end of the series, at the time of the last renewals the notes upon which the claim is based, were the only notes in the possession of the bank, the prior notes constituting the series, so renewed from time to time having been cancelled, paid and delivered into the possession of the Company as already stated, leaving nothing in the hands of the bank except the last three notes upon which the present claim is made.

(See testimony of F. Green, pp. 360-362; Henry Siegfried, pp. 363-364.)

This fact will also substantially appear from the three bank books (Exhibits E1, E2 and E3, p. 168, line 29), which constitute all the deposit books between the Bank and the Company, offered in evidence. At the same time there were deposits from time to time of cash made during this period of 1886-1899 and 1900, a running account kept with the Bank between the Bank and the Company, and the bank book settled up at short intervals.

It will also appear from these bank books that up to and including the settlement of March 29, 1899, with one small exception, the balances on the settlements were in favor of the Company, and along with deposits of cash from time to time, amounting to actual and full payment of the notes charged against the accounts and the proceeds of renewal notes credited less the discounts, thus making actual payment of such discounts. So, also, after that time deposits were made from time to time, and even if there was at any time an overdraft, the deposits subsequently made operated to cover such overdraft and keep the account in the shape of a running account.

Some point seems to be in the mind of the opposing counsel, that while the notes were originally discounted and the proceeds received by the Company, and while the renewals up to 1898, might be recoverable against the Company, after that date, because it is alleged that no discount was actually paid in money, the subsequent renewals were without authority, and the statute of limitations would operate as a bar from that last date. To this it may be answered that the renewals were really payment from time to time, the Company got the benefit thereof by regular discount and credit for the proceeds, and the old notes were paid off, cancelled and surrendered into the Company's possession, leaving nothing but the last notes sued on. It is true they are spoken of as renewals, but in point of fact while they represent the old debt of which the Company got the benefit, the notes were all regularly paid, and new notes given, and it was precisely in each case of renewal as if the notes were credited in actual cash, and a check drawn against the deposit, which included the cash deposited as well as the proceeds of the new notes in payment of the old notes. Jt was the custom of the bank, as in the case of all banks in the locality, not to require a formal check to pay off a note,

but where there was a running account to charge it against the account, and the incidental fact that there might be an overdraft on one or two occasions would not alter the effect of the transaction.

The balances on settlements of the accounts between the Bank and the Company were generally in favor of the latter, certainly up to March, 1899, and the same ran along as before with a mingling of deposits, payments and charges.

The Bill in the present case, based on the claim of the Bank, was filed January 19, 1904. (See Printed Case, p. 1.) The statute certainly had not yet run as against the claim of the Bank as based on the renewals up to that date.

But payments were made since March, 1899, both by deposits and by the system pursued of new notes discounted, the proceeds received by the Company, less the discount, and the old notes paid and cancelled.

The Bank books also show in March, 1900, a considerable balance to the credit of the Company, besides a number of deposits subsequently made between that date and the death of the President of the Company, Judge Green, in August, 1900.

While the term " renewal " has been given to the transactions between the Bank and the Company, the notes from time to time given, were really new notes. In each case it was as much a new loan and discount as the original note, and in every case the Company got the benefit of the proceeds.

This was formally admitted by counsel for respondent. (See admission by Mr. Lindabury, pp. 175-181.

The term "renewal" is not a word of art and has no legal or strictly technical signification. It is a matter of intention of the parties as to what a given transaction in the giving of a new note for an old one may be.

> Amer. & Eng. Ency. Law, 2nd Ed., Vol. 24, Page 465 and Note 2.

In addition to the facts above stated, it further appears from the testimony, that the transactions as to these notes, and many others, were or ought to have been known by the Directors. They were contained in the books of the Company, and the Bank Deposit Books, (Case pp. 169–174.) They were on file among the papers of the Company, many hundreds of them, and they were regularly renewed for many years,

all by Judge Green, the Company's President. The Company got the proceeds, and they so appear upon the books of the Company. This was also the case with the Wilbur Trust Company notes. So also the notes endorsed by H. A. Potter, a director, a long series of renewals were carried along from 1893 over and beyond the year 1897 down to 1900 at regular periods of three months, and expressly admitted by counsel for respondents as a valid claim against the Company. (p. 121.)

Attention is also directed to the letter of E. P. Wilbur, Ex. W.6, in which he speaks of the necessity of making provision for the Company's debt, and doubts whether the banks will continue the renewals of the Company's paper much longer. This letter, dated June 15, 1895, thus shows his knowledge of renewals by the banks, and, of course, of the manner in which the notes were given. (p. 275.)

As further evidence of knowledge by the directors of the claim of the Bank, of the exercise of authority by the President in creating the same and the liability of the Company for same, see the action of the Company in 1898 in appointing an auditing committee, and the report of that committee, which came to the actual knowledge of the directors. (Minutes of April 19, 1898, pp. 374-375; also testimony of W. A. Wilbur, p. 380,)

The report of the Auditing Committee, a copy of which is admitted to be correct and made by said committee in pursuance of said action, contains a statement of the notes then held by the Easton National Bank, amounting to upwards of $13,000, of which the notes now claimed upon are renewals, as already shown. (Ex. E11, Case. pp. 438-444.)

Under all the evidence in the case, Judge Green being President and General Manager of the Company, and in view of the manner in which the affairs of the Company were permitted to be carried on, the fact of actual knowledge thereof by the directors, or ample opportunity to know, their failure to exercise any control and supervision over the affairs of the Company, the long continued course of dealing by the Company in permitting Judge Green to carry on its business, borrow money, sign notes, have them discounted, and constantly renewed through nearly a dozen of years, all for the benefit of the Company, there could be no other finding than that there was full authority on his part from the Company as to the Banks, not only to negotiate the loans, and have the notes discounted, but

also to renew the same from time to time by discounting others in their place, paying off the old notes, and taking new notes and by payment or otherwise to renew, keep same alive and toll the operation of the statute, even if each renewal should not be regarded as a new discount and payment of the old note.

"Prior to July, 1890, the secretary of a manufacturing corporation had exercised the authority of endorsing commercial paper, and thereby obtained discounts, whereby funds necessary to run the corporation were obtained. In July, 1890, a new treasurer was elected, and he was introduced in the banks where said discounts had been made, by said secretary, as having authority to make endorsements formerly made by him. From July, 1890, to May, 1893, he made a multitude of endorsements on paper like that formerly endorsed by said secretary, and during such period the directors of the corporation did nothing with a view to look into and manage its affairs. They claimed that when said treasurer was elected they understood he would put in sufficient money to do away with the need of endorsing and discounting paper as was formerly done, but less than five months thereafter the majority of them knew that he had failed to put in additional money. They had access to the corporation's books, plainly showing his practice in making said endorsements, but they never examined them. HELD, that, though they did not know of said endorsements, they ought to have known.

"Where the directors of a corporation acquiesce in the act of its treasurer in endorsing its paper for discount, while holding himself out to the public as having authority so to do, they thereby constitute such treasurer its general agent to make such endorsements.

"Where a corporation's treasurer is made its general agent for the endorsement of paper, by reason of the acquiescence of its directors in numerous endorsements made by him while holding himself out to the public as having authority so to do, an endorsement made by him is binding on the corporation, though the endorsee had no knowledge of the previous endorsements.

"Where a corporation's treasurer acts as its general agent in endorsing, from time to time, large quantities of its commercial paper, it will be bound thereby, if the directors ought to have known he was so doing."

Blake vs. Domestic Manufacturing Co., 64 N. J. Eq.. 480.

The President is the Chief Executive officer, and by virtue of his office has authority to perform all acts of an ordinary nature which by usage or necessity are incident to his office and may bind the corporation by contracts in the usual course of business.

Stokes vs. N. J. Pottery Co., 46 N. J. Law, 237.

Where an officer is clothed with apparent authority, although not inherent in his office, the general doctrine of agency applies and the corporation may be liable for his acts. The authority of the officer does not depend so much on his title or on the theoretical nature of his office as on the duties he is in the habit of performing.

Fifth Ward Savings Bank vs. First National Bank, 48 N. J. Law, 513, 525.

A corporation is estopped from denying in any particular instance that its President has the power which it customarily has allowed him to exercise in the face of the public.

St. Clair vs. Rutledge, 115 Wis., 583.
95 Am. St. Rep., 964.

What will evidence authority of the president of a corporation to bind it by contract must be considered with reference to the circumstance that such officer almost universally exercises the power of a general agent for his company.

Id., p. 970.

If the directors of a corporation for a long time fail to exercise their functions in directing corporate affairs and leave them wholly to be looked after by the president, his authority to do the thing he is apparently authorized to do is as binding upon the corporation as though conferred in the most formal manner.

Id., 976.

B.

AS TO RIGHT OF RECEIVER TO DECREE AGAINST E. M. PAXSON, ELISHA P. WILBUR, HENRY A. POTTER, AND ESTATE OF HENRY GREEN, DECEASED, STOCKHOLDERS OF THE AMERICAN BRICK AND TILE COMPANY, TO PAY CREDITORS WHOSE CLAIMS ARE ALLOWED.

I.

The Statute of Limitations no Bar to Liability of Said Stockholders to a Further Call or Assessment to Pay Said Creditors, and Same Has No Application.

There has been only a partial call of $4 per share made in 1891, and no other call for any further payments on account of stock subscribed since.

The subscriptions on stock are only payable upon call, and as to the balance therefore, there could be no liability to an action therefor until a call or assessment has been made by the directors or upon their default so to do, in case of insolvency, until a call is made by the Chancellor or by the Receiver under the order and direction of the law.

"Statutes of limitation do not commence to run as against subscriptions of stock, payable as called for, until a call for its equivalent has been had, and subscribers cannot object when an assessment to pay debts has been made, that the corporate duty in this respect has not been earlier discharged.

"Stockholders of record are liable for unpaid instalments, although they may have in fact parted with their stock, or may have held it for others."

Hawkins vs. Glenn, 131 U. S., 319.
Cook vs. Carpenter, 212 Pa., 165. (Adv. Rep., Oct. 13, 1905.

It was competent for the court to order payment of the unpaid stock subscriptions, as the directors, under the instructions of a majority of the stockholders might, before the decree of bankruptcy, have done.

The capital stock of an incorporated company is a fund set apart for the payment of its debts.

As the company might have sued a stockholder for his un-

paid subscription at law, the assignee succeeding to all its rights has the same remedy.

Sanger vs. Upton, 91 U. S., 56.

A suit by the company will not lie on a subscription for stock until a call has been duly made.

Braddock vs. R. R. Co., 45 N. J. Law, 363.

"A call is nothing more than an official declaration that the sums subscribed and required to be paid."

Ibid.

Where the company has become insolvent and a receiver has been appointed, the Court of Chancery may direct the receiver to make calls.

Hood vs. McNaughton, 54 N. J. Law, 425.
Barkalow vs. Totten, 53 N. J. Eq., 573.
Hebberd vs. Cattle Co., 53 N. J. Eq., 18.

No right of action either by the corporation or by the receiver would then exist until such call was first made and the statute could only begin to run when such action accrued.

After a call has been made and the subscription or a part of the subscription is thereby rendered due and payable, the statute of limitations begins to run.

Cook on Corporations (5th Ed.), Vol. 1, §195, p. 384.

The statute of limitations begins to run against an action against a stockholder in an insolvent corporation in the hands of a receiver to recover unpaid assessments on his stock when the Court orders the assessment to be made.

Glenn vs. Marbury, 145 U. S., 499.

In Scovill vs. Thayer, 105 U. S., 143, 155, a case in equity, the court said: "Before there is any obligation upon the stockholder to pay without an assessment and call by the company, there must be some order of a court of competent jurisdiction, or, at the very least, some authorized demand upon him for payment. And it is clear that the statute of limitations does not begin to run in his favor until such order or demand;" citing cases.

Cook on Corporations (5th Ed.), Vol. 1, §196, p. 388.

A decree of a court of equity that the subscription be paid is equivalent to a call, and the statute commences to run.

Glenn vs. Saxton, 68 Cal, 353.
Cook on Corporations (5th Ed.), Vol. 1, §196, p. 388.

Where a decree is made assessing the stockholders on their subscriptions, the statute of limitations begins to run from the entry of the decree. Glenn vs. McAllister, 46 Fed. Rep., p. 883.

The present case does not admit of the application of the principle of laches. If the statute of limitations runs only from the time of a call or assessment, the right of action cannot be barred until the expiration of the full period of six years thereafter.

To hold that the delay of the directors especially of an insolvent company to make a call shall operate as laches would be to put a premium upon the neglect of the very parties who are interested in defeating or postponing creditors, and who are usually subject to the liability along with the other stockholders.

So far as the complainant is concerned in this case, its notes were regularly discounted, and renewed from time to time upon what was believed to be good and sufficient endorsement, and there is not a particle of evidence showing any knowledge of the Company's insolvency, even if such knowledge were an element of any significance.

II.

The Original Subscribers to the Certificate of Organization Liable to Creditors Upon Their Subscriptions and Stock Received by Them to the Extent that the Same Was Not Actually Paid For and Such Liability Not Defeated or Lessened by Any Private Agreement or Arrangement Among Such Subscribers.

As to E. M. Paxson, H. A. Potter, Henry Green and E. P. Wilbur, at least, there is no pretence that they paid any money other than the instalment aggregating $10,000 each, and the small assessment of $4 per share on account of their original subscriptions, or the larger amount of shares for which the Company, in the fall of 1887, issued the certificates held by them respectively.

These subscribers conveyed no property or interest of any kind to the Company, or to anybody else in payment of their stocks. Whether we regard the payments of the amounts of $10,000 as full payment for a hundred shares, or as payments on account of their stock generally, they paid or gave nothing else. The record shows that the stock they got was issued to them directly by the Company, and there is nothing to show that there was ever a transfer to them or any part thereof from anybody else.

The agreement between Simpson and Canfield and Green of March 6, 1886, properly read and interpreted according to its terms, was only an agreement between these parties by which Simpson and Canfield, the owner of the slate brick patent, was to get 4000 shares of the Company and $5,000 cash for the transfer to the Company of the patent then issued to and owned by Canfield and Simpson and one or more patents on kilns then being applied for, but not yet granted, but of which stock they undertook to return 250 shares into the treasury of the proposed corporation. In the recital in the agreement, it is stated that Green was willing to undertake to place the stock of the corporation, that is, to find purchasers or subscribers therefor. He was in effect a promotor of the contemplated Company. By the agreement he was to get or control 6000 shares, for which he was to pay nothing according to the agreement except the sum of $20,000 to be paid into the treasury of the Company and out of his shares, he was to transfer 200 shares to Canfield and Simpson. In substance, the Company was to purchase the patents and Canfield and Simpson were to get 3950 shares of stock for them, and Green was to pay them the additional sum of $5,000. This was the entire price of the patents. No interest whatever in the patents was to go to or belong to Green, or any one else under this agreement. The Company was to receive the patents and Simpson and Canfield were to get 3950 shares for them. Paxson, Wilbur and Potter, none of them in any way became the owners of the patents or any part of or interest in them, and there is no evidence whatever of any transfer of property or interest therein to them or any of them.

The attempt in the answers to set up such a theory has no support in the evidence, and although attempted to be suggested in the questions of counsel, the testimony of the witnesses

shows that they had no idea that there was any such property or ownership in them.

See Judge Paxson's testimony (Case, p. 199) that "a certain amount of the stock was to be issued to the patentees and the balance of the stock was to be issued to those gentlemen who agreed to put in some money for the purpose of operating under the patents." The witness is referring to the issuing of the stock at the informal meeting of himself, Green and Wilbur, which the counsel for respondent assumes constituted the issue of stock for the patents.

E. P. Wilbur does not remember how much the patents were to cost or how much Simpson and Canfield were to get for the patents. (p. 262). They were possibly to ge t4000 shares. (pp. 262-263.)

He further testifies that he had no idea as to what portion of the stock they (Canfield and Simpson) were to get for their patents. They were to get a considerable portion of the stock. The remaining portion of the stock, "portions of it were to go to Judge Paxson, a portion to Mr. Potter and myself, and a portion to Judge Green *for the money we put in the Company.*" (p. 264.)

He further testifies (p. 265) that outside of the stock that was to go to himself, Judge Paxson and Mr. Potter, some went into the treasury and " then the remaining portion was to go to Canfield and Simpson *for their patents.*"

Mr. Potter says he and the other parties (Paxson, Green and Wilbur) were parties to an agreement made about the time of the incorporation, which entire arrangement was " that if the four of us put up the money to build this plant and exploit it with Canfield and Simpson, we were to have a certain amount of stock under the agreement, the balance of some of it or some of the balance that they did not get was to go into the treasury, and whatever did not go into the treasury and did not go to Simpson and Canfield was to be divided between Judge Paxson, Judge Green, Mr. Wilbur and myself." (p. 327.)

Was to get an equal share of the stock from the Company and it was to be taken as fully paid up stock. (p. 345.)

Paid his $10,000 into the Company towards the erection of the plant and to exploit the patents and supposes that what

was paid to Simpson and Canfield came out of the money. (p. 352.) All that he paid for the 1500 shares was $10,000, and this was paid towards building plant and to exploit the patents. (pp. 352-353.)

This money went to the Company (p. 353) and so credited in the books of the Company. (See cash book, also schedule of payments in the Receiver's bill and admitted in the answers.) (Case p. 24.)

Judge Green, who is now dead, is the only other party to the transactions preceding and attending the original promotion of the Company. And we have his admission which conclusively shows his understanding of the agreement, and that the stock issued to the four parties named was never paid for except that a small portion in money was paid. (See copy of letter to H. Green in his handwriting addressed to Judge Paxson, dated August 23, 1898, in which he admits the above fact, and that the subscribers are bound in law and honor to respond to the demands of the creditors to raise the money and pay them.) (See Case pp. 429-430.)

As the agreement and arrangement then stood between the parties at most the patents which Canfield and Simpson agreed to convey to the Company were secured for the sum of $5,000 in money and the promise of the issue to them of 3950 shares of the stock of the contemplated company. This was the price or consideration then fixed and ascertained and so understood by all the parties to the incorporation, and this was what the Company was to pay for the patents.

The agreement being executed between Canfield and Simpson and Green fixed the liability of the parties.

Green and others were to get their stock as paid up stock for the actual money paid in to wit: the $10,000 each.

As to Canfield and Simpson, the consideration or price for their patents was already fixed by the agreement of March 6, 1886, made prior to the execution of the certificate of incorporation and the grant of the charter, and this consideration or price was less than half of the stock of the proposed Company.

This was a private agreement between Canfield and Simpson and Green, and antedating the certificate of incorporation, however binding it might be upon the parties thereto or even

other subsequent stockholders who knew or upon reasonable inquiry might know, could not bind the state granting the charter, or the public and particularly could not affect creditors who afterwards dealt with the Company presumably upon the faith and credit of the subscriptions and issues of stock and as to whom such capital stock was a trust fund for their benefit.

In the case of Wetherbee vs. Baker, 35 N. J. Eq., 502: "Five persons agreed for the purchase of a tract of land and organized themselves into a corporation, under the land improvement act. In the certificate of incorporation the capital was fixed at $100,000, and these persons subscribed for all the capital stock, and became the directors of the company. The consideration of the purchase was $50,000; the deed was made directly to the corporation, and it gave its obligations for the whole purchase-money. The directors then appraised the lands at $100,000 and credited $50,000 of that valuation as a payment of fifty per cent. on the subscriptions to the capital stock. The lands were not worth more than the original purchase-money, and the company acquired no other property, real or personal. In a suit brought by a creditor of the corporation against the subscribers to the capital stock, to compel them to pay their subscriptions, in order to satisfy debts of the corporation, *held*, that as against creditors of the corporation the allowance of a credit of fifty per cent. on the subscriptions of the stockholders were invalid, and that the stockholders were liable for the whole amount of their subscriptions to the capital stock, as they appeared in the certificate of incorporation."

Taking the most favorable view of the present case, the agreement of March 6, 1886, had already secured to the Company at a price of 3950 shares of its stock—less than one-half—and the sum of $5,000 in money to be paid, the entire property to be transferred to the Company, to wit: the then existing patent and pending patents. If it be true that the Directors afterwards issued all the stock for the patents, estimating them as worth a million dollars, crediting the excess of value thus added over the price at which by the terms of the agreement the patents had already been sold, then we have the precise conditions of the case of Wetherbee vs. Baker. The agreement clearly was conclusive that the parties did not

estimate the value of the patents at even half of the par value of the stock.

In the Wetherbee case the promoters had an agreement for the purchase of the land at a certain figure. They were held, however, as agents and trustees for the company when afterwards formed. Here, as there, the promoters could not be held to be the owners of the property which the contract had already secured for the company at a price much less than that alleged afterwards to be fixed.

Whether the agreement preceding the incorporation should be held to stipulate for the issue of a part or even all the stock of the contemplated Company for the patents, such agreement, however binding between the parties to the arrangement, could not affect the public or the creditors in contradiction of the certificate of incorporation.

In the Wetherbee vs. Baker case, supra, the Court says: "The first section of the act requires the certificate of organization to specify the amount of the capital stock, and the names and residence of the stockholders, and the number of shares held by each. This certificate is required to be acknowledged, and to be recorded in the County Clerk's office, and then to be filed in the office of the Secretary of State. The legislative purpose in exacting a statement of the amount of the capital stock, and of the names and residences of the subscribers, and of the amount subscribed by each, with the publicity of a public record of the certificate, was to provide a means of assuring the payment of debts contracted by the corporation. The legislature contemplated that subscriptions of the stock should be the capital with which corporations organized under the act should engage in business, on the credit of which the corporators were empowered to contract debts in the corporate name without any liability for such debts beyond the amount of their subscriptions to the stock. The capital stock subscribed is a substitute for the personal liability of partners in ordinary copartnerships, and creditors are entitled to a bona fide exercise of the compulsory powers of the corporation to compel subscribers to pay in their subscriptions. Any arrangement between the agents of the corporation and subscribers for its stock that their subscriptions shall be merely colorable or less onerous than they purport to be on the face of the subscription, is void as a fraud upon the creditors. Thomp. on Stockholders, §124. So rigidly is the obligation of sub-

scribers to the capital stock enforced in favor of creditors, that it is no defence to such a subscription that the stockholder was induced to make his subscription by false and fraudulent representations of the corporation or its agents."

35 N. J. Eq., p. 511.

In Marshall Foundry Company vs. Killian, 99 N. C., 501, (6 American State Reports, 543), the Court says:

"Upon a review of the authorities, we take the overwhelming weight to be, that, after stock is subscribed and the company is organized, each subscriber becomes liable for the amount of stock subscribed by him, and he can only discharge this liability by paying it in money's worth, *in the manner indicated by the subscription and the charter or by-laws of the company*, and neither the officers of the company nor the stockholders can release him from this liability without the consent of every stockholder. Each subscription, when made, becomes a conditional contract with every other person who may subscribe that the amount subscribed shall upon the formation of the company be paid in accordance with the terms of subscription, and when the requisite stock is subscribed, and the company is duly organized, *it becomes the offer or basis of credit to the public, or to all who may deal with it*, and every subscriber participating in the organization *thereby makes his subscription absolute* and is bound to pay it according to the terms of the charter and by-laws of the company, and he can discharge his liability in no other way.

"As between the corporators themselves, it may be that certificates of stock, by the consent of all the members, may be issued as if paid up, without any actual payment in full or even in part; but, however this may be, *no device or arrangement among the corporators themselves, not made known to the public, by which the stock subscribed, instead of being paid, as the safe foundation of the credit and confidence which the company invites the public to give it, can be permitted to avail against the claims of persons who may deal with and trust the company upon the faith of its capital stock and corporate liability*. By incorporation a privilege is conferred which exempts the individual members from all liability except that incurred by membership; and good faith to the public requires a strict compliance with all the obligations imposed by that membership."

Parol evidence cannot be received to vary the terms of the

subscription, or to show a discharge in any way other than that required by the terms of subscription and the charter and by-laws. Bank vs. Littlejohn, 1 Dev. & B., 563; Railroad vs. Leach, 4 Jones, 340; Cook on Stock and Stockholders, Secs. 137 et seq.

In note to Thompson vs. Savings Bank, 3 Am. State Rep., 823, 824, it is said:

"*A subscription, unconditional on its face, cannot be controlled or qualified, as to creditors of the corporation, by any private understanding or agreement between the subscriber and the officers or other agents of the corporation, by which the subscriber's liability, according to the terms of the subscription is released, or in any way lessened:* Jewell vs. Rock River Paper Company, 101 Ill., 57; Hickling vs. Wilson, 104 Id., 54; Peychaud vs. Hood, 23 La. Ann., 732; Safford vs. Barnes, 39 Miss., 399; Haskell vs. Sells, 14 Mo. App., 91; Burke vs. Smith, 16 Wall., 390, 297, affirming in part Putnam vs. New Albany, 4 Biss., 365; 2 Morawetz on Corporations, sec. 842; Cook on Stock and Stockholders, secs. 137, 138. Aside from the objection that the general rules of evidence will not permit the contract of subscription to be varied or modified, *persons dealing with the corporation have a right to rely upon the subscriptions as they purport to be, and it would be fraud upon them to permit a subscriber to show that his apparently unconditional subscription was in fact conditional.* It has even been held that a subscriber to the stock of a corporation *could not*, in an action against the stockholders by the corporate creditors to compel the payment of unpaid subscriptions, *set up a secret collateral agreement between himself and the company, by which his subscription was to be paid in land instead of money.* Noble vs. Callender, 20 Ohio St., 199."

The issuing of the stock to the original subscribers as "for property purchased," with the intention of making it paid up stock in the light of the Simpson and Canfield agreement, and the arrangement among the original promoters is clearly a device, not only in contradiction of the terms of the certificate of incorporation, but also an attempt to give an artificial credit for the payment of the stock of Wilbur, Paxson, Green and Potter to the extent of the difference between the actual money paid and the par value of the stock subscribed for or taken.

Even as to Simpson and Canfield, the agreement could only be treated as fixing the price of their stock which would be the patents agreed to be transferred to the Company.

But in the light of the authorities we contend that unless the patents are approximately shown to be the "money's worth" contemplated by the decisions herein cited, even as to Simpson and Canfield, they could not avoid their liability as to creditors upon their subscriptions.

Certainly, Green, Potter, Paxson and Wilbur, in acquiring and distributing among themselves the whole or a portion of such stock, and having knowledge of the real arrangement, would take such portion of their stock so acquired in its true condition, subject to the real consid ration therefor.

III.

As to the Claim of Appellants That the Stock Was Fully Paid For by the Alleged Action of the Directors Authorizing Issue of the Stock for the Slate Brick and Kiln Patents Assigned to the Company by Canfield and Simpson in September, 1887.

The American Brick and Tile Company was chartered April 6, 1886. (See Charter. Case pp. 8-11.)

The following is the history of the legislation up to and covering that date and showing the state of the law applicable to this corporation:

The first act is that of 1846. It authorizes the establishment of manufacturing companies, and provides in section 27, (P. L. of 1845, p. 60) that

"No note or application given by any stockholder whether secured by any pledge or otherwise shall be considered as payment of any part of the capital stock."

The same provision is contained in the act of 1849. (P. L. of 1849, p. 306 Sec. 26. It continued unchanged until the revision of 1875, when the act quoted was greatly changed, transferred to the Corporation act, in which it appears as section 54. Rev. Stat. p. 186. It there reads:

"Nothing but money shall be considered as payment of any part of the capital stock * * * except as hereinafter provided, for the purchase of property."

Then follows a new section (section 55) as follows :—

"The directors of any company incorporated under this act may purchase mines, manufactories or other property necessary for their business *and issue stock to the amount of the value thereof*, in payment therefor, and the stock so issued shall be declared and taken to be full paid stock; neither shall the holder thereof be liable for any further payments under any of the provisions of this act, and said stock shall have legibly stamped upon the face thereof the words 'issued for property purchased.' "

It was these provisions that were in force when Wetherbee vs. Baker, 35 N. J. Eq., 502, was before the Court of Errors, although the Court in that case was not called upon to construe them, but the somewhat analogous though less explicit provision contained in section 3 of the Land Improvement act (Rev. Stat., p. 568), which provided that the payment of capital stock "shall be made either in money or in land * * * the land to be appraised by the Board of Directors and taken at such value by the said company, on such terms as may be agreed upon."

Notwithstanding that the price appeared to be left entirely to the judgment of the directors, it was held that in that case that the rule applicable was "that payment of stock subscriptions is good as against creditors only where payment has been made in money or what may fairly be considered as money's worth."

If this was the rule in cases arising underthe land act, *a fortiori*, would it apply to cases arising under the corporation act of 1875, for this latter act, in plain terms, required a full equivalent in property for the stock to be issued for it; and such was the construction put upon it by Vice Chancellor Green in Edgerton vs. Electric Co., 5 Dick. Ch. Rep. 354, 361.

In 1889 the act of 1875 (P. L. of 1889, p. 414) was broadened by adding to the things that might be purchased, "the stock of any other company or companies owning, mining, manufacturing or producing materials."

The revision of 1896 does not apply to the American Brick and Tile Company which was incorporated in 1886. Section 49 of that revision is as follows:

"Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business and issue stock to the amount of the value thereof, in payment therefor, and the stock so issued shall be full paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and *in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive*."

The phrase "in the absence of *actual fraud* in the transaction, &c.," does not appear in the statute as existing at the time of the incorporation of the American Brick and Tile Company and was evidently put in to change the law from the requirement of payment in property fairly equivalent to the value of the stock issued to be tested by the judgment of the Court in case of controversy, so as to broaden the provision and make the judgment of the directors conclusive in the absence of fraud.

The insertion of this language was not a vain and empty amendment and implies that the pre-existing law differed on this very point.

Prior to the revision of 1896, the test of payment was substantial equivalence in value,

The value of the property and the nominal value of the stock must have been at least reasonably approximate and of this the court was the judge.

It is immaterial as the law stood prior to 1896 whether the directors in their minds thought the property was worth a million dollars or not. If it be found that the patents were practically valueless and the stock issued for it was the whole million dollars or the four hundred thousand dollars of stock agreed to be issued to Simpson and Canfield, it is the duty of the Court under the law as it existed before 1896, to hold the stock unpaid as to all over and above what was actually paid in from time to time in money, and to assess against such unpaid balance the amount necessary to pay debts and expenses.

But whatever be the scope and purport of the law as applicable to the American Brick and Tile Company, and even if

the later Act of 1896 should be regarded as not materially changing the law as it had previously existed, we have the conclusion of the Vice Chancellor, who heard the case below ,that there was actual fraud in the issue of the stock to Paxson, Wilbur, Potter and Green.

The petition of the receiver having been amended and allowed to be filed as a bill of complaint with proper averments of fraud and prayers to set aside the contract by which the stock was issued to the defendants as full paid for property purchased, and to levy an assessment thereon to pay creditors and the parties by counsel having on the hearing expressed their desire and consent to have the whole controversy determined, as all the evidence necessary to settle the questions that would be raised by such a bill had been taken, (Case p. 490) the Court found in its decree that the stock for which the several certificates to Paxson, Wilbur, Potter and Green were stamped "Issued for property purchased" was not issued for the purchase of property of the value thereof but that said property was taken at an excessive valuation and that the issue of the said stock was fraudulent and in derogation of the rights of creditors. (Case p. 491). And by the said decree the contract by which the same was so issued, was decreed to be fraudulent and void as to the Easton National Bank, and Henry Short creditors and the same thereby set aside and declared to be null and void. (Case p. 496).

In this connection we desire to further refer to the conclusions of the Vice Chancellor, that there was no official action taken and that "with the exception of informal meetings and perhaps general conversations with Judge Green, the carrying out of the negotiations with the patentees, was confided entirely to Judge Green; that the expectation of the parties was that he would in some way arrange matters so that for the $10,000 each had advanced stock would be issued to them, which, at par, would be greatly in excess of that sum, and that they never expected that if all of the stock was issued for patents it would be retained by the patentees, for under the view insisted upon that all of the stock was to be issued for the patents, nothing would remain for those who had contributed towards the incorporation of this Company." (Case pp. 479-480.)

And further: "If we should accept the claim of these defendants that there was a meeting of the Board of Directors,

at which it was voted to issue all of the stock for the patents, I am yet of the opinion that *the proceeding was a device to issue to these Directors stock, for which they had not and did not expect to pay in "money or money's worth,"* and that *to accomplish this there was an intentional overvaluation* of the patents, which, as against creditors, was such a fraud as a Court of Equity should discountenance." (Case p. 480.)

As a further conclusion he also found that it was never intended to issue all of the capital stock in payment for the patents, his conclusion being as follows :

"The conclusion to be drawn from the evidence is irresistible that these incorporators knew that 60 per cent. of the capital stock was to be issued to them in equal portion, representing a par value of $150,000 each, for which they paid only $10,000; nor was the formality of issuing the stock to Judge Green observed, the record showing that the first issue was to the incorporators, from which it is fair to infer that Judge Green was the agent of the parties, and that they had full knowledge of the situation. I am, therefore, of the opinion that the issue of this stock as full paid, while good as between the parties to it, was a contract made by the company with its stockholders in derogation of the rights of creditors, which should be set aside, and the holders of the stock decreed to pay on account of their holdings, in addition to what they have paid in cash, a sum sufficient to liquidate the debts of the Company." (Case pp. 481-482.)

We have thus definite and specific findings of actual fraud, findings of fact that would be decisive of the case even under the assumption that the act of 1896 is applicable or simply declarative of pre-existing law.

These findings of fact were made after a full hearing and a review of a large mass of testimony, oral and documentary, bearing upon the subject. The witnesses were before the Vice Chancellor, who had full opportunity to observe their bearing and manner. Such findings by a Master or Vice Chancellor, it is submitted, have a certain binding force, which this Court will not lightly disturb, and they are to be taken as conclusive, unless clearly against the evidence, or the weight of the evidence. It is incumbent upon the Appellants, in order to set aside or disturb these findings, to show that they are unwarranted by any evidence in the case.

Haulenbeck vs. Cronkright, 23 N. J. Eq., 408.
Blauvelt vs. Ackerman, Id., 495.
National Bank of Metropolis vs. Sprague, Id., 81.

We, however, submit the following considerations to show that the Vice Chancellor was entirely justified in his conclusions and in recommending the decree made by the Chancellor.

1. *The Patents were absolutely valueless and so demonstrated even before September 27, 1887, the date of the first issue of stock by the company.*

a. The only property in the present case for which it is alleged the stock was issued was a patent for making brick, etc., from slate refuse, and two patents on kilns in contemplation for which applications were still pending.

This patent, known as the Dickson patent, had only been issued about a year before the Company was incorporated, and had never been used in manufacture.

Some experiments costing a trifling expenditure of a few hundred dollars, and tests of a few bricks made was all that had been done in the way of practical trial of the process.

There were no licenses to use the patent granted prior to the issue of the stock, the first and only one shown in the testimony being in 1888 to one Charles H. Salmon and no royalty except about $50 was ever paid under it, the brick process proving a disastrous failure to Salmon. (pp. 394-397; Ex. W3, p. 462.)

Any estimate of value based upon such licenses was purely speculative and problematical, and in the minds of men of affairs and business experience such as the promoters of this Company, Messrs. Paxson, Wilbur, Green and Potter, would surely be a wild and reckless guess.

The testimony of Judge Paxson and Mr. Wilbur upon this subject is not to be considered of any value.

The former is clearly mistaken as to any licenses then existing, as is shown by the books of the Company showing no licenses paid, the testimony of Charles H. Salmon (p. 397), and the testimony of A. C. Giveler (p. 387), who shows that the use of the patent by the Fuller Company was about four years after the issue of the stock to Paxson, Wilbur, et al. Judge Paxson is evidently mistaken and his memory greatly at

fault as to the matters upon which he vaguely and very indefinitely expresses a belief in the value of the slate brick patent.

E. P. Wilbur's testimony is likewise of no value. He bases his estimate of the value of the patent at a million dollars upon a most unsubstantial ground when he says (p. 234) that in forming his opinion as to the value of the patents he relied principally upon the royalties that they were to get, and that he knew nothing about the brick making. There then being no licenses issued, as shown by the uncontradicted proof until, after the stock was issued, and no proof whatever of more than one contract for a license, which proved a failure, and nothing but guessing and speculation as to any others, the conclusion as to the worthlessness of the patents based upon this consideration, and that they knew or should have known of it is absolutely irresistible.

H. A. Potter made no investigation of the value of the patents, appears to have no knowledge or opinion of his own and relied upon the mere speculative statements of Judge Green as to the future production of the plant then not yet built or worked, and the uncertain and possible sale of licenses or rights in the patent. (pp. 331-332.)

No experts or persons familiar with patents, and particuly patents of the kind in question, were offered, nor were any consulted or called in at the time the stock was issued.

On the other hand, the evidence is absolutely convincing that the patents were utterly worthless.

The Dickson patent for making brick out of slate refuse is the principal subject of property upon which it is claimed the stock was issued.

The kiln improvement patents were of little or no account, and this substantially appears from the testimony. (pp. 404-409-410.) The Dickson patent is the one relied upon for manufacture and for expected royalties, which never materialized.

b. This Dickson patent was worthless because anticipated by other patents, particularly the Thomas Evans patent, granted in England in 1878. This covers identically the same process, and was in all particulars precisely like the Dickson patent. (See Specifications Ex. E18, p. 453; Thomas Evans

Patent, p. 466, and Specifications of Dickson Patent, Ex. D4, p. 459.)

This Thomas Evans patent was on file, and the description thereof in the specifications contained in the patent, set forth in the Patent Office at Washington, of which a proper certificate under the seal of the office was submitted in evidence. (Ex. E18, pp. 432-453).

It was on file at Washington at the time of the issue of the Dickson Patent, and could have been easily ascertained upon the inquiry usual in such cases, but which was never made by Wilbur et al.

No investigation was made by them as to conflicting patents and no competent person employed to examine into and report upon the validity of the patent.

There was also offered and received in evidence a duly certified public record office copy of the Thomas Evans patent for identically the same invention as the Dickson patent, showing grant of patent therefor in England in 1878. (pp. 466-475.)

The Dickson patent was, therefore, absolutely void, because anticipated by a foreign patent for identically the same thing.

The following is the law relating to such anticipation, and the evidence thereof:

"Written or printed copies of any records, books, papers, or drawings belonging to the Patent-Office, and of letters-patent authenticated by the seal and certified by the Commissioner or Acting Commissioner thereof, shall be evidence in all cases wherein the original could be evidence; and any person making application therefor, and paying the fee required by law, shall have certified copies thereof."

U. S. Rev. Stat. §892.

"Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor."

U. S. Rev. Stat., §4886.

"Whenever it appears that a patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication."

U. S. Rev. Stat., §4923.

Morse was the first and original inventor of the electro-magnetic telegraph, for which a patent was issued to him in 1840, and reissued in 1848. His invention was prior to that of Steinheil, of Munich, or Wheatstone or Davy, of England.

But even if one of those European inventors had preceded him for a short time, this circumstance would not have invalidated his patent. A previous discovery in a foreign country does not render a patent void, unless such discovery or some substantial part of it *had been before patented or described in a printed publication*. And these inventions are not shown to have been so.

O'Reilly et al. vs. Morse et al., 15 Howard (U. S.) 62,

By express provision of the statute an invention is anticipated by a prior description thereof in this or any foreign country.

Am. & Eng. Encv. Law, 2nd Ed., Vol, 22, pp. 317-319.
Rossenweisser vs. Spieth, 129 U. S., 47.
Dunbar vs. Miers, 94 U. S., 196.

"A prior foreign patent anticipates and renders void a domestic patent for a subsequent invention for substantially the same thing, although, as has been seen no amount of foreign knowledge or use will constitute an anticipation unless the invention has been patented or described in a printed publication."

22 Amer. & Eng. Ency. Law, 2nd Ed., p. 315.

"To defeat a party suing for an infringement of letters-patent, it is sufficient to plead and prove that prior to his supposed invention or discovery the thing patented to him had been patented, or adequately described in some printed publication. A sufficiently certain and clear description of the thing patented is required, not of the steps necessarily antecedent to its production.

"Letters-patent No. 137,893, issued April 15, 1873, to Moritz Cohn, for an improvement in corsets, are invalid; the invention claimed by him having been clearly anticipated and described in the English provisional specification of John Henry Johnson, deposited in the Patent Office January 20, 1854, and officially published in England in that year."

Cohn vs. U. S. Corset Co., 93 U. S., 366.

c. Moreover the Dickson patent is not for a patentable invention, and therefore valueless for that reason.

As to a patent for making brick, tiles, etc., from pulverized slate, instead of clay, not being a patentable device and invention, the following are authorities:

"The mere change or substitution of one material for another in an instrument, machine and article of manufacture, the purpose, means of accomplishment and mode of operation remaining the same, is not invention, and invention cannot be inferred because the new device is cheaper and better, and made of material better adapted for its purpose."

Amer. & Eng. Ency. of Law, Vol. 22, 2nd Ed., p. 290.

The substitution in a manufactured article of one material for another not involving change of method or of use, is not a patentable device.

Florsheim vs. Schilling, 137 U. S., 64.

In Hotchkiss vs. Greenwood, 11 How. (U. S.), 248, it is decided that employing one known material in place of another is not invention, if the result be only greater cheapness and durability of product.

" It is well settled that the mere substitution for an existing device, or part of a device, or combination, of its equivalent, doing the same thing as did the original device, by substantially the same means, though with better results, is not such invention as will sustain a patent. This principle applies to a change of materials used in a process or compound."

Amer. & Eng. Ency of Law, Vol. 22, 2nd Ed., p. 291.

A double "T" slide being old, and a wooden double-edged or dovetailed slide being old, it is not patentable invention to make either of metal instead of wood.

Carter vs. Messenger, 11 Blatchford (U. S.), 34.

Substitution of Papier mache for wire in "dummies," the former material having been used to make lay figures, many of which were draped in suitable clothing, is not invention.

Palmenbing vs. Buchholz, 13 Fed. Rep., 673.

The mere change in an instrument or machine of one material into another—as of wood, or of wood strengthened with iron—into iron alone, is not "invention" in the sense of the Patent Acts, and therefore is not the subject of a patent; the purpose and means of accomplishment, and form and mode of operation of each instrument—the new as of the old—being each and all the same. The mere fact that the new instrument is a better one than the old one—requiring less repair and having greater solidity than the old one—does not alter the case. It does not bring the case out of the category of more or less excellence of construction.

Hicks vs. Kelsey, 85 U. S., 670.

In view of the state of the art at the time of their issue, letters patent No. 101,590, granted to Tyrner Cowing, April 5, 1870, for " a wood pavement composed of blocks, each side having a single plain surface and one or more of the sides being inclined, and the blocks being so laid on their large ends as to form wedge-shaped grooves or spaces to receive concrete or other suitable filling, substantially as set forth " are void for want of novelty.

The substitution of blocks of wood of a given shape for blocks of stone of the same shape in the construction of a pavement neither involves a new mode of construction, nor developes anything substantially new in the resulting pavement, and is, therefore, not patentable as an invention.

Brown vs. District of Columbia, 130 U. S., 87.

d. The testimony of the witnesses for the petitioner as to the total failure of the patents, even before the issue of the stock in September and November, 1887, is overwhelming, and has not been contradicted or impeached.

Stephen Dietrich, an experienced brick maker and employed by the American Brick and Tile Company in 1886 or 1887, testifies fully as to the attempts to manufacture brick at the Company's plant, and as to the use of the Simpson kilns and their abandonment as a failure, and the substitution of the old regular kilns. (p. 404.)

He also testifies as to the burning and making of bricks by the Company for three or more years out of slate refuse, and loss of a large proportion and the failure and defects in such manufacture, and that they could not be made at a profit. (pp. 405-407.)

George Cole, also an experienced brick maker, and employed as foreman for a number of years, from the spring of 1886 at the brick yard of the Company, testifies fully as to the use of the Simpson patent kiln under the supervision of Canfield, its failure during the first year and a half, which was before the issue of the stock, and its abandonment and the substitution of the ordinary kilns. (pp 409-410.)

He also testifies that the manufacture of brick under the Dickson patent was a failure in 1886 and 1887, and also thereafter. (p. 411.) The manufacture described and the defects. (pp. 412 et seq.)

This witness also testifies very fully as to the trial and operation of the process at the works, and proves that the manufacture of brick under the patent was unsuccessful. (pp. 414-415.) Also at the Fuller place, Pennsgrove, afterwards and at the Salmon plant in Massachusetts, and that the same was a failure. (pp. 413-416.)

William Bray testifies that in the summer of 1887 (before the issue of the stock) the brick manufactured from slate refuse were defective and unsatisfactory, and not saleable for pressed bricks. (pp. 421-422.)

Bray also testifies as to offer of Judge Green to take him and his associates in "on the ground floor," and the declaration of Judge Green that he had secured this patent at a *very low price*. (p. 421, line 28.)

See also Judge Green's copy of letter to Judge Paxson, Ex, E17, in his handwriting, found among the papers of the Company, admitting but a small portion paid on the stock and admitting liability to contribute to pay debts of the Company. (p. 429.)

The testimony of Frederick Green as to the statement of manufacture and sales of brick, showing a profit of less than one dollar per 1000, says this was the rate for several years. (pp. 423-427.) See also statement for 1889. (Ex. E14, p. 425.)

Reference is also made to testimony of A. C. Giveler as to the failure of the patent process at the J. C. Fuller plant in 1891, at Pennsgrove, Pa, (p. 388.) Had competent persons, expert brick makers, to try to make brick under the Dickson patent and made experiments and bricks for a year before they abandoned it. (p. 391.)

See also testimony of Charles H. Salmon. Tried the making of slate brick from 1887 to 1890 or 1891 under the Dickson patent (p. 393); was a failure (p. 396). Expended $35,000 in these experiments and trials of this process. (p. 397.)

As showing that even in November, 1887, a few weeks after the issue of the stock, it was regarded as of little value, and if it represented the patents, those patents were comparatively worthless, see letter of Judge Green to W. A. Wilbur (Ex. W12, p. 374) in which the former says he got the stock there mentioned at cost of $5.65 per share. This is the stock that was obtained from Simpson and Canfield.

See also receipt from Canfield to Green for $3,750 in full payment of 493 shares October 1, 1887—a few days after the issue of the stock. (Ex. D12, p. 246.)

The stock of Paxson, Wilbur, Potter and Green, was issued to them in September and November, 1887, and July, 1888. (See Receiver's Bill, p. 11; answer of Wilbur, p. 36; answer of E. M. Paxson, p. 44; answer of H. A. Potter, p. 55.)

Wilbur, Paxson, Green and Potter were directors, of the Company, and had full opportunity to know the operations of the Company, the cost of the operations, the insignificant profit on the comparatively few bricks manufactured, the failure of the Dickson patent, the actual trial and abandonment of the "Simpson Kiln," all prior to the issue of any of the stock in the fall of 1887. They had access to the books, and it was their duty to know the business and results of the trials and work at the plant of the process under their patents.

They could have learned the fact of the invalidity of the patent, because already covered by a prior English patent, of which there was the record in the U. S. Patent Office at Washington, and they should have known, especially the lawyers of the board, that there were grave doubts of the patentability of the process as an invention.

2. *As to the alleged action of Paxson, Wilbur, Green and Potter in the issue and division of the stock, which is claimed to be the issue of stock for property purchased.*

For the convenience of the Court we have made the following references to the testimony of Messrs. Paxson, Wilbur and Potter, showing their own version of the transaction :

E. M. Paxson says (p. 199) that some of the stock was to be issued to the patentees and the balance of the stock was to be issued to those gentlemen who agreed to put in some money for the purpose of operating under the patents. This is the resolution or action referred to by the witness.

Relative to the resolution of assessment of 1891, Mr. Lindabury admits that if it was an assessment as upon stock not fully paid, voted upon by Judge Paxson and complied with, it would amount to an admission that his stock was not fully paid and was assessible. It was upon this ground that he contended for the admission of the statement of Judge Paxson as to his understanding of the resolution and what its intention was. (pp. 210-211.)

It is needless to say that a witness ought not to be permitted to give his opinion or mental purpose in voting upon a resolution.

There was but one single patent, the patent for making brick from slate refuse, that existed before the incorporation when it was first brought to attention of witness. (p. 216.)

Does not know whether the action as to the issuing of stock took place at the organization meeting. (p. 216.) Cannot say whether the action was taken at a meeting held before or after the organization of the Company, and the granting of the letters patent. Does not recollect anybody else being present except Judge Green, Mr. Wilbur and himself. pp. 218-219.) Has no recollection where the meeting was held—whether at Philadelphia or Easton, or whether anybody acted as President or Secretary. Says that Judge Green, Wilbur and himself frequently got together, sometimes at the dinner table, and sometimes at other places, and talked about the matter in an informal way. (p. 220.)

The resolution or arrangement as to the stock and patents referred to took place at an informal meeting, such as above described. No notice of call of such meeting. It was talked

about in this informal way that the stock should be issued for the patents. It was before the organization of the Company and the issuing of the stock, that is all he can tell us. (p. 221.)

The making of brick under the patent, prior to that time was merely experimental. Had not been manufactured by any plant or establishment. No business done, merely something done by way of experiment by the patentees. (p. 223.) The visit to the Fuller place as shown by Giveler's testimony (pp. 388-389), could not have been until long after the issuing of the stock, *about four years*. The testimony of Judge Paxson on this subject is clearly a mistake. (p. 224.)

As to royalties, it was shown by subsequent testimony that no license was granted to any one until sometime after issuing of stock. The only license was that of Charles H. Salmon for Massachusetts and Connecticut in 1888. (See testimony of Salmon, p. 397.)

Letter of Judge Paxson, April 30, 1891, as to the assessment: "I enclose check for $1,500 instalment due tomorrow." (p. 229.) (This an admission of liability.)

E. P. Wilbur, on his own behalf, details his various positions and business experiences in banking, railroads, etc., President of the Lehigh Valley Railroad for ten years, and one of the trustees under the Packer will, etc. (pp. 229-230.)

Judge Green brought the matter of the Brick and Tile Company to attention of witness. (p. 231.) The meeting at which action was taken for issue was shortly after incorporation. Not sure where, but thinks at Easton. (p. 232.)

The following is Mr. Wilbur's statement of the action of the alleged meeting:

"Q. What action was taken at that meeting, looking to the issue of the stock, and the consideration for it?

"A. *My recollection is that a statement was made by Judge Green as to the issue of stock to the gentlemen who had subscribed, and also the issuing of stock to Mr. Canfield, and the other gentleman whom I do not know.*

"Q. *Mr. Canfield and Mr. Simpson?*

"A. *Yes, sir, that is the names, for the purchase of the patents payable in stock.* . . .

"Q. How was it to be distributed, according to the way

you resolved—what was said, if you can recollect, and if you cannot recollect, give the substance of what was said ?

"A. I can only remember that a *certain amount of stock was to be given to these gentlemen for their patents*, a certain amount was left, which was to be kept in the treasury, and *other amounts to be paid for or delivered to Judge Paxson and myself, and those who had paid for their stock.*" (pp. 232-233.)

Wilbur testifies as to the issue of stock :

"Q. I asked you what you relied on ?

"A. Well, I relied more especially upon the income we should derive from the royalties." (p. 235.)

Says he did not get any of the 1500 shares direct from the Company except the 100 shares. Got the 1400 from Judge Green. (p. 237.)

Clearly this last statement is incorrect and at variance with what he had already testified to and the theory of the defence. The certificate book shows that the shares were directly issued to Wilbur and no transfer from Judge Green as an individual. Being the President, as the proper official, he may have handed the certificate to him. But the contention being that they were issued for property purchased, and so marked by the Company, they should have been paid for by the witness either by the transfer from Wilbur of property in the patents, or other property. He paid nothing either to Green individually or to the Company, nor did Judge Green.

Witness was told by Judge Green that he had made an arrangement by which he had gotten rid of the original holders of that stock. Does not know what the corporation got for that stock. Got his stock from Judge Green as part of the distribution, he supposed. Does not think Judge Green ever said what it was for when he sent it to the witness. (p. 247.)

E. P. Wilbur, further cross-examined, said he was present at first meeting for organization. Do not remember whether the Simpson and Canfield patents were spoken of at this meeting, but think not. (p. 258.) The action as to the issue of stock not at this meeting. (p. 258.) No recollection where the meeting took place at which the subject was discussed as to purchase of the patents. (p. 259.) Can only recollect that Judge Green, Paxson and himself were present, not sure as to Potter. (p. 260.)

Don't recollect who acted as chairman on that occasion, nor whether anybody acted so. (p. 260.) No distinct recollection as to the form of the action taken. No statement as to the value of the stock. The statement was what was to be done with regard to the issue of the stock. (p. 261.) Thinks it was put to vote, but is not positive as to that. No minutes. Does not remember how much the patents were to cost, nor how much Simpson and Canfield were to get for the patents. They were possibly to get 4000 shares. (p .262.) They were to get a portion of the shares. Cannot give details of the vote. (p. 264.)

Have no idea as to what portion of the stock of the Company they were to get for their patents. They were to get a considerable portion of the stock. The remaining portions of the stock, "portions of it were to go to Judge Paxson, a portion to Mr. Potter and myself, and a portion to Judge Green for the money we put in the company." (p. 264.) Outside of the stock that was to go to Judge Paxson, &c., some went into the Treasury and then the remaining portion was to go to Canfield and Simpson. That was substantially the way it was understood at that time. Thinks the meeting was a month or two after the organization. (p. 265.) The 100 shares came from Judge Green. (p. 269.) *Does not remember what he paid for the 1400 shares of stock. Cannot recollect what, if anything, he paid for the stock. Did not pay anything that he recollects.* (p. 270.)

Letters from E. P. Wilbur, as to assessment (pp. 274-277), amounting to an admission of liability.

Letter of E. P. Wilbur to Judge Green, May 24, 1900, as to paying up and arranging method of carrying it out. Judge Paxson ready to pay up. (p. 278.) Thinks there were some papers relative to a patent by an English party for same process enclosed in letter of January 18, 1888, Exhibit W11. Letter offered with enclosures. (p. 282.)

See enclosures in full (pp. 282-309), showing nature of English patent and identity of invention with the Dickson patent.

Wilbur made his arrangements with Judge Green by which he was to get the 1400 shares after organization. (p. 310). First arrangement with Judge Green for getting the stock was that he (Wilbur) was to pay $10,000 and was to get the same

amount of stock as he himself, Judge Paxson, or as Mr. Potter has, those who subscribed $10,000. Four were to put in $10,000. (p. 311). Wilbur says: "I was to get through Judge Green all (the shares) that I did get, except the 100 shares which I paid cash for." (p. 312). Does not remember the original arrangement as to the stock. Cannot recall when or how the change was made from 1000 shares to 1500 shares. (p. 314).

Q. Do you remember anything about it—how you came to get 1500 shares instead of 1000 shares?

A. I remember Judge Green told me I was entitled to that much stock in common with the others. Just how he got it I cannot recall. I do not know and I do not know that I ever knew." (p. 314).

Q. (By Mr. Lindabury). "Under the original scheme as mentioned in that paper neither you nor Judge Paxson or Mr. Potter are named, but here you are down for each 1000 shares, and Judge Green is down for 1000 shares plus 250—can you explain that?

A. I do not think I can explain it. (p. 316).

Judge Green spoke of several licenses, but witness does not think any of them had been made—he was negotiating for them. (p. 316).

Henry A. Potter details his business experience. Engaged in the largest oilcloth factory in the world. (pp. 322-323). In making Simpson and Canfield agreement Judge Green was not acting as agent for witness. (p. 324). Witness says he acquired his interest in the Company from Judge Green. This was before the incorporation of the Company. (p. 326).

Before the incorporation of the Company the witness says he had this verbal arrangement with Judge Green: "A. Why, that he had acquired an interest or had acquired these patents which to his mind were valuable and under the agreement he was to organize a company, the capital of which was to be one million of dollars, and it was to represent the purchase of the patents. In further agreement he was to supply or pay into the treasury of the Company $20,000 as working capital or capital sufficient to build a plant to exploit these patents; and that he had interested Judge Paxson and Mr. Wilbur, and it would be probable that the four of us would put that money

in, and if it required more than that to build a plant, we stood ready to put in an amount up to $10,000 to build a plant and exploit these patents.

"Q. What was the $10,000 you were to put in to go for?

"A. To build a plant to exploit the patents." (pp. 326-327.)

Meetings were informal. (p. 320.) Was to get an equal share of the stock from the Company, with the others, and *it was to be considered as fully paid stock.* (p. 345.)

Don't recollect whether voted or not, the decision arrived at some informal meeting. The decision was arrived at in some informal way to issue the stock. No recollection as to the shape or form in which it should be issued. *Simply authorizing the officers to issue the stock.* (p. 349.) The $10,000 paid to Judge Green to build a plant and to help purchase the patents and supposed that whatever was paid to Canfield came out of my money. (p. 352.) Paid into the Company for the purpose of building the plant and exploiting the patents. (p. 356.)

We might also in this connection refer to the testimony of J. L. Hendricks, from the State Department, that no other certificate or paper of any kind is on file in that office than the original certificate of incorporation. (p. 430.)

And also the testimony of John I. Firth to the same effect as to the office of the Clerk of Warren County, where the corporation is located. (p. 431.)

This was offered in view of the following provision of the Corporation Act of New Jersey:

"The president and secretary, or treasurer, upon payment of each installment of capital stock, and of every increase thereof, shall make a certificate, stating the amount of the capital so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any, previously paid and reported, which certificate shall be signed and sworn to by the president and secretary, or treasurer, and they shall, within ten days after such payment, cause the certificate to be filed in the office of the Secretary of State."

The absence of any such certificate on record is the strongest evidence that the stock was not fully paid in money, or property and no proper action was taken issuing it for such property. It is difficult to believe that men and lawyers of the

ability of the promoters of this Company would have failed to have complied with the above statutory requirement had such action taken place or had their consciences allowed them to make such certificate especially as they were liable to a severe penalty for not doing so.

We may draw the following deductions from the foregoing:

1. There is no proof of any corporate or official action authorizing the issue of the stock for property purchased. The alleged meetings were nothing more than the casual coming together of two or three of the active promoters of the Corporation, and it may even have been at the dinner table. No time or place of any such meeting was fixed, nor did it appear whether it was before or after the incorporation. There were no minutes of such meeting and no definite statement of any resolution or purport thereof. Nor was there any call or notice of such meeting. It is impossible to believe that men of the business ability of these gentlemen, two of whom have been Chief Justices of the State of Pennsylvania, would not have recognized the importance of a record of such a transaction and the embodying of it in distinct and precise form if any such action at a formal meeting had taken place.

Acts required to be done by the directors of a company, as the designating a time for election, must be done by them as a board when lawfully convened. Johnston v Jones, 23 N. J. Eq. 217.

The affairs of a corporate body can be transacted only at a corporate meeting. Its legislative and discretionary powers can be exercised only by the coming together of the members who compose it; and its purposes or will can be expressed *only by a vote embodied in some distinct and definite form.* Their only existence is as a board, and they can do no valid act except as a board, and such act must be by ordinance or resolution, or something equivalent thereto.

Schinn vs. Seymour, 24 N. J. Eq. 143.

2. These original subscribers at least paid nothing for their stock, beyond the few partial payments, of which a schedule is contained in the Receiver's Bill. (Case p. 24-27).

3. The patents were valueless and the manufacture under the process proved a substantial failure even before the issue of the stock. This they knew, or by the exercise of the most

ordinary care and business prudence could have known. As directors also they were chargeable with the knowledge which in the proper performance of their duties, they would have had.

4. It is impossible to suppose for a moment that the Dickson patent, which was the principal basis of the enterprise, granted only the year before the incorporation, never tried in actual manufacture, or used in any extended operations of a plant, merely experimented with at a slight cost, covering an invention as to which, at least in the mind of any lawyer, there would be grave doubts whether it was patentable with no licenses or royalties arranged for or definitely in prospect, and as to which the Patent Office at Washington contained at length on its records the full description of the same invention covered by a prior English patent, was worth four hundred thousand dollars ($400,000), at which it was to be purchased in stock by the Company from Simpson and Canfield, much less the million dollars ($1,000,000) at which the Appellants' counsel ingeniously claimed that the patents were valued, at a meeting, the time or place of which the witnesses were en tirely unable to fix, and whichis as elusive as a will-of-the-wisp. No one in his senses could for a moment believe that such property, consisting simply of untried and doubtful patents, would bring $1,000,000 or even $400,000. The $5,000 cash, which was all the money Simpson and Canfield were to get, and which is probably all they ever did get (see letter from Green to Wilbur, p. 374), was easily more than they could have obtained in the market for the patents, and they undoubtedly gladly gave up their interest in the patents and in the stock of the Company upon getting about that amount. The only possible finding, therefore, was that of the Vice Chancellor that there was an intentional overvaluation of the patents.

5. At most, the agreement between Simpson and Canfield and Judge Green and the subsequent revised scheme of distribution of the stock, was a sale by Simpson and Canfield of the patents to the Company for 4000 shares of stock and a small amount of cash, and an arrangement for the distribution of the remaining sixty per cent. of the 10,000 shares of stock to and among the four parties already named, for which they were to pay into the Company but $10,000 each. In effect, they were to get their stock for and upon the payment of but $10,000, and it was to be issued as "Full paid for property purchased,"

although nothing was paid beyond the $10,000 each and no property of theirs ever given or conveyed to the Company.

6. If, however, it be contended that the whole issue of stock was for the patents, and in some indefinite way the same was issued by the directors to themselves as payment for the patents, it could only be upon the theory that the directors themselves were the owners of the patents. The transaction in this aspect would be one in which the parties acting as directors were also the parties buying. They were on both sides of the bargain and were selling to themselves. The subscriptions being a trust fund as to creditors and they acting in a fiduciary capacity, and the property purchased being grossly overvalued, the transaction would be treated as a fraudulent one against the creditors of the company, who are *cestuis que trustent*. This situation would differentiate the case from some of the cases which might seem to justify a sale of stock for property somewhat disproportionate in value, and would bring the case clearly within the conditions of the Wetherbee case.

7. The patents which were alleged to have been the property purchased were not owned by these parties. They were not assigned to them or in any way recognized as their property, nor were they at any time or in any way by them transferred to the Company. Canfield and Simpson owned them, and had agreed to convey them to the Company for about 4000 shares of the stock and a small amount of money. This was the priee already fixed. These parties knew that the sixty per cent. of the capital stock was to be issued to themselves, representing a par value of $600,000, for which they actually paid only $10,000 each. They paid nothing beyond this amount, except the small assessment afterwards made, and they conveyed no property, nor any interest in any property, patents or otherwise, for it, and they so testified.

8. Any action or arrangement to which they were parties and by which the patents were assumed to be worth $1,000,000 and stock to that amount issued for the same, was an intentional over-valuation on their part, the price having already been fixed and agreed upon between the owners of the patents and Judge Green. Subsequent action by these directors by which the patents were arbitrarily raised in value to the whole amount of the stock, and the $600,000 excess thereof over the original amount for which the patents were to be transferred,

returned and distributed to themselves as "full paid stock for property purchased," upon their paying only $40,000, could only be a scheme or device to secure the stock without payment, either in cash or property, to the full amount of the value thereof. The natural and ordinary tendency and effect of such a transaction being to impose upon and defraud creditors they are presumed to have intended such result, and the Vice Chancellor was clearly warranted in finding the fact of such fraud.

9. The testimony of these parties is so vague, uncertain and indefinite, and the failure to meet the burden of proof, resting upon and assumed by them so complete, that the Court could not find that the stock was fully paid, or that it was issued for property purchased to the amount of the value thereof, as required by the then existing law.

10. The whole arrangement was a scheme on the part of the original subscribers to the certificate of incorporation to get a very large amount of stock, or to use the language of Judge Green to William Bray, to "get in on the ground floor," for practically a very small investment of money, sufficient only to erect the plant and *exploit the patents*, i. e. make a trial of the process then previously untried in actual manufacture, and, if successful, to secure a large return for their money, and if unsuccessful, to escape any further liability on their subscriptions by having their certificates for the stock stamped full paid "for property purchased." That the arrangement was really to *exploit the patents*, and contemplated the risking only of the $10,000 paid in by each of them, in money, is abundantly shown by the testimony of the three respondents called and particularly the testimony of H. A. Potter.

We rely upon the following further citations of authorities to support our contentions under the foregoing state of the proofs:

"*Subscriptions to capital stock are a trust fund for the payment of the debts of the corporation. The trus tis created for the benefit of creditors as a class.*" . . .

"The officers of a corporation are the trustees of the subscriptions to its stock, and hold them *as a trust fund for creditors;* and the trust cannot be defeated by any simulated pay-

ment of the stock subscription, or by any device short of *actual payment* in good faith.

"Transactions under statutes authorizing corporations to purchase property and issue stock in payment for it, or to accept property in payment of subscriptions to the capital stock, are upheld only where the agreement to purchase property and pay for it in stock has been made in good faith, and the property taken in payment of stock subscriptions has been put in at a *fair* bona fide valuation.

"Courts have inflexibly enforced the rule that payment of stock subscriptions is good as against creditors, only where payment has been made in money, or *what may fairly be considered as money's worth.*

"The third section of the land improvement act (Rev., p. 568), enacts that payment of the capital stock of corporations organized under the act, shall be made either in money or in land—the land to be appraised by the board of directors and taken at such value. *Held.*

"(1) That this section does not supersede the obligation of subscribers to pay their subscriptions, as they appear in the certificates of organization—it simply provides the manner in which payment shall be made; and in a suit by creditors against a stockholder, to compel him to pay his subscription, the inquiry is, has he paid in money or *money's worth?*

"(2) That the directors, in the appraisement of land taken in payment of subscriptions, *act in a fiduciary capacity*, and *are bound to discharge the duties of the trust with fidelity.*"

Wetherbee vs. Baker, 35 N. J. Eq., 501.

In the case just cited, the Court, as pertinent to our present case, says:

"*The directors who adopted this resolution were the same individuals who were the subscribers to the capital stock of the company, and who were to receive the benefit of the credit proposed. They were the contracting parties on both sides.* The resolution recited that they were the owners of the equity in the tract of land, which was untrue. They were neither the owners of any estate in the lands, nor did they in reality become purchasers of it. As promoters of the company, they occupied the position of agents of the company in acquiring the property on which the company was to be formed. The

deed was made directly to the corporation, and the corporation gave its obligations for the whole purchase-money. The cost of the property was $50,000, and it is apparent that was a full, if not an excessive, valuation. It was put in by the directors at a valuation of $100,000. The property was over-valued, and the fifty per cent. credit on the subscriptions to the capital stock had nothing for its support but a paper resolution adopted by interested parties."

"It is true that the statute directs the lands taken in payment of subscriptions to be appraised by the Board of Directors, and to be taken at their valuation by the Company. But the directors, in making the appraisement and valuation and dealing with their stock subscriptions, act in a fiduciary capacity, and are bound to discharge the duties of the trust with fidelity. This appraisement, it is manifest, was illusory, and made only in the interest of the directors who were to profit by it. Under these circumstances the resolution in question was a nullity, and the defendants. so far as concerns the claims of creditors, have paid nothing on account of their subscriptions to the capital stock of the company, and are indebted for the full amount thereof, as the subscriptions thereto appear on the face of the certificate of organization."

In National Trust Company vs. Miller, 33 N. J. Eq., 163, the Court says: . . .

"Equity regards the property of a corporation as a fund held in trust for the payment of its debts, and if others than *bona fide* creditors of the corporation or purchasers possess themselves of it, they take it charged with this trust which a Court of Equity will enforce against them. This is now a well recognized rule of equity jurisprudence and the courts of no State have enforced it with more firmness than those of the State (N. Y.) which gave corporate entity to both of these corporations." . . .

"The same principle in a more amplified form was promulgated by Chancellor Williamson in Redman vs. Dickerson, 1 Stockton 507. In that case one of the directors of a corporation had purchased certain machinery for it at one price and afterwards charged it to the corporation at an advance of $10000. This charge was made with the consent of the other directors, who with the director who made this purchase, held all the stock of the corporation. The Chancellor was con-

vinced that the $10000 had been divided among all the directors. The validity of this remarkable transaction was attempted to be defended on the ground that nobody was harmed by it; that inasmuch as the directors owned all the stock, and they consented, no one else had sufficient interest to entitle them to be heard. But the Chancellor very pertinently asked:

"Were not the public interested? Why did the charter require a certain amount of money to be paid in as capital upon which the Company were to do business? Was it not for the protection of the public with whom the Company were to obtain credit and to deal? . . . Did it make no difference though these directors were the sole stockholders, whether the capital was improvidently diminished or safely guarded and preserved as a fund for the future operations of the Company? Was it not a breach of trust for the directors so to speculate on the capital and for their individual benefit as to lessen the security which the legislature intended to provide for the protection of their dealers and the business community? The directors of a corporation cannot speculate with its funds or its credit and take to themselves the profits of their venture. Even if they are the only persons interested as stockholders, still they have no right to do so, for such transactions are opposed to the policy of the law and cannot in any manner be countenanced in a Court of Equity."

Contracts between the directors and the corporation may be repudiated by the cestuis que trustent, and no consideration of its apparent or intrinsic fairness will induce a court, either of law or equity, to enforce it against the resisting cestui que trust.

Stewart vs. L. V. R. R. Co., 38 N. J. Law, 505.
See remarks of Judge Dixon, pp. 522-523.
See also Guild vs. Parker, 43 N. J. L., 430.

"Payment of stock subscriptions is good, as against creditors, only when made in money, or in what may fairly be considered as money's worth; Wetherbee vs. Baker, 35 N. J. Eq., 501. Thus where a corporation was organized for the manufacture of a patented article, and *its capital stock was taken by the defendants in exchange for their interest in the patent, which proved to be worthless, the defendants having paid no value for their stock, are liable to the creditors as for unpaid subscriptions;* Chisholm vs. Forney, 65 Iowa, 333, and see to the

same effect, Thurston vs. Duffy, 38 Hun., 327. The trust for the benefit of creditors of a corporation in unpaid subscriptions cannot be defeated or the fund impaired by any simulated or pretended payment for the stock, or any device short of actual payment; Sawyer vs. Hoag, 17 Wall, 610; Crawford vs. Rohrer, 59 Md., 599, 604; and see Goodwin vs. McGehee, 15 Ala., 532, 246. Any arrangement, therefore, by which the stock is but nominally paid for, whether in money or *property*, the corporation not in fact getting the benefit of the price in good faith, is not a valid payment as against the creditors of the corporation, however it may be regarded as between the corporation and the stockholder; Crawford vs. Rohrer, supra. So where the officers of a corporation made an arrangement with themselves as stockholders, whereby paid up certificates were issued to themselves, in consideration of real estate conveyed at a price understood to be many times its real value, as between such stockholders and a creditor, the stock will be considered paid only to the extent of the fair value of the property conveyed; Osgood vs. King, 35 Iowa, 478; and as between the creditors of the corporation and the original holders of the stock, as in the case here, it in no manner affects the rights of the former that the stock has been issued as fully paid-up stock; for their rights depend, not upon the mere appearance of things, but upon the actual bona fide payment by the stockholders, whether that payment be alleged to have been made in money or property," Crawford vs. Rohrer, 59 Md., 599, 604. . . .

Note to Thompson vs. Saving Bank, 3 Am. St. Rep., 818.

"It is, therefore, but just that when the interest of the public or of strangers dealing with this corporation is to be affected by any transaction between the stockholders who own the corporation itself, such transaction should be subject to a rigid scrutiny, and if found to be infected with anything unfair towards such third person, calculated to injure him, or designed intentionally and inequitably to screen the stockholder from loss at the expense of the general creditor, it should be disregarded or annulled so far as it may inequitably affect him."

Sawyer vs, Hoag, Assignees, 84 U. S., 610, at page 623.

Capital stock of a corporation, issued for property not worth five per cent. of the par value of the stock, in pursuance of a

scheme designed to secure the issue of the stock as fully paid without value having been received by the corporation for it, is not fully-paid stock in the hands of those who were cognizant of or parties to the scheme and its execution.

Hebberd et al. vs. The Southwestern Land and Cattle Co., 55 N. J. Equity 18.

Where stock has been issued or given to a party as a bonus and while as between the corporation and such party "such a contract is binding upon the Company and its shareholders, but as the capital stock constitutes a *trust fund* for the payment of debts, it cannot be given away from the demands of creditors, and hence the holders of bonus stock may be required to pay for it in satisfaction of the demands of creditors after the exhaustion of all other assets upon the ground that its issuance to them was a fraud in law upon the creditors."

Id. p. 31.

"The subscription to the stock and the acceptance of a certificate for the shares constitute a contract between the subscriber and the Company, by which the subscriber engages to pay the remaining installment on demand by the corporation. From this agreement the subscriber cannot recede without the assent of the Company. He may transfer his stock without the consent of the Company, and thereby vest in the purchaser his right to the shares, and as between himself and such purchaser cast upon the latter the obligation to pay him such installments as are called upon the stock, but the subscriber cannot thereby impair or affect the contract rights of the Company. His liability to the Company cannot thereby become extinguished."

Hood, Receiver, vs. McNaughton, 54 N. J. Law, 425, at page 428.

"Therefore, to justify a corporation in issuing stock under our act for property purchased, there should be an approximation at least in true value of the thing purchased to the amount of the stock which it is supposed to represent.

"These parties first estimated, in their agreement, the value of Professor Edgerton's invention at the sum of $2,500,000, which for some reason which appears to have been developed at an interview with the State Tax Commissioners, the complainant agree to dispose of for $1,000,000 in capital stock. As stated, this should have been the *bona fide* value of those

inventions to justify the company in using full-paid stock representing that amount in payment therefor. These inventions were claimed to have been for an electric motor and for the electro-typographical machine. The controlling influence o the value of the latter is unmistakably indicated in the agreement. It provides that if the company which claimed this invention should succeed in its effort in wresting the ownership and patents from the complainant, or the patent office should refuse to patent it, or if on a full test being made it should not prove to be of any practicable value, or should not do what the complainant claimed it would do, then all moneys were to be returned and the concern was to be wound up.

"According to the testimony of some at least of the company, the motors made by complainant have turned out to be worthless, and he himself admits that he has not as yet been able to perfect the electro-typographical machine. In this aspect, what possible value exists which can be considered as a legal basis for the issuing of any stock of this corporation? The officers very properly have never issued a single share. The complainant now asks this Court by its decree to require the company to issue to him full-paid stock of the company representing a par value of $600,000, stamped as 'issued for property purchased.' *If the officers had issued this amount of stock on the unsubstantial basis indicated, it would have been the duty of this Court, if the question had been properly presented for decision, to have declared that such issue was fraudulent and not authorized by the true consideration of the act, and it cannot by its decree direct that to be done which it would thus condemn.*"

Edgerton vs. The Electric Improvement and Construction Co., 50 N. J. Equity, 354, at page 361.

The case of Rural Homestead Company vs. Wilds, 54 N. J. Equity, 668, has no application to the present case. That was the case of a bill exhibited by certain stockholders to vacate a sale by a certain person, named Bowers, of his interest in land to the company for 230 shares of the stock of such company. In the opinion of the Court, the decision was made to depend upon the fact that Bowers, the purchaser of the interest, was a *bona fide* purchaser without notice, and the opinion of the Court expressly states that his claim to this status was not successfully assailed. The case apparently has no application to one like the present, where the rights of creditors are

sought to be affected by a secret and unrecorded transaction between the directors, as directors, and themselves, as stockholders.

The case of Bickley vs. Schlag, 46 N. J. Equity, 533, in the light of the cases already cited, bearing directly upon the question in the present case, cannot affect this controversy. It will be seen that this case was really not decided upon a point as to the issue of stock for property. The case as we understand it was reversed upon the defects and irregularities in the proceedings, although the subject of the issue of stock for property purchased was discussed by the Court. The Court, at the conclusion of its opinion, referring to the irregularities in the proceedings, say, "It is obvious that this controversy cannot be settled in the present condition of things, and, consequently, the decree must be reversed, and the respondent's bill must be dismissed without costs, and without prejudice to a subsequent prosecution of his claim, if any he has, under an *unobjectionable mode*." It will also be noticed that in that part of the opinion, in which the question of the property purchased is discussed, it appears that the amount of stock issued by the Company was $75,000, but that $64,000 worth was paid for it, so that $15,500 worth of stock remains unpaid for, that is to say that the discrepancy between the value of property and the value of the stock was only $15,500. It will also be seen that there was substantial property transferred, such as steamboats and other property for the stock, and that the difference in value between the property and the stock issued was exceedingly moderate under the circumstances. There were no facts or conditions of gross overvaluation present in the case, and the difference actually existing was such as might honestly exist in the estimate of property under the circumstances.

Donald vs. The American Smelting Company, 62 N. J. Equity, 729, was decided under the corporation act as amended and revised in 1896. The provision as follows: "And in the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive," was inserted in 1896, and did not exist in the corporation act prior to that date, or at the time of the organization of The American Brick and Tile Company. The section 49 will, therefore, be read in its application to our case, as if that provision were not in it, and the Court, referring to that part

of section 49, which is applicable to our case, said as follows: "The meaning of section 48 is not questionable. The money must equal the face value of the stock. The language of section 49 is even more explicit. The corporation may issue stock *to the amount of the value* of the property. The value of the property in the one case, just as the value of the money in the other, must, at least, equal the face value of the stock. Such was the view expressed for this Court by Mr. Justice Depue in Wetherbee vs. Baker, 35 N. J. Eq., 501, and supported by abundance of authority.

"The distinction between the contemplated issue of the corporate stock for property and its issue for money lies, not in the rule for valuation, but in the fact that different estimates may be formed of the value of property. When such differences are brought before judicial tribunals, the judgment of those who are by law entrusted with the power of issuing stock 'to the amount of the value of the property,' and on whom, therefore, is placed the first duty of valuing the property, must be accorded considerable weight. But it cannot be deemed conclusive when duly subjected to judicial scrutiny. *Nor is it necessary that conscious overvaluation* or any other form of fraudulent conduct on the part of these primary valuers should be shown to justify judicial interposition. *Their honest judgments, if reached without due examination into the elements of value, or if based in part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of this statutory rule as surely as would corrupt motive.*"

This last cited case was a proceeding to enjoin the issue of stock under a contract to purchase certain property at much less value than the nominal value of the stock. So far as it seems to distinguish from the case of stock already issued, the latter point not being involved what is said with regard thereto is only dictum. It is hard to see why if the Court would enjoin the issue as a violation of law, it would not annul such issue if made for the same reason. The Court's position in Edgerton vs Electric Company, cited above, is more logical and consistent.

"An act in fraud of the law will not shield the actors from the personal liability imposed by the statute for the debts of the corporation. While a difference of opinion as to the value of the property might not alone be sufficient to impeach the

transaction, the actual value of the property is an important item of evidence, and, with other circumstances, may be sufficient to establish fraud; while without some evidence as to the value, it would ordinarily be difficult to show fraud."

Boynton et al. vs. Hatch, 47 N. Y. Reports, 225, at page 228.

The trust arising, in favor of creditors by subscriptions to the stock of a corporation cannot be defeated by a simulated payment of such subscription, nor by any device short of an actual payment in good faith; and it was not intended, by anything said in Clark vs. Bever, 139 U. S. 96; Fogg vs. Blair, 139 U. S. 118; or Handley vs. Stutz, 139 U. S. 417, to overrule this principal, or qualify it in any way, but only to draw a line beyond which the Court was unwilling to go in affixing a liability upon those who had purchased stock of the corporation, or had taken it in good faith in satisfaction of their demands.

Camden vs. Stuart, 144 U. S. 104.

"The price agreed by the Company to be paid for the property is only *prima facie* evidence at most of its value in favor of the stockholder; and when it appears, as the evidence tends to show in the present case, that such price was more than twice the actual value of the property, the agreement of the Company to pay such excessive price is no shield to the holder of stock issued in payment for property at such excessive price from the liability imposed by the tenth section of the act of 1848. Were it otherwise the amendment of 1853 would enable parties so disposed to practice the grossest frauds upon creditors, and purchasers of the stock issued in payment of property purchased at fictitious prices by the Company. Creditors have the right under the statutes to rely upon the fact that the corporators have invested the full amount of the capital stock of the Company in the business, and that such amount has been paid to the company either in cash or property necessary to the business of the Company *at its value*. This fund the law provides as security for the creditors of the Company."

Boynton vs. Hatch, 47 N. Y. Rep. 225, at page 231.

In the case of National Tube Works vs. Gilfillan, 124 N. Y., 302, the element of disproportion between the value of stock and the real value of the property purchased for which

such stock was issued, as well as certain other facts, was alluded to as bearing upon the question as to whether the jury in that case were properly permitted to find the fact of a fraudulent device or purpose in the issuing of the stock. That the directors in that case were intelligent men, and that there was such a gross disproportion between the value of the property and the value of stock issued for it was considered sufficient to justify the finding that there was a fraudulent issue of the stock notwithstanding the defendants testified that they considered the inventions, which were the property in question, worth the full amount of the stock issued.

In the case last referred to, the defendant excepted to the following instructions to the jury, viz: "It is not necessary for plaintiff to prove that the trustees of the Brooklyn Marine Power Company have been guilty of a fraudulent intent to entitle the plaintiff to recover. We do not think that the exception was well taken, because the jury is presumed to comprehend and act upon the charge as a whole, and hence to have understood that the 'fraudulent intent' referred to meant an actual, furtive design to perpretrate a fraud, for they had already been told that the fraud is consummated by the issue of stock as full-paid stock . . . which has not been fully paid . . . and it does not depend upon any *fraudulent intent* other than that which is evidenced by the act of *knowingly* issuing stock for property to an amount in excess of its value."

Id. p. 305.

It operates as a fraud upon dissenting stockholders and upon subsequent creditors relying upon the capital stock being fully paid for the corporation to issue stock for property, labor or services taken at an overvaluation.

Clark vs. Marshall on Corporations, vol. 2, p. 1213.

It has been said that "a gross and obvious overvaluation of property would be strong evidence of fraud," but according to the better opinion it would be more than this. If a gross and obvious *overvaluation is unexplained*, it is conclusive evidence that the overvaluation was intentional and fraudulent. . . . The weight of authority is to the effect that an *actual fraudulent intention is not necessary* to the overvaluation. An *intentional overvaluation* is fraudulent at a matter of law.

Ibid. 1215.

"Where the nature and condition of the property" said the Minnesota Court "are such that its value is well known and understood, or *is capable of being readily estimated and ascertained*, and the property is transferred to the corporation at a gross overvaluation for paid up shares, the transaction is *prima facie* fraudulent as to subsequent creditors, and as against them the burden is upon the stockholder to rebut the presumption by clear and satisfactory evidence. If he knew or *ought to have known* that he was paying for his stock in property at a material overvaluation, *it will not be sufficient for him to show as a mental operation that he did not intend to defraud any one.* He must go further and show that, *in the exercise of ordinary business sense he was justified in believing and did honestly believe that the property was being turned in at a fair* valuation. Where the facts are undisputed, and the *overvaluation is so great as to show that the stockholder ought to have known it if he had exercised ordinary business prudence, his actual belief or intention will not avail him; he will be presumed to have intended the reasonable and natural consequences of his act which is to defraud creditors in case of the insolvency of his corporation.*"

Clark & Marshall on Corporations, Vol. 2, page 1215.

Citing Hastings Malting Co. vs. Brewing Co., 65 Minn. 28.

"But payment in a patent right or other property which has no ascertained value is not a payment in money or its equivalent wfthin the meaning of a statute. In such a case it was said 'the transfer of a patent which has no ascertained value; which, in the language of the witness, 'as it turned out was worth nothing,' cannot be regarded as 'money' or its equivalent, *because those engaged in the management of the company believe at the time it is valuable*, and *receive it after organization, upon some fixed estimate of its value*, between them and the subscribers as so much money. Before a thing can be regarded *as money, or its equivalent, it must be an actual, positive and ascertained value—a value so thoroughly ascertained, and fixed at the time, that it can at once be changed into money, of which it is regarded as the equiualent.*"

Clark and Marshall on Corporations, Vol. 2, p. 1218.
Citing Wasker vs. Wallace, 6 Daly (N. Y.), 364.
Also, Tube Works Co., vs. Gilfillan, 46 Hun., 248.

Indeed it has been held that payment in an invention or patent right or other property *which turns out to have been absolutely worthless* is not a good payment as against subsequent *creditors even where the parties believed it to be valuable.* In such a case proof of actual fraudulent intent is not necessary to entitle such creditors to enforce payment.

Clark and Marshall, Vol. 2, p. 1218.

In Ireland vs. Douglas, 75 N. Y., 100, the Court say that the fraud is consummated where stock is issued as full paid stock which has not been fully paid for in value by the property for which it was issued and does not depend upon any fraudulent intent other than that which is evidenced by the act of knowingly issuing stock for property to an amouut in excess of its value.

In this case the question of value was held material and the jury, to whom the question of value was referred, found that the value was largely disproportionate to the nominal value of the stock issued. The Court then say: "The other question of fact and the whole case upon the law were submitted to the Judge as upon a trial by a Court and it is found as a fact that the value of the property was so disproportionate to the nominal value of the stock as to take the case out of a sound discretion exercised by the trustees, and as a *conclusion of law that the transaction was a fraud upon the law*, and not to be upheld as a mistake or innocent misunderstanding of the value of the property and that the capital stock of the Company had not been paid in as contemplated by law."

IV.

As to the claim that these subscribers afterwards got their shares from Judge Green as an individual and not from the Company.

This contention could have its only support in the ambiguous and exceedingly obscure statements of these witnesses themselves, in one part of their testimony, that they got their stock from Judge Green. That the stock certificates may have been handed to them by Judge Green proves nothing, as he as President and in general control of the Company executed the certificates and must have delivered them to all parties obtaining them from the Company. That they got their shares from Judge Green individually, and not from the Company, is

negatived by a proper reading of their own testimony, and the records of the Company, including the Stock Exchange Book and all the facts in the case.

The fact remains, however, in any case, that these parties paid nothing for the shares to anybody, either to the Company, except the $10,000 and the $4 per share, assessment, or to Judge Green. If they got them from Judge Green as an individual, of which, as we have said, there is practically no proof, their subscriptions to the Company are still unpaid and their contract with the Company, and particularly as to the creditors for whom the subscription is a trust fund, unperformed.

Judge Green paid nothing for his shares beyond a very small sum, and he, in a letter to W. A. Wilbur, admits this as to such shares as had been given up by Simpson and Canfield (see Ex. W12, p. 374), and as to such shares as he subscribed for and got from the Company, he admits that only $6.67 per share on a par of $100, and a small assessment partly paid, was ever paid in. (Copy of letter to Judge Paxson, August 28, 1898, Ex. E17, p. 452.)

The contention that Paxson et al. got their shares from Judge Green and not from the Company, even if true, would not avail them to discharge their liability for their subscriptions under the following authorities:

The subscribers of the memorandum of association of a company under the Companies Act, 1862, are by the 23rd Section of the Act bound to take as many shares as they have subscribed for, whether or not the shares are actually allotted to them, and this obligation is not satisfied by the allotment at a subsequent period of nominally fully paid up shares. Therefore, where M subscribed the memorandum of a company for five shares and eight months afterwards five fully paid up shares which the company had agreed to allot to C as part of the purchase money for property sold to them by C, were by C's direction allotted to M, and the company was wound up:

Held, that M was a contributory in respect of five shares on which nothing had been paid.

Migotti's Case L. R., 4 Eq., 238.

A person who subscribes the memorandum of association of a company for a certain number of shares, is bound to take that

number of shares from the company and pay for them either in money or money's worth.

P. signed the memorandum of Association of a company for 1350 shares and F. and J. for 50 shares each. P. sold a business to the Company, part of the price of which was to be paid by 1500 paid up shares. By his direction 50 of these paid up shares were allotted to F. and 50 to J.

Held, that the obligation into which F. and J. had entered by subscribing the memorandum was not thus satisfied; and that each was a contributory in respect of 50 shares on which nothing had been paid.

Forbes and Judd's Case, L. R. 4 Ch. App. 270.

In Marshall Foundry Machine Company, vs. Killian, 6 Am. State Reports, 554, above referred to in this brief, in deciding a similar case the Court say:

"It has been held in England under what is known as the 'Companies Act,' which is in some respects like ours, that if a person signs the memorandum of Association—that is subscribes for stock—he is bound to take the shares from the Company, and does not satisfy the obligations by taking them from some one else; and in a proceeding to wind up a Company, a subscriber will not be permitted as against creditors, to discharge himself from liability to pay for the stock for which he has subscribed by showing an understanding and agreement with the other subscribers by which, instead of paying to the Company for the stock subscribed by him, he should take a portion of the stock subscribed by another in lieu of that subscribed by himself; Forbes and Judd's Case, L. R. 5 Chan. App. Cas., 270; Migotti's Case, L. R. 4 Eq., 238.

"If this were not so, an association of individuals, availing themselves of the privilege conferred by the State, might, without paying a dollar, if by their subscriptions alone they could get credit, rig out this artificial being called a corporation, and embark it upon the sea of trade and speculation, and safely take the profits of the voyage if it shall prove successful and easily escape the result of wreck and misfortune if such shall be its fate. This the authorities, English and American, concur in saying the law will not allow: Cook on Stock and Stockholders, c. 11, Sec. 208; Field on Corporations, Sec. 403; Thompson's Liability of Stockholders, Secs. 11, 105, 124, 139; Hager vs. Cluelland, 36 Md. 490; Sagery

and Dubois, 3 Sand. Ch. 509; Sawyer vs. Hoag, supra; Forbes and Judd's Case, supra; Migotti's Case, supra, and the many authorities cited in them.

"If it be said in the case before us that the defendant Killian was permitted to substitute the stock purchased by him from Miller, (who had purchased it from Self) for the stock subscribed for by himself, and that there were no creditors and no liability to any one when this was done, the answer is, *that the substitution was not warranted by the terms of the subscription, or by the charter and by-laws, and the fact is made to appear, not from the books of the Company, but by parol; and the defendant could not discharge his liability in this way.* The creditors of the Company, and all who may be interested in its safety or solvency, may well ask that the fund upon which they rely (the capital stock subscribed) shall really exist, not on paper, but in money, and be held sacred to discharge corporate liabilities. Wood vs. Pearce, 2 Disn. 411; Angell and Ames on Corporations, Sec. 146, 531."

In conclusion, and at the risk of some repetition, we say that there cannot be the slightest doubt that the subscribers got their stock and paid nothing for it except the $10,000 each and the $4 assessment per share admitted in the pleadings. No amount of ingenious and suggestive questioning on the part of counsel, in which all the assumptions are found in the questions and *not* in the answers, can strip the transactions of the essential conditions which are that the four promoters at least, to wit: Green, Paxson, Wilbur and Potter, gave nothing outside of the money mentioned which was to exploit the process. They did not own the patents or any interest in them. They did not convey them. They were conveyed from Simpson and Canfield to the Company, and these two gentlemen got nothing for them except their forty per cent. of the stock. Their release of October 1, 1887 (Ex. D10, p. 245), shows that the $5,000 they were originally to get from Green was paid into the Company and not to them. The stock the others were to receive thus really represented nothing but the money they were to pay, and was based upon no property of theirs. Stripped of all dexterous theory and verbiage, the stock was "watered" to the extent of the excess over and above the money actually paid by these parties. In the final distribution of the stock Paxson, Wilbur and Potter each got 1500 shares for $10,000, paid to the Company. Or, if we

appropriate the $10,000 paid by Paxson and Wilbur to their 100 shares certificates, this was the only stock they paid anything for. They gave nothing for their 1400 shares. Green got his 2124 shares, on which he paid, or is entitled to be credited with only the instalments already mentioned, and if some of it is represented by shares relinquished by Simpson and Canfield, nothing was paid even to them so far as we know, except about $5,650 already referred to in the letter from Judge Green to W. A. Wilbur. How is it possible to believe that to men of the astuteness, large business experience and high intelligence of all these parties—two of whom were lawyers of the first rank, one of whom was at one time the receiver and manager of the Reading Railroad system, another the President of a great trunk line railroad, another and another, Potter, a man of large business experience—this arrangement represented any real value or that as to them they paid anything more for their stock than the comparatively small proportion paid in money. They expected that the money paid in would probably cover all necessary to "exploit" the patent process, and quite likely did not, as did very few in the many similar cases, deliberately contemplate the incurring of indebtedness and the cheating of any particular persons. Does anybody in the possession of the slightest intelligence believe for a moment that the Dickson patent was worth a million dollars, or half of it? Can the Court believe it, or believe that these men thought so? Does anybody believe that it could have been sold for any such sum, or that these gentlemen could have thought for a moment they could get a million or half a million, or one hundred thousand, or fifteen thousand, or even ten thousand for such an untried patent under the conditions disclosed in this proof? A thing is worth what it will bring in the market. Would this patent in 1886 or 1887 have brought, if offered for sale, more than a few thousand dollars at the most? We do not believe they could have found a purchaser for even that. They had enough business knowledge to know this. Even if in some mysterious and undefined way their stock is to be taken as having been issued to them for the patents, how can anyone believe, in view of their manifestly gross overvaluation, that such transaction was in good faith, or that it was not calculated to deceive and defraud creditors? How can this Court shut its eyes to the palpable facts and say then that this stock was fully paid or issued for property purchased within the meaning of the law as it then stood?

To so hold would be to emphasize the very worst instance of the kind of abuse which the law, we believe, seeks to guard against, and too much of which kind of finance has brought the exploiting of our modern corporations into such utter disrepute.

It seems to us that the present case affords a fair opportunity to this Court, which should be promptly embraced, to vindicate the integrity and efficiency of the laws of this State, and to arrest and correct the growing impression among the other States that a New Jersey corporation is an easy and convenient instrumentality for the most desperate and reckless undertakings.

GEO. M. SHIPMAN,
W. S. KIRKPATRICK,

For The Easton National Bank and Clarence Walters, Receiver, Respondents.

New Jersey Court of Errors and Appeals.

BETWEEN THE EASTON NATIONAL BANK, Complainant and Respondent, AND THE AMERICAN BRICK AND TILE CO., ET. AL., Defendants and Appellants.	On Bill, Etc. Appeal from Final Decree.

BRIEF OF FREDERICK GREEN, EXECUTOR, AND FREDERICK GREEN, INDIVIDUALLY.

These appellants, with permission of Counsel for the Easton National Bank, rely upon the brief submitted by them, in support of their contention, that the stockholders of this Company are liable for an assessment to pay the debts of the Company. The learned Vice Chancellor held that under the proven facts of this case, the stock of the Company was not full paid, and non-assessable, but he refused to decree that the claims of Judge Green's estate, and of Frederick Green, as creditors, should be paid on the ground that they knew "of the arrangement under which the stock was issued as full paid." He said as follows:

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"Henry Green, on behalf of whose estate a large claim is made, Elisha P. Wilbur, President, at the time the stock was issued, of the E. P. Wilbur Trust Company, and Henry Potter, were Directors of the defendant corporation, and Frederick Green was its Secretary and Treasurer, at the time the stock found to be unpaid was issued, and each at the time they became creditors knew the exact condition of the Company, and that the stock they now seek to impress with their claims was not issued for property at its value. Their right to hold subscribers for unpaid balances on account of stock issued depends entirely upon the fact that it was issued fraudulently as to creditors. If it was so issued, it was by the act of the directors, and within the knowledge of the Treasurer, and they each extended credit with notice that the stock was not full-paid, and that the Company had entered into a contract with its stockholders that no further payments would be required."

As to Henry Green's knowledge of the consideration for the stock there can be no denial, but that he was conscious of any fraud or that there was any such contract we insist was not established by the facts of the case and we respectfully insist that the Vice Chancellor committed clear error in holding that Frederick Green had any such knowledge, and that he was in the same position as the Directors of this Company. To defeat the claim of Frederick Green, upon the theory of the Vice Chancellor there must appear to be either *actual knowledge* of the over-valuation of the property for which the stock was issued, or the Vice Chancellor must have assumed it as a proper legal conclusion from the fact that he held the office of Secretary and Treasurer of the Company, that he must, as *a matter of law*, have known for what the stock was issued. To support the first proposition, there must be evidence; to support the latter, there must be legal authority. We think we can show that there is neither.

For convenience, however, let us refer to these claims, as they are found mentioned in the testimony, and to what the witnesses testified, with reference to Frederick Green.

The claim of Frederick Green, Executor of Henry Green, deceased, is for the sum of $22,947.88, with interest

from March 3, 1900, for moneys loaned by Henry Green to The American Brick and Tile Company, at various times beginning August 14, 1886. The total amount loaned by Judge Green to the Company was $50,618.10, and the total amounts that were paid by the Company to him were $27,670.22. (Pages 67 to 71.)

The proof of this claim is contained in the Company's books. See page 92 of state of case, and the testimony of Mr. Frederick Green, pages 92 to 103. And it was also certified as correct by the accountants, whose report was offered in evidence in this case. See page 439. This account commenced in 1886, and the credits extended from that year down until March 6, 1900, when the sum of $1800.00 was paid by the Company to Judge Green, out of the proceeds of the sale of real estate.

The claim of Frederick Green amounts to $6,655,00, with interest. This claim consists of three promissory notes, drawn by The American Brick and Tile Company, to the order of F. Green, and also of a loan of $300.00, made by Frederick Green to the Company, evidenced by a check and by entries in the Company's books of account. See pages 103 to 105 of testimony.

It must be always borne in mind that Frederick Green was never a stockholder of this Company. On pages 254 and 255 of testimony, there is a transcript of the capital stock account of the Company. An inspection of it will show that Mr. Frederick Green never owned a share of stock in this Company. When he was called in the first part of this case, he testified in effect, that his position as an officer in this Company was a merely nominal one, and he had no knowledge of the important affairs of the Company. Page 153 of state of case. He kept the books of account, but was not present at any of the meetings of the Board of Directors except one, and knew nothing about the issue of the stock of the Company, or the patent business of the Company.

On page 144, being the testimony of the first meeting, the witness's want of knowledge was such as to bring out a rather drastic criticism from the Court, but as the case progressed, Messrs. Paxson, Wilbur and Potter, pagess 196,

218, 232, 348, testified that Frederick Green was not present at the meetings at which the important matters of the Company were decided, and it appeared that the minutes of these meetings were taken either by Judge Green or by Mr. Warren A. Wilbur, page 182 of testimony. Their testimony showed conclusively that Mr. Frederick Green testified truthfully, when he said that he had no knowledge of the important matters connected with this Company. It is exceedingly important to bear this in mind, when it comes to a consideration of what he did as an officer of the Company which would stop him from claiming as against those who are stockholders. We confidently submit that the only thing that Mr. Frederick Green did was to attach his signature to the certificates of stock, as ordered by the President. Messrs. Paxson, Wilbur and Potter all testify that Mr. Frederick Green was not present at the meeting in which it was resolved to issue the stock for the patents. His position, as a creditor of this Company, in nowise differs from that of The Easton National Bank, or Henry Short.

Nominally, he was an officer of a corporation, but practically, there was no corporation.

In their entire corporate existence of at least fifteen years, they never held more than three meetings of their Board.

The minutes of two meetings were entered in the regular minute book, and the minutes of the other meeting were on a loose piece of paper. (Page 123, line 20, et seq.)

There was no stock book, only a certificate book, in the hand-writing of Judge Green, pages 124 and 125 and no By-Laws.

The minutes contained no reference to the original consideration for the stock, but at one meeting an assessment on the stock was ordered, and as is shown in the testimony, it was paid by the Directors, against whom the present assessment is asked.

Frederick Green was cross-examined, in full, by Mr. Lindabury, (see pages 137, line 35, to page 147) as to his knowledge about the property that was received for the stock, and as to the patents. He testified that he had no

knowledge at all on these subjects, and Messrs. Paxson, Wilbur and Potter fully corroborate him, for they testify that he was not present at the meetings, and was not consulted by them. If this case was being tried before a Jury the Court would have to charge them that there was no evidence that Frederick Green knew for what the stock was issued, and we respectfully submit that the Vice Chancellor should have so found.

Is he to be held liable because knowledge of the Company's affairs must be imputed to him, by virtue of his position as Secretary and Treasurer?

All powers of a corporation are conferred upon the Boards of Directors, except those granted to, or specifically required from its officers—as President, Secretary and Treasurer. With respect to third parties, corporations may invest their Treasurer and Secretary with power to bind the corporation, either by express grant, or by a course of dealing which implies a grant.

IN FIFTH WARD SAVINGS BANK VS. FIRST NATIONAL BANK,
19 Vr., 513.

Mr. Justice Depue said:

"When, in the usual course of a business of a corporation, an officer has been permitted to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to transact its business and that, in such cases, the authority of the officer does not depend so much upon his title, or on the theoretical nature of his office, as on the duties he is in the habit of performing."

That this also is the rule, seems to be deducible from

BLAKE VS. DOMESTIC MFG. CO., 64 N. J., Equity, 480.

That is to say, with respect to outsiders, the secretary and treasurer may become all powerful. Within the corporation, and considering the relations between the directors and stockholders, and the secretary and treasurer, there is no difference between their relations and those of third parties. If the secretary has knowledge of an over-issue of stock, it is *actual*, and not *implied* knowledge. It

must be gotten from the testimony, and not presumed from the relation which he bears to the Company.

The secretary of a corporation is a corporate officer but he has practically no authority.

COOK ON CORPORATIONS, Sec. 717, et. seq.

CLARK & MARSHALL ON CORPORATIONS, pages 2144 to 2150.

There is nothing either in the law or the testimony from which it can fairly be said that Frederick Green knew, or ought to have known, how this stock was paid for.

We contend that there is, therefore, a very marked difference between the position of Judge Green's Estate, and that of Frederick Green, and that the latter is in exactly the same position as the Bank and Mr. Short.

Is the decree from which we have appealed a proper one, as to either of these parties? The decree separates and discharges all the holders of the stock from any liability to assessment, except the original directors and stockholders, defendants, "Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter and Frederick Green, Executor of the Estate of Henry Green, Deceased." (Decree, page 488.)

The decree recites that the issue of the stock to them as "full paid," was "fraudulent and in derogation of the rights of creditors."

The Vice Chancellor further finds "That the stock in the form it was issued, constituted a contract between the Company and its stockholders, which would prevent an assessment until that contract was set aside as an agreement in fraud of creditors," and yet in the next discussion (pages 479, 480), he holds that there was no action at all of the Board, as to the issue of this stock.

He calls pointed attention to the fact (page 480, line 22) that "It was never intended to issue all of the capital stock in payment of the patents." In his conclusion, he states (page 482, line 2):

"I am therefore of the opinion that the issue of this stock as full paid, while good as between the parties to it, was a contract made by the Company with its stockholders

in derogation of the rights of creditors, which should be set aside, and the holders of the stock decreed to pay on account of their holdings, in addition to what they have paid in cash, a sum sufficient to liquidate the debts of the Company."

What is, therefore, the proper conclusion as to the relation of these parties to the corporation and to each other? Is it not that they were all promoters or partners in this enterprise, each having a full knowledge that it would require a certain amount of money to float the Company, and each being willing to pay, when called on? Is this case not a different one, from the cases referred to in the text books, and in the opinion of the Vice Chancellor, where there were formal meetings and resolutions, fixing, or appraising the value of the property transferred, and for which stock was issued?

Some of the cases hold that the stock subscribed is considered in equity, as a trust fund for the payment of creditors.

Capital stock of a corporation was defined, in the case of the American Pig Iron Storage Co. vs. The State Board of Assessors, 56 N. J. L., 389, as follows. Mr. Justice Depue delivering the opinion.

"Capital stock is the sum fixed by the charter as the amount paid in or to be paid in by the stockholders for the prosecution of the business of the corporation, and for the benefit of the creditors of the corporation."

In SCOVILLE VS. THAYER, 105 U. S., 143, it was said:

"The stock held by the defendant in error was evidenced by certificates of full paid shares. It is conceded to have been the contract between him and the Company that he should never be called upon to pay any further assessments upon it. The same contract was made with all the other shareholders, and the fact was known to all. As between them and the Company this was a perfectly valid agreement."

* * * * * * *

"But the doctrine of this court is, that such a contract, though binding on the Company, is a fraud in law on its

creditors, which they could set aside; that when their rights intervene, and to satisfy their claims, the stockholders could be required to pay their stock in full."

We start then with the capital stock provided for by the charter. It, nowhere, appears that there was any sufficient contract between the Company and its original subscribers, that this was to be paid in property, instead of in money. The mere issue of certificates with the words, "Issued for property purchased," was not evidence that the stock was full paid to Messrs. Paxson, Wilbur, Potter and *Green*. As to Knight, et. al., subsequent holders of the stock, *it was such evidence* as held by the Vice Chancellor, and we have no reason to dispute that portion of the decree which relieved them. The certificate is merely the stockholder's evidence to his stock. "It is not the stock itself but evi dence of the ownership of the stock." (Cook on Corporations, Section 13).

Many cases have been decided, and they are referred to in Cook on Corporations, at Section 39, quoted by the Vice Chancellor, where the courts have refused to listen to the complaints of creditors, who were also stockholders of a corporation, that had issued stock for property, at a gross over-valuation, where the complaining creditor had knowledge of the fraudulent act, or had participated in a meeting, which authorized it. We have not found any authority in New Jersey directly in point, and as we have insisted above, we do not think there ever was a case where the corporation's affairs were conducted as this one was. There was no contract at all as to the issue of the stock.

The payment of the subsequent assessment shows, as we insist, that Messrs. Paxson, Wilbur, Potter and Green did not regard the stock as full paid, although the Vice Chancellor thinks that this was a mere voluntary payment.

In the two Minnesota cases, cited by the Vice Chancellor, First National Bank of Deadwood vs. Gustin Mining Company, 42 Minn., 327, and Hospes vs. Car Company, 48 Minn., 174, there is a radical difference as to the underlying principle of these cases, shown in the opinions of the Judges. The Court in the first case places it on the "Trust Fund" doctrine. The Court in the second places it on the

ground that the stockholder, by his subscription, made a representation as to the actual amount of the capital of the corporation, on the faith of which creditors have dealt with the corporation, and given it credit.

Many cases have been decided, wherein one or the other of these views have prevailed, but in none of them has the question narrowed down to the exact issue presented here.

The case was not commenced on the theory that there was a contract, which had to be set aside. It was commenced with the idea that these gentlemen had not paid for their stock, had not paid their original stock subscriptions, and were assessable for the debts of the Company under Section V of the corporation act; and after it was heard on that theory, there was a change to a bill in equity, with the result that the present appellants are now confronted with the allegation that there was fraud in the issue of these certificates to these gentlemen, who participated in the issue, and who knew all about the facts, which they now say estop us as claimants.

Original petition does not charge fraud.

See State of Case, pages 6 to 17.

Petition amended into bill in equity by suggestion of Vice Chancellor (see page 477) was not filed until nearly a month after conclusions were filed by Vice Chancellor. The date of filing the amended bill was March 14, 1905 (printed by mistake "1904"). See page 18.

Let us consider whether the above doctrines are applicable to the facts of this case and let us assume the following. In a case where the capital is fixed at a given sum, and where stock has been subscribed for, and the money, therefor, is payable by several payments or assessments, and two out of five payments, making forty percent of par value, have been paid in cash, there remains sixty percent. which can be called for by the Company itself, or which a Receiver can collect to pay debts, when the Company is insolvent. That same condition must exist, where there has been no subsequent contract that modifies or changes the contract to pay cash, which resulted from the signing of the articles of incorporation. The original articles are printed in the Receiver's petition, page 9. Each of the

parties, Paxson, Wilbur and Potter, subscribed for One Thousand shares. Green subscribed for Three Thousand shares. The books of the Company do not show how these gentlemen paid for these shares, do not show that the Company relieved them, in any way, from their obligation to pay, and the Vice Chancellor held that there was no evidence of a contract of composition. This contract of subscription cannot be breathed out of this case. The original petition by the Receiver proceeded upon the correct theory that there should be an assessment on the stock under Section 5 above referred to. Proof that capital stock was not all paid in by these subscribers is all that was necessary to establish their liability to an assessment to pay the debts of the Company. That act does not relieve them of any part of that obligation, because, a creditor may be an officer and may have known what all knew, that the shares were not fully paid.

BECKLEY V. SCHLAG, 1 Dick, on page 537.

See also the recent case of

SEE V. HEPPENHEIMER, 61 Atlantic(Nov. 9, 1905) page 843.

The act protects all creditors alike, without any exception. The Vice Chancellor compelled the Receiver to change his petition, to a bill to set aside an alleged contract between the Company and its subscribers, which never was proven.

In KNOOP VS. BOHMRICH, 49 N. J. Equity, 83, Van Fleet, V. C., held that the burden was on a defendant who alleged that he was to pay for the stock of a corporation with property instead of cash, and decreed that he should pay a complaining stockholder in money, without giving him credit for property, which the corporation had used. This decree was affirmed in

BOHMRICH VS. KNOOP, 50 N. J. Equity, 485.

There is nothing in the case to rebut the presumption that the payment of the subscription was to be in money, except the fact that they held the certificates with the words for "Property Purchased" printed on them.

Their paying the second assessment, and the letter, Exhibit E 17, page 452, from Judge Green to Judge Pax-

son, shows that Judge Green did not regard the stock as full paid. He wrote:

THE SUPREME COURT OF PENNSYLVANIA.

EASTON, Aug. 23, 1898.

Hon. Edward M. Paxson,

DEAR SIR:

In accordance with your request I enclose copy of statement of the affairs of our Brick Co. made by the accountant employed for that purpose. The Easton Bank has given notice that they require payment of their notes and we will doubtless soon receive similar notices from the other creditors. As we have never paid in but a trifling part of the capital stock ($6.67 per share on a par of $100 per share and a small assessment partly paid) and made the very grave mistake of borrowing money to pay in part for the construction of the plant and for carrying on the business, entirely. I know of no response we can make to the demands of our creditors except to raise the money and pay them. This is what we are clearly bound to do both in law and in honor, and what we will certainly be compelled to do if we do not do it voluntarily.

Yours truly,

H. GREEN.

Again, how can the conclusion of the Vice Chancellor be correct in view of what he has fonnd, as to the way the stock was issued and paid for?

The articles show a subscription for ten thousand shares, but when they came to issue same, without any assignments of the subscription rights, the stock was issued to the above, each receiving only fifteen hundred shares, and part of this issue was for stock that was paid up in full. There could have been no intention to make all of this stock full paid, and this case is, on its facts, entirely different from the many cases cited in the text books, and which will be, no doubt, referred to on the other side.

We have referred to some of them supra, to show that we were not ignorant of the doctrine applied in them, but this case, we submit on its facts, is different.

There was no contract, of purchase of property, to settle the original contract of subscription, no composition or payment of same, and no fraud on the part of Judge Green, to his associates.

Is not this Judge Green's position as a creditor, he dealt with his associates, relying on their subscriptions and their fairness, and well known financial ability to pay all that was asked of them.

If his estate is now to be barred, it must be because he is bound by estoppel. Something which he did must, in law, bar him from recovering from these men, who were original subscribers.

Fortunately, this doctrine is well understood in the courts of New Jersey.

We desire to refer in the first instance to what the text writers have said on this subject.

"An estoppel may be defined in a general sense to be a preclusion of a person to assert a fact which has been admitted or determined under circumstances of solemnity, such as by matter of record or by deed, or which he has, by an act *in pais*, induced another to believe and act upon to his prejudice."

AM. & ENG. ENCY. OF LAW, 2d Ed., Vol. 11, page 387.

"Misrepresentation or Concealment of Facts—a. IN GENERAL.—The most usual application of the doctrine of estoppel *in pais* arises from the misrepresentation or concealment of material facts on the part of the person to be estopped. Thus, it is a well-settled rule of equity which has been adopted by the courts of law that where A has, by his acts or representations, or by his silence when he ought to speak out, intentionally or through culpable negligence induced B to believe certain facts to exist, and B has rightfully acted on this belief, so that he will be prejudiced if A is permitted to deny the existence of such facts, A is conclusively estopped to interpose a denial thereof."

Same book, page 421.

"The primary ground of the doctrine is that it would be a fraud in a party to assert what his previous conduct has denied, when others have acted on the faith of that denial.

The element of fraud is essential, either in the intention of the party estopped or in the effect of the evidence which he attempts to set up."

Same book, page 422.

"It may be stated, as a general rule, that the representation or concealment relied on to sustain an estoppel must have been made with full knowledge of the facts by the party to be estopped, unless his ignorance was the result of gross negligence or otherwise involves gross culpability, as where he is consciously ignorant of the facts at the very time of professing full knowledge of them.

Same book, page 433.

"(a) In General.—It may be stated as a general rule that it is essential to the application of the principle of equitable estoppel that the party claiming to have been influenced by the conduct or declarations of another to his injury, was himself not only destitute of knowledge of the state of the facts, but was also destitute of any convenient and available means of acquiring such knowledge; and that where the facts are known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel.

Same book, page 434.

Reliance upon Act or Representation.—Another essential element of estoppel by misrepresentation or concealment is that one party should have relied upon the conduct of the other and been induced by it to act or to refrain from acting so that he will be substantially injured if the other party should be allowed to repudiate his action. And this rule applies as well where the conduct of the party to be estopped consists of silence as where it consists of positive acts.

Same book, page 436.

The cases when carefully analyzed show that all the following elements must actually or presumably be present in order to an estoppel by conduct.

1. There must have been a false representation or a concealment of *material* facts.

2. The representation must have been made with *knowledge* of the facts.

3. The party to whom it was made must have been *ignorant* of the truth of the matter.

4. It must have been made with the *intention* that the other party should act upon it.

5. The other party must have been *induced to act upon it.*

BIGELOW ON ESTOPPEL, 3d Edition, page 484.

So on the other hand the estoppel is removed by proof that the party claiming its existence, even though mistaken in regard to his rights in law, had notice of the actual state of the facts at the time of acting upon the representation, and this though the representation was made on oath. The party urging the estoppel must in the absence of specific contract have been deceived.

BIGELOW ON ESTOPPEL, 3d Edition, page 520.

"1544. This doctrine of estoppels in pais in ordinary cases grows out of a fraudulent purpose and a fraudulent result. If indeed the element of deception is wanting, there is no estoppel; as if both parties were equally consusant of the facts, and the declaration or silence of one party produced no change in the conduct of the other, he acting solely upon his own judgment. There must be deception and change of conduct in consequence, in order to estop the party from showing the truth."

STORY'S EQUITY JURISPRUDENCE, Vol. 2, 13th Edition, page 863.

Sec. 798. Estoppels are strictly construed, and are not allowed as instruments of fraud, but only to prevent injustice, and are well founded when confined to the legitimate purpose of preventing one man from being injured by the acts or misrepresentations of another."

ESTOPPEL AND RES JUDICATA—Herman, Vol. 2, page 925.

DECISIONS OF THE COURTS.

In Den ex dem. RICHMOND, ET. AL. VS. BALDWIN, 1

Zab., 395, 403, Carpenter, J., expresses the rule as follows:—

"Equitable estoppel rests on the principle that when any one has done an act or made a statement which would be fraud on his part to contravert or impair, and such an act or statement has so influenced any one that it has been acted upon, the party taking it will be estopped and cut off from the power of retraction. It must appear, first that he has done some act or made some admission, inconsistent with his claim; secondly, that the other person has acted on such conduct or admission; and thirdly, that such party will be injured by allowing such conduct or admission to be withdrawn. It is intended that the acts and admissions of a party should operate against him in the nature of an estoppel when in good conscience and honest dealing he ought not to be permitted to gainsay them."

"These facts clearly prove the complainant invested his money in the purchase of the mortgage, through the procurement of the defendant. In fact, he made the sale and received the whole proceeds. He cannot, therefore, be permitted to assail its validity. The doctrine of equitable estoppel as it is called, has its foundation in the plainest principles of natural justice. It will not permit a person, either by word or act, to represent a security issued by him to be good, and thereby induce another to give his money for it, and then, when he is required to pay it, repudiate the truth of his representation and escape its payment by showing, as between himself and the person to whom it was issued, it was valid. No reference to books is necessary in vindication of a principle so clearly fundamental in every system of laws framed to promote justice." BUSH AND HOWARD VS. CUSHMAN, XII C. E. Green, 131.

In MARTIN VS. RIGHTER, 2d Stockton, 510, there is a good illustration of the doctrine of equitable estoppel. The Court, opinion by Potts, J., reversed Chancellor Williamson, and he relies on the quotation from Mr. Justice Carpenter, in

DEN VS. BALDWIN, 1st Zab., 403.

Elmer J. filed a dissenting opinion, and relies on the same quotation. He said as follows:

"This statement of the doctrine may be accepted as correct; but it does not profess to contain all the explanations of which it is susceptible. In most cases, it will be important to inquire how or to whom the acts or admissions were made. The object is to prevent fraud. Unless, therefore, the acts or admissions were so made as to show a design to produce a false impression, or were of such a kind that such would be their natural result, there would be no fraud to prevent. No case was produced, nor do I suppose one can be found, that goes farther than this. Where it is said the admissions must be acted on, it is meant, as the authorities relied on show, that they induced the other party to do what otherwise he would not have done." * * *

"There can be no doubt that this doctrine, rightfully applied, is calculated to promote just and honest conduct, and that Courts of equity and of law ought carefully to maintain it. But we are asked, in my judgment, to extend it beyond its just limits and beyond any precedent in England or America. I am not willing to do this for the sake of saving a case of seeming hardship."

Elmer, J.;

"To constitute an *estoppel in pais* there must be an admission intended to influence, or of such a nature as will naturally influence the conduct of another and so change his condition as materally to injure him, if the party making it is allowed to retract it. *And the estoppel must not be carried beyond the limits of the injury, so as instead of preventing a fraud, the enforcement of it will produce a greater injury than it was intended to prevent.*"

THE PHILLIPSBURG BANK VS. JOHN FULMER, 2d Vroom, 52.

Where it does not appear that a party claiming an estoppel has lost or will lose something of value, in consequence of the act or omission of his adversary which he makes the basis of his claim, his claim must be adjudged groundless.

HANNAH S. HART ET. AL. VS. EDGAR V. KENNEDY, 47 N. J. Equity.

Reports, page 51, on page 52.

Land of a judgment debtor was sold under execution, the debtor knowing of the advertisement for the sale, and procuring one adjournment thereof. The purchaser went into possession and collected rents, with the knowledge of the judgement debtor, and mortgaged the premises to pay the price and satisfy prior liens. The purchaser sold the premises and his vendee went into possession. The judgment, under which the execution sale was made, was void for failure to comply with the acts relating to docketing of judgments on bill filed to foreclose the mortgage and charge the land upon the mortgage and payments:—*Held*, that the judgment debtor was not estopped from receiving the premises as against the mortgagee, it not appearing that the purchase or loan was induced by any positive acts or statements on the part of the owner or that he knew at the time of those transactions that the execution sale was void.

THE JUNIOR ORDER BUILDING AND LOAN ASSOCIATION vs. REDFORD SHARP ET. AL., 63 N. J. Equity Reports, 500.

When we remember how careful Counsel were to show the position, influence and character of the Directors of this Company, it is absurd to say that Judge Green misled these gentlemen in these transactions. Judge Paxson had been a Judge of the Court of Common Pleas of Philadelphia County, then Judge of the Supreme Court of Pennsylvania, and its Chief Justice, and one of the Receivers of the Philadelphia and Reading Railroad Company.

Mr. E. P. Wilbur was the President of the Lehigh Valley Railroad Company, and an officer of the E. P. Wilbur Trust Company.

Henry A. Potter was a large manufacturer of Philadelphia.

They were all men of the very best business capacity, and were Directors of this Company. If they neglected their duties, and did not keep themselves informed of all that was done, they cannot plead their own neglect in their own behalf.

As to the issue of the stock, and what was paid for it, they certainly knew as much as Judge Green, and it would be most unjust to compel his estate to pay an assessment to

other creditors, and at the same time lose its own claim against the Company.

As to the claim of Frederick Green, we repeat that the only thing that connects him with this stock was his name upon the certificates. All the proof shows that all the circumstances about the consideration of the stock were known to Judge Green, Judge Paxson, Mr. Wilbur and Mr. Potter, and that they were totally unknown to Mr. Frederick Green. How can he be now estopped? Let us apply the principles laid down in the decisions above quoted, to the facts of Frederick Green's claim, and paragraph our conclusions.

FIRST. *He never* made any false representation to anyone of these gentlemen.

SECOND. He concealed no facts from them, for the proof shows that he knew nothing of the consideration for the stock.

THIRD. *The parties*, Paxson, Wilbur and Potter, who received the certificates of stock, with the endorsement on them, "Property Purchased," knew all about the entire transaction.

FOURTH. The signing of the name, "F. Green, Secretary," did not, in fact, deceive Paxson, Wilbur or Potter.

FIFTH. There is no proof that they acted on the faith of anything that Frederick Green represented.

SIXTH. The enforcement of this alleged estoppel would work a fraud on the rights of Frederick Green.

We, therefore, respectfully submit that these appeals should be sustained.

S. C. SMITH,
RUSSEL C. STEWART,
For above named Appellants.

The Baker Printing Co., Law Case Printers, 251 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals.

Between THE EASTON NATIONAL BANK, *Complainant.* *and* AMERICAN BRICK & TILE CO. *Defendant.*	*On Appeals of Frederick Green and Frederick Green Executor of the Estate of Henry Green deceased.*

BRIEF OF R. V. LINDABURY ON BEHALF OF ELISHA P. WILBUR AND FIDELITY TRUST COMPANY, Executor of Edward M. Paxson, deceased.

This suit is now before the court on two of several appeals taken from a decree advised by Vice-Chancellor Bergen. The questions to be determined on the other appeals are in part different from those raised by the appeals of Frederick Green and of Frederick Green as the executor of the Estate of Henry Green, deceased, and this brief will be confined solely to these latter appeals.

The American Brick and Tile Company, which is a New Jersey corporation, was adjudged insolvent in the early part of the year 1904 by a decree of the Chancellor made in this suit, and a receiver appointed therefor (case pp. 1-6). The receiver thereafter

filed a petition in the suit showing that no assets had come into his hands; that the stock of the company, which was one million dollars, had all been subscribed for, but only a small amount paid thereon and that several claims against the company had been presented to and allowed by him, including a claim of Frederick Green for $6,655., and two claims of the Estate of Henry Green for $22,947.88 and $30,100, respectively. The prayer of the petition was that an assessment should be levied on the stockholders to satisfy the claims of the creditors and to provide for the expenses of winding up the injunction (Case pp. 6-17). On the return of the rule to show cause made on this petition certain of the stockholders, including the said Wilbur and Paxson, filed answers in which they set up that the claims presented to and allowed by the receiver were not valid claims against the company; that even if they were valid they could not be held liable to pay them as all of the issued stock of the company had been fully paid, and that in any event they could not be compelled to make payment of the Green claims as both the said Henry Green in his lifetime and his estate since his decease, and the said Frederick Green, were estopped from questioning the *bona fides* of the issue of stock or alleging that it was not fully paid and non-assessable (Case pp. 32-57). During the hearing had upon the issues thus raised the claim for $30,100, filed on behalf of the Estate of Henry Green, was withdrawn (Case p. 486, l. 14). Upon the proofs taken the Vice-Chancellor concluded among other things that even if the stock was not fully paid neither the Estate of Henry Green nor Frederick Green were entitled to have their claims paid by the stockholders as both

Henry Green and Frederick Green, who was his son, had taken an active part in the issuing of the stock as fully paid, and were therefore estopped from calling upon the stockholders to pay any unpaid subscription in satisfaction of their debts, or from instituting an inquiry as to the value or amount of the consideration given for the stock. It is from the part of the decree based upon these conclusions that the appeals now before the court have been taken.

Since the appeals were perfected Edward M. Paxson has died, and his executor, the Fidelity Trust Company, has been substituted as a defendant to the receiver's petition in his stead.

Upon behalf of Mr. Wilbur and the said Executor, I submit that the appeals should be dismissed.

I.

BECAUSE NEITHER THE ESTATE OF HENRY GREEN NOR FREDERICK GREEN HAS ANY STANDING IN THIS COURT TO QUESTION THE VALIDITY OF THE PORTION OF THE DECREE APPEALED FROM BY THEM.

Prior to the hearing had upon the receiver's petition Edward M. Paxson under leave of the court filed a petition appealing from the allowance by the receiver of the several claims presented to him, and by agreement of the parties the validity of these claims was to be determined upon the evidence taken on the hearing had upon the receiver's petition (case pp. 82-86). The Vice-Chancellor has not, however, in either his conclusions or in the decree advised by him made any reference to the validity of the Green claims as against the corporation, but simply decided that the stockholders could not be assessed to pay them.

Frederick Green is not a party to the proceeding instituted by the receiver as he was not a stockholder in the company, and as executor of his father's estate he is simply a party defendant to the receiver's petition to secure an assessment upon the stock. So far as the Green claims are concerned, therefore, they were represented in the proceedings had against Wilbur and Paxson solely by the receiver who filed his petition in their behalf as well as in behalf of the other creditors. Neither Frederick Green as executor of his father's estate or individually has therefore any standing to appeal from the portion of the Vice-Chancellor's decree which adjudges that these claim are not to be paid by the stockholders. They have no more right to such an appeal than a creditor of an insolvent corporation would have to appeal in his own name from a judgment dismissing a suit brought by the receiver of the corporation against one of its debtors. The receiver has not appealed from any portion of the decree, and as shown no portion of the decree adjudges that these claims are invalid as against the corporation. There is therefore, I submit, no course open but for the court to dismiss the appeals.

II.

BECAUSE NO DECREE FOR THE PAYMENT OF THE CLAIMS CAN, IN ANY EVENT, BE MADE IN THIS SUIT.

Early on the hearing it appeared conclusively that all of the issued stock of the company had been issued as fully paid and non-assessable, and with the exception of two hundred shares paid for at par in cash, have been issued for property, the certificates being marked fully paid and "Issued for property purchased." It was thereupon insisted on behalf of

the appellees that the stock in the form in which it was issued constituted a contract between the company and its stockholders, which, even if the stock had not been fully paid, prevented an assessment until the contract had been set aside as in fraud of creditors; that no order for an assessment could be made in this suit, and that the proper course was for the receiver to file a bill of complaint, in a cause in which he was the complainant and the stockholders of the company were the defendants, to have the contract under which the stock was issued set aside as fraudulent, and the stockholder decreed to pay a sufficient proportion of their unpaid subscriptions to satisfy the liabilities of the company. This view was taken by the learned Vice-Chancellor, but as all the evidence necessary to settle the questions that would be raised in such a suit had been taken, the counsel for all of the parties were desirous of having the controversy determined upon those proofs, the Vice-Chancellor said that he would permit the petitioner to amend his petition by making it a bill of complaint, and thus present the issues to which the testimony was directed (case p. 477). No order was ever entered, however, making effective the method of procedure thus consented to. All that the receiver has done has been to file an amended petition in this suit in which he designates himself as "your orator" instead of "your petitioner," and in which he has added to the prayer of his original petition an additional prayer that the contract under which the stock was issued as fully paid, be declared fraudulent and set aside on that account. Manifestly an original bill of complaint in a suit brought by the receiver to set aside the fraudulent contract between the stockholder and his com-

pany must be successfully prosecuted before an assessment upon the stock can be made where, as here, the stock has been issued as fully paid in return for property purchased by the company. In the absence of both an order permitting the receiver to file such a bill of complaint and of the bill itself, no decree except one dismissing the receiver's petition could properly be made in this suit. Indeed, if this amended petition could be treated as an original bill it would be multifarious as presenting two opposite and contradictory claims for relief: one that the stock was legally issued subject to future assessment, and should now be assessed to pay debts and the other that the stock was fraudulently issued as fully paid and non-assessable and that the illegal contract should be annulled. When the question of turning the action into an original bill was up before the Vice-Chancellor at the hearing defendant's counsel distinctly stated that they would consent to that course being taken provided the petitioner would abandon his petition and the claim made therein of a right of assessment upon the theory that the stock had been legally issued subject to assessment. Defendant's counsel insisted that they would not consent to defending in the same action upon two different and contradictory theories which could not be put forward in one suit. For this reason, as it appeared to counsel at the time, petitioner's counsel did not elect to amend and the offer to stipulate thereupon fell. After, however, the Vice-Chancellor's opinion was filed an attempt seems to have been made without order or consent to so amend the petition as to present before the Court of Errors the double ground for relief and that by the petition itself instead of by

an original bill. I submit that this is altogether irregular.

III.

BECAUSE THE EVIDENCE SHOWS THAT THE GREEN CLAIMS ARE NOT VALID AS AGAINST THE CORPORATION.

(a) *As to the claim of Frederick Green.*

This is based entirely upon loans made to the corporation more than eleven years before it was adjudged insolvent (case pp. 72-74; pp. 103-104). The books of the company do not show any payment of interest on these loans for more than six years before adjudication (case pp. 111-113). The only payment within that period was one made by the claimant as the treasurer of the company to himself by a check that he drew to his order without any authority whatever except the consent of his father who was the president of the company at the time (case p. 114, l. 11; p. 167, l. 39). This payment was made in part out of money loaned to the corporation by the claimant's father for the express purpose of permitting it to be made (case p.112, l. 25). The payment was applied by Frederick Green in part to each of the loans (case p. 109, l. 23; pp. 112-115). The only written evidence of the payment is the claimant's own entry on the stub of the company's check book and his endorsement of it on the notes by which the loans were evidenced (case p. 105, l. 5). The company had then been out of business for over four years and was insolvent (case p. 110). That an officer of an insolvent corporation cannot without authority from its directors keep a claim which he has against it alive in this manner is too clear to need argument. Unless the payment of interest thus made is considered as

sufficient to take the claim out of the statute of limitations it has no validity, for no other payment of principal or interest was made or demanded for more than six years before the company was adjudged insolvent.

(b) *As to the claim of Henry Green.*

This is entirely for cash loaned the corporation. The total amount claimed to have been loaned is $50,618.10. Of this sum only $4,100 was loaned within six years prior to the adjudication of insolvency. No interest was ever charged or paid on any part of the loan. Of the $27,760.22 repaid by the company only $1,800 has been repaid since the year 1893 (case, pp. 67-72; p. 116). This payment came about in the following manner: The company's plant having in 1897 been destroyed by fire (case, p. 110, l 19) it was determined to sell the lot on which it had stood and $2,500 was received by the corporation for the lot on the third of March, 1900 (case pp. 110-111). This amount was placed to its account in the bank. Within a day or two thereafter Henry Green, without any authority from the directors, requested his son as the treasurer of the company to give him a check for $1,800 of the money so deposited to be applied on account of loans that he had made to the company (case p. 115). This request was complied with without any authority from the board of directors (case pp. 113-117; pp. 115-117). No entry of this payment was made on the books of the corporation (case p. 112, l. 30). The account on which the claim is based cannot be said to be a mutual or running account between merchants (*Gulick & Sons* v. *Princeton &c. Co.*, 14 N. J. L., 545), and I submit that with the exception of $2,300, being the amount remaining due on the

loans made since 1898, after deducting the $1,800 repaid as explained, this claim is barred by the statute of limitations and invalid.

IV.

BECAUSE EVEN IF THE CLAIMS WERE VALID AS AGAINST THE CORPORATION PAYMENT OF THEM COULD NOT BE ENFORCED BY AN ASSESSMENT UPON THE STOCKHOLDERS.

The company was formed in the year 1886 as the result of the efforts of Henry Green, who was then a Justice of the Supreme Court of the State of Pennsylvania (case p. 8, l. 5; p. 193, l. 1). It was organized for the purpose of purchasing and using certain patents for making brick, tile and other fabrics and certain processes employed therein. These patents and processes were owned by Lenox Simpson and E. P. Canfield of Pittsburg, Pa. Before taking any steps to organize the company Judge Green, under date of March 6, 1886, made an agreement with the owners of the said patents and processes which provided that a corporation should be formed with a capital stock of not less than $1,000,000 and its capital stock issued to the patentees and himself in certain agreed proportions in payment for the patents and processes. The agreement also obligated Judge Green to provide the corporation with a certain amount of working capital and to pay the patentees a certain amount in cash. This agreement will be found on pages 241-243 of the printed book.

After entering into this agreement Judge Green submitted his plan to his colleague on the bench, Chief Justice Paxson, to Mr. Wilbur and to a Mr. Potter, who was his son-in-law, and requested each of them to contribute $10,000 toward the amount he had

agreed with the patentees to raise and to take an interest in the company to be formed (case p. 191, l. 30; p. 193, l. 29; p. 199, l. 20; p. 201, l. 33; p. 231, l. 26; p. 322, l. 14; p. 326, l. 15; p. 327, l. 23; p. 332, l. 2; p. 344, l. 6). Judge Paxson, Mr. Wilbur and Mr. Potter were all men of large means, having extensive business interests and connections, and on this account Judge Green was anxious to interest them in the company and to secure their help in providing the money he had agreed to put in. After satisfying themselves that the patents and processes were worth the amount of stock to be issued for them these gentlemen agreed with Judge Green to join him in the incorporation of the company and to become directors in it with him (case pp. 202-203; p. 215, l. 3. p. 229, l. 20). In forming their conclusions that the patents and processes were equal to the par value of the stock to be issued for them they were guided to a considerable extent by Judge Green's representations as to the value of the patents and processes to be acquired (case p. 203, l. 23; p. 204, l. 6; p. 225, l. 3; p. 234, l. 5; p. 236, l. 27; p. 332, l. 3).

The terms upon which the stock was to be issued for the patents and processes were finally agreed upon at a meeting of the directors at which Judge Green was present (case p. 232, l. 6). Judge Green was elected president of the company at the time of its organization and acted as its president and general manager until his death, which occurred in the year 1900 (case p. 105, l. 27; p. 208, l. 23; p. 342, l. 4; p. 351, l. 35). At the same time his son Frederick Green, was elected as the secretary and treasurer of the company and held both of these offices until it was adjudged insolvent in 1904 (case p. 92. l.

30; p. 161, l. 31). During all this time Judge Green had complete control of the corporation and managed all of its affairs (case p. 208, l. 26). That he knew the consideration which the company was to and did receive for its stock is of course indisputable, for he not only made the agreement under which the stock was issued, but arranged the assignment of the patents, the payment of the money received by the company and the patentees, and the issuing of the stock. He also signed all the certificates as president of the company. In these transactions he was aided by his son, Frederick Green, who was a lawyer and thoroughly understood them. As secretary and treasurer of the company the latter had possession of the stock book and other books of the company from the time it was organized until the receiver was appointed (case p. 93, l. 1; p. 126, l. 5). He drew and signed every certificate of stock that was issued (case p. 137, l. 35). Every one of the certificates was issued as fully paid and with the exception of two were marked "Issued for property purchased" (case p. 151, l. 6; p. 477, l. 14). Frederick Green also knew just how much money and what property the company received for its stock (case p. 139, l. 34; p. 149, l. 32), and the amounts paid in cash therefore were received by him and entered by him in the cash book of the company which he kept (case p. 126, l. 35). None of the indebtedness of the corporation to Frederick Green was incurred until after the stock had been issued.

In considering the claims sought to be assessed upon the stockholders the Vice-Chancellor says in his conclusions: Judge Green was a director of the company and Frederick Green was its secretary and treasurer at the time the stock found to be unpaid was

issued, and each, at the time they became creditors, knew the exact condition of the company, and that the stock they now seek to impress with their claims was not issued for property at its value. Their right to hold subscribers for unpaid balances on account of the stock issued depends entirely upon the fact that it was issued fraudulently as to creditors * * * If it was so issued it was by the act of the directors and within the knowledge of the treasurer, and they each extended credit with notice that the stock was not fully paid and that the company had entered into a contract with its stockholders that no further payments would be required" (case p. 486).

That Judge Green and his son both knew that the corporation had agreed with the stockholders that the latter should be under no further liability on account of the issuance of the stock is of course indisputable. If a fraud was committed they were parties to it. At all events they gave credit to the corporation with the fullest knowledge of the circumstances under which the stock was issued. That under these conditions they cannot hold the owners of the stock responsible for payment of their claims is certain, for, as the learned Vice-Chancellor says: "It is not every creditor who can call upon a stockholder to pay an unpaid subscription in satisfaction of his debt, or institute an inquiry as to the value or amount of the consideration given for stock. It is only those creditors who can fairly allege that they have relied, or whom the law presumes to have relied, upon the amount of the capital stock. The doctrine that the capital stock is a trust fund for creditors which the company may not dissipate cannot be invoked when a creditor has

knowledge of the arrangement under which the stock was issued as fully paid" (case p. 487).

If any authorities can be needed in support of this statement the following are surely sufficient:

In *Clark & Marshall on Corporations*, Sec. 401 j., after pointing out the liability of stockholders upon a claim of the kind here made rests upon the ground of fraud, it is said:

> "It is only those creditors who can fairly allege that they have relied, or whom the law presumes to have relied, upon the amount of the capital stock of the company, who have a right to make such inquiry, or in whose favor equity will impress a trust upon the subscriptions to the stock, and set aside a fictitious arrangement for its payment. It follows that an issue of watered or fictitiously paid up stock by a corporation cannot be attacked, nor the holders thereof be compelled to pay its full par value, by or for the benefit of persons who dealt with the corporation and became creditors before the stock was issued. The same is true of a creditor who participated in the issue of the stock or consented thereto, whether he participated as a stockholder or officer of the corporation or as its attorney, or otherwise."

In *Morawetz on Corporations*, at Sec. 829, it is said:

> "If a person should contract with a corporation, or voluntarily give it credit, knowing that its capital had not been fully paid up, but was declared to be fully paid up for the purpose of discharging the shareholders from further liability, the evident intention of both parties would be to make the agreement subject to these conditions; and there would be no equity in charging the shareholders with any further liability on account of the obligation so incurred by the company. So, if the capital of a corporation was de-

> cared to be fully paid up in consideration of specific property of less value than the amount of the capital, a person who should voluntarily deal with the company, knowing the character and value of the property so transferred to the company, would have no claim upon the shareholders for any further contribution of capital. By voluntarily dealing with the company under the circumstances, he must be deemed to have assented to the existing arrangement, the company and its shareholders having offered to contract only on these terms. The fact that such an arrangement is illegal, and contrary to public policy, might possibly be a ground for declaring it void, and for dissolving the corporation; but it would not be a ground for giving a creditor who assented to the arrangement rights against the shareholders for which the creditor did not stipulate, and which the shareholders never agreed to give."

In *Cook on Stockholders,* at Sec. 39, it is said:

> "Stockholders in a corporation who participate or aid in the issue of paid up stock, upon payment of less than its par value, or who have knowledge of the act and acquiesce therein, cannot afterwards complain of the transaction, either in their own behalf or in behalf of the corporation. They are bound by estoppel or acquiescence."

In *First National Bank of Deadwood* v. *Gustin Minerva Con. Min. Co.,* 44 N. W. Rep., 198, it was held that:

> "Where, by arrangement between the corporation and the shareholders, the stock is issued as fully paid up, without in fact having been paid for to the full amount of its par value, equity will set aside this fictitious arrangement for its payment, and hold the shareholders liable for the

amount not actually paid, in favor of creditors who can fairly be presumed to have given credit to the corporation in reliance upon its apparent and professed capital having been fully paid in; but no such trust will be enforced against the stockholders in favor of creditors who have dealt with the corporation with full knowledge of the arrangement by which the stock was to be fictitiously issued as paid up."

Bank of Fort Madison v. *Alden,* 129 U. S., 372, (1888). This was a bill in equity by a creditor of a corporation to compel the executor of one of its stockholders to pay its claim against the corporation upon the ground that at the time of his decease the stockholder was indebted to the corporation in a large amount for stock subscribed which had been issued to him, but for which he had never paid except in lands not exceeding in cash value forty per cent. of the amount subscribed. In affirming a judgment in favor of the defendant, Mr. Justice Field said:

"The bill was framed upon the theory that the deceased was at the time of his death indebted to the company in a large amount for the stock issued to him, it being contended that the cash value of the lands conveyed to the trustee for that stock did not exceed forty per cent. of the amount subscribed. But this theory falls to the ground before the facts of the case, as detailed above. The parties who became stockholders had, pursuant to a previous agreement, conveyed their lands to a trustee, in stock for the corporation formed, upon an understanding that the stock should be issued to them in proportion to their individual interests in the property. The subscription was made upon this arrangement and the parties acted with full knowledge of the conditions on which the property was to be trans-

> ferred to a trustee, and the stock was to be issued to them. There was no attempt to pass off the property as different or more valuable than it was. There was no deception or misrepresentation of any kind in the case. No demand, therefore, against the estate of the deceased Waterman can be sustained, upon the assumption that by the conveyance of his land he had not paid up all that he contracted or was bound to pay by his subscription. There was no credit given by the bank to the company upon any representation of a different set of facts than that which actually existed. The bank was owned by two of the stockholders of the company, Brewster and Smith, who had participated in and had been well advised of all that was done by the company. They held all the shares of the bank, and were respectively its president and cashier. Such being the case, the answer to the claims of the bank is found in the decision of this court in *Coit* v. *Gold Amalgamating Co.*, 119 U. S. 343, 345. * * * Under this authority no foundation is laid for calling upon the estate of the deceased to pay anything more for the stock issued to him than was paid."

In *Rickerson etc. Co.* v. *Farrell etc. Co.*, 75 Fed. 554, 559, (Circuit Court of Appeals, Sixth Circuit, 1896), it was held that:

> "A stockholder paying his stock subscription in property at an agreed value is not liable in equity to a creditor of the corporation, who had knowledge of and assented to the transaction at the time it took place."

To the same effect are:

Washburn v. *National Wall Paper Company*, 81 Fed. 17, (Circuit Court of Appeals, Second Circuit, opinion by Judge Lacombe, 1897).

Woolfolk v. *January*, 33 S. W. 432 (Missiuri 1891).

Hoopes v. *Car Company,* 44 Minn., 174.

Nicrosi v. *Calera Land Co.,* 22 So. 146 (Ala., 1897), and many other cases.

The case of *Knoop* v. *Bohmrich,* 49 N. J. Eq., 82, although not a creditor's bill, is also, by analogy, an authority against the contention of the appellants. the suit was brought by one stockholder in the company to compel another stockholder therein to pay for stock for which he had subscribed. The defense was that the stock had been issued under a contract with the company by which the defendant was to convey property to it in payment for the stock and that this had been done with the knowledge and approval of the complainant. Vice-Chancellor Van Fleet said: "If this claim is true, it would seem to be quite clear that the complainant is not entitled to the decree he seeks. Though the corporation may not be bound by this contract, still it would seem to be unquestionably just, that the complainant should be held to be bound by it to the extent of depriving him of the right to maintain an action in equity to compel Bohmrich to pay for his stock in a manner entirely different from that agreed upon; especially should this be so, if it be true, as alleged, that the complainant was present when the stock was issued and consented to its issue in execution of the contract."

As the learned Vice-Chancellor has held "it therefore follows that these (last named) claimants are not in a position to call upon the delinquent subscribers to contribute toward the payment of their claims" (case p. 487).

For these reasons I respectfully submit that the appeals of Frederick Green and the Estate of Henry Green should be dismissed with costs.

Respectfully submitted,

RICHARD V. LINDABURY.

Dated Nov. 27, 1905.

New Jersey Court of Errors and Appeals.

BETWEEN
THE EASTON NATIONAL BANK, Complainant,
AND
THE AMERICAN BRICK AND TILE COMPANY, Defendant.

On Appeal of Elisha P. Wilbur and Fidelity Trust Company, Executor of Edward M. Paxson, deceased, from Decree in Chancery ordering assessment on capital stock to pay debts.

Brief of George M. Shipman and W. S. Kirkpatrick, for The Easton National Bank, and Clarence Walters, Receiver, in Reply to Brief of Samuel Dickson and Richard V. Lindabury, for Appellants.

We find upon an examination of brief of counsel on the appeal of Elisha P. Wilbur and Fidelity Trust Company, Executor of Edward M. Paxson, deceased, that every point has been so fully anticipated and covered by our brief heretofore filed, that a reply seems hardly necessary.

We will content ourselves, therefore, with a few observations suggested by Appellants' brief, more particularly relying upon our former argument as fully answering the various contentions of Appellants.

It is clear from the evidence that the original agreement (Case p. 241) between Simpson and Canfield and Judge Green and the objects thereof were fully understood by Judge Green and by the other three promoters of the Company, Messrs. Wilbur, Paxson and Potter, before the actual formation of the corporation and the filing of the certificate. This certificate will be found in State of Case, pp. 8, 9 and 10. One of the purposes of the Simpson and Canfield agreement, as recited therein, was the placing of the stock of the then contemplated corporation by Henry Green (Case p. 241). That these parties all knew of the arrangement and understood the purposes thereof is apparent from the testimony of Potter (Case pp. 326-327). They were precisely in the same position as Judge Green as to knowledge of the real purpose. The ownership of the patents, the only property claimed to have been given for the stock, was in Canfield and Simpson. The patents were to be sold to the proposed company by Canfield and Simpson and they were to receive for them 3950 shares and a small sum of money. By the testimony it appears that each of the others were to pay to the company a certain sum of money, and were to get the remaining shares of the stock of the company. By the original scheme (Case p. 244) they were to each get 1000 shares. At some time later — when, does not appear — the distribution was rearranged and each were to receive 1500 shares, Judge Green receiving a little more, to wit: 1750. Stripped of all superfluous verbiage, Simpson and Canfield were to sell or transfer their patents to the company for 3950 shares of the stock. Wilbur, Potter, Paxson and Green were each to have issued to them the balance of the stock in the figures above stated, for which they were to pay in money $10,000 each, the total amount of money paid being $40,000, and the par value of the shares distributed to them being $600,000. No amount of ingenuity can change this situation. It was patent to the most ordinary intelligence that they were to get $600,000 of the capital stock and pay nothing for it but the $10,000 each in money. It was impossible for these gentlemen to misunderstand the significance of this arrangement. With full knowledge of these facts, and of the real purport of the plan, they

executed the certificate in which they certified to the State and to the public that Paxson, Wilbur and Potter were subscribers each for 1000 shares, the subscription of Henry Green being 3000 shares. As every man is presumed to have intended the ordinary and natural consequences of his acts, it was impossible for these gentlemen not to know that under this certificate they were creating the impression that they were subscribers for such shares and had agreed to pay in money for the stock so subscribed to the full amount of the par value thereof, when in point of fact they were paying but a very small proportion of that money for the shares of stock that were afterwards issued to them in September and November of 1887, more than a year and a half after the certificate was filed. However binding the prior existing secret understanding may have been among themselves, or perhaps even as between the corporation and themselves, as to third parties, and particularly as to creditors, they would be bound by their contracts as subscribers in the certificate. They knew and were bound to know that the public, and particularly the creditors of the company in case of indebtedness incurred, were relying upon the faith of the full amount of capital being paid in in money or money's worth as implied in the certificate. The creditors being the parties now interested it is clear that as to them this was a fraud, and the Vice Chancellor was, in our opinion, clearly right in his conclusions with regard thereto.

If Canfield and Simpson, under this arrangement, sold the patents to ~~stock of~~ the company for 3950 shares, which they were to receive, then Messrs. Green, Wilbur, Paxson and Potter were neither the purchasers from them nor the vendors of the patents to the company, and the only thing they parted with for their stock was the comparatively small portion of money paid in by them. In order to escape this situation it was attempted in Appellants' argument to make these parties in some way owners of the patents. They could only be the owners of the patents by purchase from Canfield and Simpson, and the only consideration would be the amount of money they paid to the company or to Simpson and Canfield. In either case it did not exceed $40,000. As directors of the company, if any action was taken by them as such, and as to which there is clearly no evidence, or the evidence is so unsatisfactory as to produce no conviction, then they, if purchasers of the patents for the benefit of the proposed company, must have estimated the value of the patents far beyond the amount that they were really to cost, and being themselves on both sides of the

bargain, they again sold these same patents to the company and received for them this immense body of stock. A statement of this situation is a sufficient answer to the whole of the contention of the Appellants on this subject.

If the Appellants had acquired the stock upon the theory that they were in some way to be regarded as the owners of the patents, then the only value which they could be considered to have paid for the patents would be the amount of money they paid into the company, and if in re-selling the patents to the company they took for them stock to an amount greatly in excess of the amount actually paid by them into the company, it was a clear case of overvaluation or an artificial credit, and upon that theory being the owners of the patents, and at the same time directors and trustees of a fund in which the creditors were interested, they were guilty of actual fraud and a violation of their fiduciary duties in thus overvaluing the property which represented to them a cost largely below the immense sum of $1,000,000 at which they placed the property to the company. No man of the most ordinary intelligence could make himself believe that such property was worth any such amount as was represented by the par value of the stock issued to them, or that this was anything but a device by which they attempted to secure this large body of stock for but a very small sum of money, or through a conscious gross overvaluation of the property for which it was pretended the stock was issued. We refer to our former brief and the citations of the testimony which show that the patents were absolutely valueless. And whether they were or not, Canfield and Simpson sold them for four-tenths of the capital stock of the company, and so far as Paxson, Wilbur, Potter and Green were concerned they acquired six-tenths of the capital stock of the par value of $600,000 by the payment of but $40,000.

We repeat that there is absolutely no evidence of any meeting on the part of the directors as such in which they valued the patents and authorized the stock to be issued for the patents. Such meeting, if it ever took place, was a very informal one and *was held outside of the State.* As an actual fact the patents were practically worth nothing. Even if there had been a formal valuation, as was said in See vs. Heppenheimer, 61 Atl. Reporter, page 851, a case which very elaborately covers this whole subject:

> "It cannot be deemed conclusive when duly subjected to judicial scrutiny. Nor is it necessary that conscious

over-valuation or any other form of fraudulent conduct on the part of these primary valuers should be shown to justify judicial interposition. Their honest judgment if reached without due examination into the elements of value or if based in part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of the statutory rule as surely as would corrupt motive."

Commenting upon the intention of the Legislature in Sections 48-49 of the Revised Act of 1896, the Court, in the case just cited, p. 851, say:

"The intention of the Legislature, expressed in these sections in question, in my judgment manifestly was that the capital stock of all corporations should at the start represent the same value, whether paid for in property or money. That result can only be obtained by supposing that the property is to be appraised at its actual cash value, precisely as if a board of directors, with the whole capital stock actually paid in cash, is dealing at actual arm's length as real purchasers with the owner of property proposed to be purchased as a real vendor, without any interest in the directors to overvalue the property or other interests inconsistent with the real interest of the stockholders as such. I say "at the start" because we all know that property purchased in good faith for cash is liable afterwards to depreciate in value, owing to circumstances not foreseen at the time of its purchase. After all, it seems to me that the true test, under this statute, as applied to the case here in hand, is this: If the company actually had to its credit in bank the sum of $5,000,000, would it have been willing to have paid that price in cash for the property in question for the uses and purposes to which it proposed to devote it? Would the property be worth that sum in cash to the company? Any less severe test will, it seems to me, fail to satisfy the letter and spirit of the two sections of the Act before recited, which seem to me clearly to require that the shares of capital stock of any company organized under the Act in force when this company was organized should be of equal value, whether paid for in cash or property purchased."

Applying the test suggested in the above quotation, if the company actually had in cash or to its credit in bank the sum of $1,000,000, would it have been willing to have paid that price in cash for the patents? Would the property be worth that sum in cash to the company? Does anybody believe that such property, purely speculative and intangible, was worth in the market any such preposterous figure as that?

It is incredible that these gentlemen should have considered that the Dickson patents, and the two kiln patents, which afterwards proved a total failure, even before the stock was actually issued in 1887, were worth in actual cash $1,000,000, or that they would have paid any such sum in cash for them.

Even if the interpretation and application of the Act of 1896. as enunciated in See vs. Heppenheimer *supra*, is not accepted by this Court, we must remember that the law applicable to this case was that existing prior to the revised Act of 1896, and that the provision as to action of the directors being conclusive in the absence of fraud was not part of the law under which this corporation was promoted and formed. The case of Wetherbee vs. Baker, 35 N. J. Eq., 502, is an authoritative exposition of the law applicable to this case, and we especially refer to the same as cited and discussed in our former brief.

We have only briefly summarized one or two situations, which seem to us to amply answer the ingenious reasoning of counsel for Appellants, and would refer the Court to our more extended discussion of the testimony and the authorities in the brief heretofore filed.

Respectfully submitted,

GEO. M. SHIPMAN,
W. S. KIRKPATRICK,

Counsel for The Easton National Bank and Clarence Walters, Receiver.

New Jersey Court of Errors and Appeals.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant,
AND
THE AMERICAN BRICK AND TILE COMPANY,
Defendant.

On Appeal of Elisha P. Wilbur and Fidelity Trust Company, Executor of Edward M. Paxson, deceased, from Decree in Chancery ordering assessment on Capital Stock to pay debts.

BRIEF OF S. C. SMITH AND R. C. STEWART, FOR FREDERICK GREEN, EXECUTOR, AND FREDERICK GREEN, INDIVIDUALLY, IN REPLY TO BRIEF OF SAMUEL DICKSON AND RICHARD V. LINDABURY, FOR APPELLANTS.

We have examined the brief of Counsel on Appeal of Elisha P. Wilbur and Fidelity Trust Company, Executor of Edward M. Paxson, deceased, especially that portion contained on pages 11 to 19, relating to the claim of Judge Green's Estate, and of Frederick Green; and while we are confident that it does not contain a sufficient answer to the

former argument, contained in our brief, in this matter, as the learned Counsel for the above parties seemed to misapprehend our position, we feel constrained to file a short brief in reply. We insisted, in our argument, that the proceeding, as originally commenced, under Section Fifth of the Corporation Act, necessarily makes the above parties liable for the claims of our clients.

The Fifth Section of the Corporation Act, Gen. Stat., page 910, provides "that where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the company, or such proporation of that sum as shall be required to satisfy the debts of the company.

This section of the statute fixes the liability upon the stockholders to pay the debts of the company, and makes no distinction between creditors, who as officers of the company have notice that stock issued as full paid is not full paid, and other creditors.

The words, "claims of its creditors," must include all creditors, and the words "debts of the company" must comprise all of the debts of the company.

In the brief, heretofore filed, we called attention to the authorities, which have been quoted in full in the brief of Messrs. Dickson and Lindabury, to show the Court that we had not overlooked them, and endeavored to point out the distinction that exists between a case where the capital stock had been properly issued for property purchased, and a case where there had been no proper issue of the stock at all, and where the attempt was made to hold the parties liable under their original contract of subscription. We shall not repeat the argument of our former brief, but we desire to call the further attention of this Court to the fact that the burden is upon the other side to show that the stock was properly issued for property purchased.

KNOOP VS. BOHMRICH, 49 N. J., Equity, 83.

BOHMRICH VS. KNOOP, 50 N. J., Equity, 485.

The certificate of incorporation is printed in full, bottom of page 8, pages 9 and 10, State of the Case. It nowhere appears that this corporation had the right to meet outside of the State of New Jersey. The Act of February 28th, 1849, and the Act of 1875, provide, that stockholders' meetings must be held at the principal office in New Jersey, except where the charter designates another place.

In Hilles vs. Parish, 14, N. J., Equity, 380, it was held that any action taken at a stockholders' meeting outside of New Jersey, was void. Where the directors propose to hold meetings out of the State, the charter or the By-Laws must give permission to that effect.

The testimony shows that this important meeting of the directors was held in Pennsylvania.

Judge Paxson testified (Page 220, State of the Case, line 5), that he could not remember whether it was held in Philadelphia or Easton.

Mr. Wilbur testified (Page 232, State of the Case, line 14), that he thought the meeting was in Easton.

Mr. Potter testified (Page 330, State of the Case, line 13) he did not recollect where the meeting was held.

It thus appears that these directors, according to their best recollection, met in Pennsylvauia, at either Easton or Philadelphia, and that under their charter, there being no By-Laws at all, their alleged action, in reference to the issue of this capital stock for property purchased, was under the laws of New Jersey, utterly void, so that, as we contend, we are remitted to their original contract of subscription, under the Fifth Section above.

We desire also, to call the Court's attention to the fact that all the certificates of stock held by these parties, were signed by Henry Green, President, and Frederick Green, Secretary. The Corporation Act provides that the certificates shall be signed by the President and *Treasurer*. The very certificates themselves don't conform to the statutory requirements, and would not be prima facie evidence of the stockholders' title to stock. In other words, the burden being on these parties to show that this capital stock was issued for property purchased, it cannot be shown by the certificates, for they are not in the form prescribed by the

statute, and they must prove their case from some other records of the corporation. In that, they utterly failed, because, as has been shown by the briefs, filed in this case, there is no other record at all of the action of the Company, in issuing this stock for property purchased.

We also desire, in answer to argument of the learned Counsel, on page 27, to call the attention of the Court to the fact that the testimony discloses that about the same time they say these patents were sold to the Company for a Million Dollars, Messrs. Canfield and Simpson, by agreement, sold the very same patents to Henry Green, see page 241, State of the Case, for some shares of stock of the nominal value of $400,000.00, and that subsequently, see page 246, State of the Case, M. P. Canfield, on October 1st, 1887, sold 493 shares of the same stock which he had received for the patents, for $1250.00, which is at the rate of $7.63 for a share, which same stock the other side now contends, these directors, at that time, thought was worth $100.00 a share.

What better evidence of the value of stock can you have, than this sale on October 1st, 1887, the very time when they say the stock was issued for this tremendous price of One Million Dollars' worth of patents?

Counsel, on page 27, of their brief, indulge in fine writing, and say:

"Hindsight has long proven to be more valuable than foresight, but it is the foresight and not the hindsight with which we are concerned in this case."

We, however, are of opinion that it would require a case of total blindness, and a loss of all the senses, before anyone would conclude that Judge Paxson and Mr. Wilbur were deceived into thinking that this stock was worth One Hundred Dollars a share, when they received it. The best evidence of its value and one that should control here, was the cash value the patentees themselves put on it.

Respectfully submitted,

S. C. SMITH,
R. C. STEWART.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between THE EASTON NATIONAL BANK, *Complainant,* *and* THE AMERICAN BRICK AND TILE COMPANY, *Defendant.*	*On Appeal of Elisha P. Wilbur and Fidelity Trust Company, Executor of Edward M. Paxson, deceased, from Decree in Chancery ordering assessment on capital stock to pay debts.*

BRIEF OF SAMUEL DICKSON AND RICHARD V. LINDABURY FOR APPELLANTS.

The case is stated in the brief heretofore filed by Mr. Lindabury on the appeals of Frederick Green individually and as Executor of Henry Green from the same decree.

We submit that the decree, in so far as it ordered an assessment upon the stock held by these appellants to pay the claims of the Easton National Bank and Henry Short, should be reversed, and, in so far as it adjudged that no assessment should be levied upon said stock to pay the claims of Frederick Green and Henry Green's Estate, should be affirmed, for the following reasons:

I.

THE CLAIM MADE BY THE PETITIONER THAT THE STOCK OF THE AMERICAN BRICK AND TILE COMPANY HELD BY THE APPELLANTS WAS ISSUED SUBJECT TO ASSESSMENT WAS NOT SUSTAINED BY THE PROOFS.

(a) The agreement entered into between Simpson and Canfield, of the first part, and Henry Green, of the second part, shortly before the corporation was organized shows the scheme of its projectors (case p. 241). This agreement after reciting that Simpson and Canfield had acquired the ownership of the Dickson patent for making brick, tile and other fabrics out of slate; that Simpson in addition had applied for two patents for improvements in kilns, and that it was proposed to form a corporation for the purpose of putting said patents into practical use, provided:

1st. That a corporation should be formed and established *upon the basis of said patents and to carry the same into practical effect* with a capital stock of not less than $1,000,000;

2nd. That Green upon paying into the treasury of such corporation the sum of $20,000, and to Simpson and Canfield the sum of $5,000, should be entitled to have and take six-tenths of said capital stock, and that Simpson and Canfield, upon assigning and transferring to such corporation all of said patents, should be entitled to have and take the remaining four tenths of said capital stock, and that out of said six-tenths of said capital stock so to be taken by Green he should deliver to Simpson and Canfield $20,000 worth at par and should also deliver into the treasury of the corporation $55,000 worth at par, to be used and sold from time to time as might be required for the purpose

of raising working capital for conducting the operations of the corporation. The agreement also provided that in addition to assigning to the corporation the said patents and all improvements and inventions which they, or either of them, might make thereon, Simpson and Canfield should deliver into the treasury of the corporation $25,000 worth of stock at par out of the four-tenths so to be issued to them, to be used and sold as working capital.

It is, we think, undeniable that this agreement contemplated the issue of the whole capital stock of the proposed corporation in consideration of the transfer of the patents plus the sum of $25,000 in cash, plus the return to the treasury of the corporation of $80,000 worth of stock at par, to be used for working capital. It is declared that Green shall be entitled to six-tenths of the stock upon paying into the treasury $20,000 and to Simpson and Canfield $5,000. But it is added that upon receipt of such stock Green is to transfer $20,000 of the same at par to Simpson and Canfield and is to deliver into the treasury of the corporation $55,000 worth of the same at par. Whether it be considered that this agreement contemplated the issue of the whole capital stock for the patents, plus $25,000 in cash to be paid in by Green and the $80,000 of treasury stock to be contributed by Green, Simpson and Canfield, or that it contemplated the issue of four-tenths of the stock, less $25,000 worth at par for the patents, and six-tenths, less $55,000 worth at par, for the $25,000 in cash to be paid by Green, it is manifest that either for the joint or the several considerations all the stock was to be issued.

Nor can it be said that Green was to receive six-tenths of the stock in trust for the corporation. He

was to assign $20,000 worth of the same at par to Simpson and Canfield for which he was to receive no further consideration than the remaining stock to be issued to him, and he was to turn $55,000 worth at par into the treasury of the company to be sold by the company for working capital. These provisions are entirely inconsistent with the theory that Green was to receive any of the stock in trust for the corporation or anybody else. Indeed there is no mention of any trust in the articles of agreement and it is hardly conceivable that if a trust was intended it would not have been set forth.

(b) Paxson, Wilbur and Potter all testified that the stock was to be issued and was issued for the patents except the 200 shares for which Paxson and Wilbur paid cash. And there is no evidence from anybody to the contrary.

Judge Paxson says that there was a meeting of the board of directors some time after its election (case p. 195); that at this meeting Judge Green, Mr. Wilbur and himself and he thinks Mr. Potter were present (p. 196); that a resolution was passed providing for the issue of the stock of the company for the patents (p. 198); that according to his recollection a certain amount of the stock was to be issued to the patentees and the balance of the stock was to be issued to those gentlemen who agreed to put in some money for the purpose of operating under the patents; that the amount so to be issued for cash was $40,000 (p. 199); and that the assignment of the patents to the company was taken in pursuance of this action (p. 197).

Mr. Wilbur says that he remembers action being taken at a directors' meeting looking to the issue of stock and that it was very shortly after he was elected

a director. He says that he is quite confident that the meeting was held in Easton, although he would not want to be sure; that as nearly as he can recollect Judge Green, Judge Paxson, Mr. Potter, Mr. Canfield and himself were present. He says that a statement was made by Judge Green showing how the stock was to be distributed and that this was confirmed and action directed in accordance therewith (case p. 232). He says that a certain amount of the stock was to be given to Canfield and Simpson for their patents, a certain amount was left which was to be kept in the treasury and that other amounts were to be delivered to Judge Paxson and himself and those who had paid for their stock. He mentions the amount of this latter stock which was to come to himself and Judge Paxson as 100 shares to each (p. 233).

Mr. Potter says that he understood from Judge Green before the company was organized that he, Judge Green, had acquired the patents in question and was to organize a company with a capital stock of $1,000,000, which was to represent the purchase of the patents. He also understood that Judge Green had interested Judge Paxson and Mr. Wilbur and that the four of them were to put up such an amount in cash, not to exceed $10,000 each, as would be needed to build a plant (p. 326). He says that the entire arrangement was that the four of them were to put up the money; that some of the stock was to be turned into the treasury and that whatever did not go into the treasury and did not go to Simpson and Canfield was to be divided between Judge Paxson, Judge Green, Mr. Wilbur and himself. He says that he in fact got 1,500 shares, but that by the original arrangement he was only to get 1,000 (p. 327). He says that Judge Green made a sub-

sequent arrangement with Canfield and Simpson to give up half of the stock which they were entitled to under the agreement, and that this was divided among the four of them. He says that he knows that the stock was ordered issued by the board of directors (p. 328); that there was a meeting and the stock was ordered issued; that 1,500 shares were issued to him for his share in the patent (p. 329).

A paper was discovered among Judge Green's effects in his own handwriting entitled "Original Scheme." It is printed on page 244 of the case. This shows the division of the stock as originally contemplated. It was modified afterward before the stock was actually issued upon Judge Green's acquiring from Simpson and Canfield a portion of their stock. This, when acquired, was equally divided between himself, Wilbur, Potter and Paxson, and, with the 1,000 shares that each of them was originally to receive, made up the amount which was actually issued to them.

(c) The assignments of the patents bear date on the same day that the certificates of stock were issued (p. 344) and the certificates themselves (except the ones for the 200 shares issued to Paxson and Wilbur for cash) all recite not only that they are fully paid and non-assessable, but also that they are issued for property purchased. There is no pretense that any other property was transferred to the corporation on account of the issue of the stock.

These latter circumstances alone, in the absence of all evidence to the contrary, would seem to establish that, formally or informally, rightly or wrongly, the stock, except the 200 shares paid for by Wilbur and Paxson in cash, was issued for the patents. Upon what

other theory could it have been issued as "fully paid and non-assessable" and "for property purchased?"

As further showing this intent we have the testimony of Warren A. Wilbur to the effect that at the time he and Mr. Linderman purchased their stock Judge Green represented to each of them that the stock was fully paid and non-assessable (case pp. 367, 386). We have also the admission from the other side that at the time Charles A. Mayer purchased his stock Judge Green represented to him that he would incur no liability by reason of the purchase as the stock was non-assessable (case p. 431).

Against all this the letter supposed to have been written by Judge Green to Judge Paxson on August 23d, 1898, is of no account whatever.

1st. Because there is no legal evidence that it was ever in fact sent;

2nd. Because there is no evidence that it was ever received by Judge Paxson;

3rd. Because neither Judge Paxson nor any other stockholder could be bound by this belated and unsworn statement of Judge Green made after he had himself become insolvent and probably had discovered, or thought he had discovered, a way of getting back from his more fortunate associates some of the advances to the company which he had himself made and wasted;

4th. Because the statements contained in the letter are utterly discredited by the representations made by Judge Green to Mayer, Linderman and W. A. Wilbur and by the recitals in the stock certificates over Judge Green's own hand.

The multitude of references to this letter which are contained in the briefs filed by the other side constitute

almost a reflection upon our method of administering justice. This supposed letter was admitted in evidence only as against Judge Green's estate and of course it is not competent evidence and should not be considered as against any other stockholder, and yet counsel on the other side, who are united in their endeavors to further the interests of Judge Green, or at least to protect his good name, have referred to it again and again, not as evidence against him, which it is, but in his favor, which it is not; and particularly and with emphasis have they referred to it again and again as evidence against Judge Paxson, Wilbur and Potter, which it is not and could not be. This course might be comprehensible if counsel were addressing a jury, but, except upon the theory that the court will be unconsciously affected by it in considering the claims against Paxson, Wilbur and Potter, we are quite unable to understand either the offer of the letter or the use that is attempted to be made of it in the briefs.

(d) The certificate of incorporation indicates nothing contrary to the arrangement exhibited in the Simpson, Canfield and Green agreement of March 12th and detailed in the testimony of Paxson, Wilbur and Potter.

The certificate declares that the company will commence business with $25,000. The Simpson and Canfield agreement executed a few days before indicates that the parties expected that some time would elapse before the issue of the Simpson patents and, therefore, before the corporation should be established, as it was to be established on the basis of the patents. For this reason it was provided in the agreement that money should be advanced by Judge Green at once and that he should have credit for the same on account when

the arrangements were fully completed. It is probable that Judge Green had this provision in mind when he wrote in the certificate of incorporation that the company would begin business with $25,000. Apparently this $25,000 was the cash, or a part of it, that he, Paxson, Wilbur and Potter were to pay in. They probably thought that $25,000 would be all the money that would be needed and that if any further was required it could be gotten by a sale of treasury stock. The fact that the patents were not transferred until a year and a half later and that the stock was not issued until such transfer lends support to this view.

The provision in the certificate of incorporation regarding the distribution of the stock was quite within the arrangement testified to by the parties. They were originally each to have 1,000 shares of stock and this scheme of division was not changed until after the certificate was filed. Of course the statement of the amount of stock to be taken by each of these persons did not involve an undertaking to pay for the same in cash. It was quite in accord with the declaration of the certificate to pay for it in property. And whether the property transfer was made by the persons to whom the stock was issued or by one of them or by a stranger was of course of no possible account so long as it was made on account, or in consideration of the issue of the stock.

See *Vail* v. *Phillips,* 14 N. J. L. J., 45.

Mr. Wilbur says that when he signed the certificate of incorporation he did not expect to take his 1,000 shares of stock from the company; that he in fact got only 100 shares from the company and the other 1,400 shares from Judge Green (p. 237).

(e) Nor was the later assessment of $4 per share evidence that the stock was issued subject to assessment:

1st. Because it was imposed upon all of the outstanding stock, and it is entirely certain that 100 shares held by each Paxson and Wilbur were fully paid and non-assessable.

2nd. Because the resolution imposing the assessment itself shows that it was merely voluntary and without legal or enforceable basis.

Upon what other theory is it possible to explain the provision that "if any stockholders fail to respond to call the stock in the treasury be pledged as collateral for any sums advanced under the said call?"

This could only mean that if every stockholder paid such payment should constitute a voluntary contribution to the company, but that if any stockholder failed to contribute the payments of those who did respond should be reated as loans secured by a pledge of the treasury stock as collateral. How can such an arrangement be called a legal assessment or payment thereunder regarded as an admission of legal liability to assessment?

Judge Paxson and E. P. Wilbur both say that they were present at the meeting of directors when the assessment was ordered and that it was purely voluntary (pp. 211, 237).

II.

NEITHER JUDGE GREEN'S ESTATE NOR FREDERICK GREEN IS IN A POSITION TO CALL IN QUESTION THE ARRANGEMENT UNDER WHICH THE STOCK OF PAXSON, WILBUR AND POTTER WAS ISSUED AS FULLY PAID AND NON-ASSESSABLE.

Whether this arrangement was formal or informal, legal or illegal, both Judge and Frederick Green were not only cognizant of it but were parties to it and are bound by it. If it was a fraud they were *particifes criminis*. If it was innocent it amounted at least to an assent on their part that neither as stockholders nor creditors would they look to the stock so issued for further calls. Upon either view it is out of the question for them now to claim that they gave credit to the corporation in reliance upon the liability of the stock to further calls.

On the contrary, they made the representation by signing the certificate as president and secretary that the stock was full paid and non-assessable, which induced Paxson and Wilbur to accept the stock, and to pay the $10,000 in cash for the 100 shares which each took, understanding that that amount of stock was to be paid for in cash, the rest having been paid for by the transfer of the patents. They thus actively induced the appellants to pay out money by the written declaration signed by them, that they were not to incur any liability by the acceptance of the certificate. A clearer case of *estoppel* cannot be found in the books.

That this is true as to Judge Green does not appear to be denied, but some claim is made that Frederick Green is in a different position. He, however, signed

every certificate that was issued "for property purchased" and as "full paid and non-assessable," and besides being secretary was treasurer of the company and had possession of both its stock book and cash book and knew exactly what was paid in by every stockholder (case pp. 123, 126-132, 139, 143).

That a certificate of stock issued for property purchased and as full paid and non-assessable cannot be impeached under New Jersey law by the corporation issuing it, or by the stockholders thereof, seems to be clear in principle and to be settled by authority.

Thus, in *Hebberd* v. *Southwestern Land and Cattle Co.*, 10 Dick., 31, the Chancellor, in discussing the situation created by the issue of stock of the Cattle Company without consideration, said:

> "As to the bonus stock, the contract between the purchaser of bonds and the company was that he should not be called upon to pay for the stock. Such a contract is binding upon the company and its shareholders, but as the capital stock constitutes a trust fund for the payment of debts it cannot be given away over the demands of creditors, and hence the holders of bonus stock may be required to pay for it in satisfaction of the demands of creditors after the exhaustion of the other assets, upon the ground that its issuance to them was a fraud in law upon the creditors." (Citing cases.)

In *Dickerman* v. *Northern Trust Co.*, 176 U. S. 181 (1889), the court refused to declare invalid at the suit of a stockholder certificates of stock issued by a New Jersey corporation without payment, the certificates declaring on the face of them that they were fully paid and non-assessable. The court said:

> "The very authorities which hold that the declaration that the stock is fully paid and unassessa-

> ble is not binding upon creditors, also hold that the corporation cannot repudiate it and proceed to collect either from the person receiving the stock or his transferee the unpaid part of the par value. * * * There is no doubt that, if this were a suit by creditors to enforce payment of the unpaid portion of the stock subscription, the fact that the stock certificates declared that they were fully paid and unassessable would be no defense; but it is a suit of stockholders in the right of the corporation, and as between the corporation and its stockholders the declaration that the shares are fully paid up and unassessable is a valid one."

And upon similar principles it is held that a creditor dealing with a corporation with knowledge that its stock has been issued as fully paid and non-assessable, although in fact it has not been so paid, cannot compel a further assessment upon the stock for the purpose of paying any indebtedness which may remain to him as the result of such dealings.

In such cases the creditor deals with the corporation subject to the conditions as they exist to his knowledge and there is, therefore, no equity in charging the stockholders with further liability on his account. We have found no more apt statement of the rule anywhere than that contained in *Morawetz on Corporations,* at Sec. 829, which is quoted on page 13 of Mr. Lindabury's former brief.

In addition to the authorities referred to in that brief on this point we beg to call the court's attention to a few others.

The first is *Coit* v. *The N. G. Gold Amalgamating Co.,* 14 Fed. 12; 119 U. S. 343. This was a bill in equity by a creditor of a corporation against the corporation and its stockholders for a decree for the payment of

his debt by the stockholders. The complaint was based upon the allegation that the stockholders had received their stock in exchange for property of a value less than the par value of the stock. It appeared, however, that at the time of the issue and distribution of this stock the complainant knew of the whole transaction and acquiesced in it. It was held in both the Circuit and Supreme Courts that the complainant could not recover. In the Circuit Court the decision was by Mr. Justice Bradley, who said:

> "Under these circumstances to make the stockholders liable personally to Mr. Coit on the ground that the subscriptions to the stock became a trust fund for his benefit, would be instead of promoting justice promoting injustice; it would enable Mr. Coit by a mere trick of the law to take money out of the pockets of these men which he never expected or relied on."

In the Supreme Court Mr. Justice Field said:

> "The plaintiff had placed no reliance upon the supposed paid up capital of the company on the increased shares, and, therefore, has no cause of complaint."

The well known case of *Handley* v. *Stutz,* 139 U. S. 417, further illustrates the application of the principle on which stockholders are held liable to creditors. That case was a creditor's bill to compel the holders of bonus stock to make good the debts of the corporation to the amount of the par of the stock. The court held that only creditors whose debts had been contracted subsequent to the issuance of the stock in question could hold such stockholders liable, and that precedent creditors had no rights against them since they could not possibly have relied, in contracting their debts, on the capital supposed to have been contributed by such stockholders.

In *Taylor* v. *Walker,* 117 Fed. 737, the first paragraph of the syllabus reads as follows:

> "To render the organizers of a corporation, who caused its stock to be issued to themselves in exchange for property which they conveyed to the corporation, liable to its creditors for the difference between the value of the property and the nominal value of the stock, it must be shown that such property was taken in payment for the stock at a large over-valuation, fraudulently, with intent to cheat and defraud those who might become creditors of the corporation, *and also that the creditors became such on the faith that its stock was paid up.*"

Cunningham v. *Holley & Co., et al.,* 121 Fed. 720, was an action by a creditor against a corporation and its stockholders to recover from the latter the unpaid balance of their subscriptions to the amount of a judgment which plaintiff had recovered against the corporation. The defense was that the stock had been issued to the defendants in exchange for certain property under an agreement between the defendants and the corporation that the stock should be non-assessable; that the complainant was a party to such agreement, and participated in the organization and incorporation of the company, and knew that the stock was issued as fully paid and non-assessable. It was held by the Circuit Court of Appeals for the Ninth Circuit that under such circumstances the plaintiff could not recover. The opinion of the court on this point is short and we quote it in full.

> "It is contended that the facts set up in the answer concerning the understanding between the stockholders, whereby it was agreed that the placer claims and water rights, together with the sum of $70,000, should be taken as and for the full

payment of the capital stock of the corporation, constitute no defense as against a creditor of the corporation, unless it is also averred that the property so transferred was at the time of the transfer thereof of the full actual value of the sum for which it was taken. It is alleged in the answer, however, that the plaintiff in error was a party to the agreement by which the property and money so subscribed were taken and accepted in full payment of all the capital stock, and the shares were issued as paid up and non-assessable. A party to such an agreement cannot, as against other stockholders with whom he agreed and contracted, assert the invalidity of the transaction. There is in Washington no statutory prohibition against the payment of stock subscriptions by the transfer of property to the corporation in the place of cash. *Turner* v. *Bailey,* 12 Wash. 634, 42 Pac. 115; *Kroenert* v. *Johnston,* 19 Wash. 96, 52 Pac. 605. When stock is so paid for and property is so taken in payment, it is the general rule that the transaction cannot be impeached, even at the suit of a creditor of the corporation, except for fraud. 'Where full paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account.' *Coit* v. *Amalgamating Co.,* 119 U. S. 343, 345, 7 Sup. Ct. 231, 30 L. Ed. 420; *Phelan* v. *Hazard,* 5 Dill. 45, Fed. Cas. No. 11,068. And this is especially true where the creditor has dealt with the corporation with full knowledge of the transaction whereby the shares were paid for or was a party thereto. *Fort Madison Bank* v. *Alden,* 129 U. S. 372, 9 Sup. Ct. 332, 32 L. Ed. 725; *Adamant Manufacturing Co.* v. *Wallace, et al.,* 16 Wash, 714, 48 Pac. 415; *First National Bank* v. *Gustin, etc., Mining Co.,* 42 Minn. 327, 44 N. W. 198, 6 L. R. A. 676, 18 Am. St. Rep. 510; *Walburn* v. *Chenault,* 43 Kan. 352,

23 Pac. 657; *Whitchill* v. *Jacobs,* 75 Wis. 474, 44 N. W. 630."

The facts in the above case are so remarkably similar to those in the case at bar that no comment or application of the case to the present is necessary. If the authority of the Federal Courts is of any weight in this state, under the foregoing decisions these two creditors have no right of recovery.

In other states the courts have come to similar conclusions. *Walton* v. *Hake,* 9 Mo. App. 595, was a case, the facts of which are almost exactly like those in the case at bar. The court there held (we quote from the opinion of Thompson, *J.*) that

> "One who was a director when the board of directors of a bank improperly released its stockholders from a portion of their subscriptions and who afterward becomes a creditor of the bank, cannot have the transaction undone for his benefit in a proceeding by him against a stockholder. His acts estop him from asserting that he gave the bank credit on the faith that the stock thus retired was still unpaid."

Two Minnesota cases are so often cited upon this question and contain such sound reasoning as to be worthy of note. One of these, *First National Bank of Deadwood* v. *Gustin Mining Co., et al.,* 42 Minn. 327, is referred to in Mr. Lindabury's former brief. The other is *Hoopes* v. *Car Co.,* 48 Minn. 174. This was a case in which a creditor sought to hold liable a stockholder whose bonus stock had been issued after the plaintiff's debt was contracted. Mr. Justice Mitchell discussed and criticized at length the so-called "trust fund" doctrine, and arrived at the conclusion that the capital stock of a corporation is in no sense a trust fund, but belongs to the corporation as completely

and as absolutely as the property of an individual belongs to the individual; that the liability of the holder of bonus stock to the creditors of the corporation rests not on the theory that his subscription is a trust fund, but on the principle that the stockholder has by his subscription made a representation as to the actual amount of the capital of the corporation upon the faith of which creditors have dealt with the corporation and have given it credit. As respects such a *bona fide* creditor, therefore, the stockholder should be required in equity to make good his representations; no such equity would arise in favor of a creditor whose debt had been contracted prior to the issuance of the bonus stock in question, since such creditor would have placed no reliance upon the representation of the holder of the stock.

Whether we adopt the trust fund doctrine, or the doctrine of Mr. Justice Mitchell given above, Frederick Green and Judge Green's estate are equally precluded from recovery. If we regard the capital stock as a trust fund for the payment of creditors, it is plain that no *cestui que trust* can have any rights against one who claims by virtue of a transaction which the *cestui que* has authorized, furthered, and acquiesced in.

If we proceed on the ground of misrepresentation or fraud the result is the same. The Greens have never been misled into believing that they had a greater security than that which had certainly been paid into the corporate treasury. They never contracted with the corporation relying on any representations, express or implied, made by the defendants. It was the defendants who were led by the Greens into believing that the stock which they received was full paid and

non-assessable. The Greens have no equity to stand on, while the defendants have a strong equity to be relieved from liability in favor of persons on whose representations they have been induced to accept their stock.

III.

PAXSON, WILBUR AND POTTER ARE NOT LIABLE TO ASSESSMENT TO PAY THE CLAIMS OF THE EASTON NATIONAL BANK AND HENRY SHORT, BECAUSE THEIR SUBSCRIPTIONS TO THE STOCK OF THE COMPANY WERE FULLY PAID BY THE TRANSFER OF THE PATENTS.

That the stock was issued at least nominally for the patents, we have already shown, as we think, conclusively. We now submit that it was issued in good faith as for property believed to equal the par value of the stock and that such belief was justified by the circumstances under which the parties acted.

Judge Paxson says that the matter of the patents was first brought to his attention by Judge Green when they were holding court in Pittsburg. He says that he thought that if brick could be made out of slate at the cost suggested to him that the patent would be valuable. He says that he, however, did not feel like going into the matter without making a test, and that he spent several hundred dollars in building a kiln at Pittsburg in which he and Judge Green put the process to the test. He says that the brick "turned out a very fine brick, it was a brick which had double the resisting power of an ordinary brick, it was a brick which absorbed no moisture at all, and one which would last very much longer than the ordinary brick" (case p. 202). Judge Paxson says that in addition to this Judge Green represented to him that there were a large number of royalty contracts in different parts of

the United States given to different parties, the names of whom he does not remember, except one, a Mr. Fuller, up somewhere about Pine Grove, or somewhere out in the interior of Pennsylvania. He says that this Mr. Fuller owned a large estate there consisting of thousands of acres with iron works on the property and was both a very prominent man and a very good business man. He says that he took the trouble to go up and see Mr. Fuller, and that when he saw him he was very enthusiastic about it; that Fuller owned a mountain of slate and had built a railroad three miles long up to the mountain to get out the slate for the purpose of making these bricks, and that through the royalties that were granted or that were in course of negotiation he made up his mind that the royalties alone would pay the interest on the whole capital of $1,000,000. He says that he went to see the plant again after it was in operation and that he (Green) was burning thousands of millions of bricks. He says that he does not know what was received from these bricks as he never got any information, but that he was satisfied that the brick which was being burned under those experiments and the way in which offers were coming in for the right to make the brick on royalty, that all these combined made him think that the patent was worth thousands and thousands of dollars and that he expected to become a very rich man (case p. 203). He says that at the time he voted for the issue of stock for the patent the patent was worth a million dollars (case p. 204). He says that the matter was thoroughly canvassed before the directors voted to issue the stock, each director giving to the others what information he had, and that the action taken was based upon the information so communicated.

It is to be noted that the stock was not issued until more than a year after the corporation was organized and that therefore the directors, when they voted to issue the stock for the patents, had the benefit of the experiments at the plant referred to by Judge Paxson.

Elisha P. Wilbur says that both Judge Paxson and Judge Green told him of their experiments in Pittsburg, and that in addition to this one or the other of them sent him bricks to be tested and that he had them tested on the Lehigh Valley Railroad (case pp. 234, 236). He says that he thought the patents were fully worth the amount of the capitalization (p. 235). In his statement as to the test of the brick made on the Lehigh Valley Railroad he is corroborated by his son, Warren A. Wilbur. The latter says that the Lehigh Valley Railroad test and their own test as to evaporation, hardness, &c., were highly satisfactory. He also adds that the bricks were used in their own office building at South Bethlehem, and that they had a sample arch built in the Musconetcong Tunnel of the Lehigh Valley Railroad. The result of these tests and this use of the bricks led him and his brother-in-law, R. P. Linderman, president of the Bethlehem Iron Company, to themselves invest in the stock of the Brick and Tile Company.

Mr. E. P. Wilbur also says that before the stock was issued Judge Green specially called the attention of the directors to the royalties which he had arranged for, giving them what the income would be from the royalties, that these royalties, if they had been received, would have amounted to a sum largely in excess of the interest on the proposed capitalization (p. 234).

In addition to this all the parties had the story of the discovery of the process and the abandonment of the brick originally designed for the Pittsburg tunnel and the substitution of brick made by this process (case p. 323).

Judge Paxson says that he did not decide to go into the matter until "after a very patient and, what I considered, thorough investigation" (case p. 199).

Mr. Potter says that he was informed of these experiments and tests made by Judge Green, Judge Paxson and Mr. Wilbur, and relied upon them without any investigation of his own, as, we submit, he had a right to do (pp. 331, 332). He says that after a full discussion as to the matter and a full canvass of the information obtained by Judge Green, Judge Paxson and Mr. Wilbur, he considered that the patents were worth $1,000,000 and that all the directors agreed to this same valuation (p. 332).

That the process was a very attractive and promising one was abundantly shown by the other side. Thus, Charles H. Salmon, now of Philadelphia, but formerly of Still River, Mass., a business man of character and experience, became interested in the process through Judge Green in 1887 and later took a license to manufacture under it at Still River. It appears that Salmon went to Phillipsburg to see the actual manufacture of the brick and there first met the witness Cole. Indeed he says that he went to Phillipsburg several times with Judge Green (p. 396). On page 400 he says that he not only visited the works at Phillipsburg, but had his superintendent go over and work at the process and paid his expenses while there, and that his superintendent was there anywhere from two to five months. It was after all these visits of

Mr. Salmon and his superintendent and after he had held the matter under consideration and investigation for about a year (p. 400) that he took out a license and built a plant for manufacturing thereunder at a cost of $35,000 (p. 398).

Surely if the process looked so attractive as this in 1888 it may well have seemed attractive to the promoters and directors of the company in 1886-7. Indeed Mr. Salmon says that he investigated the process sufficiently to know that if it was successful it would be very valuable, or otherwise he would not have gone into it (p. 399).

Equally important is the testimony of Andrew C. Givler, secretary and treasurer of the Fuller Brick and Slate Company of Pine Grove, Pa. He says that his company was organized for the manufacture of brick from slate in 1891; that the company built a railroad to its slate deposits five and one-half miles long and started to build a plant for making brick the same summer of its organization (p. 387). He says that Mr. Fuller became interested in the scheme of making brick from refuse slate through Judge Green about a year and a half or two years before the organization of the witness' company. At page 389 Mr. Givler says that Mr. Fuller (who appears to have been the head of the company) became very much interested in Green's process about a year before his, Fuller's, company was organized and wrote to a good many friends and tried to get them interested in the new concern. He admits that he is not able to say whether or not in fact Fuller's interest did not date back to 1886. He says that the company was capitalized at $600,000, and that it spent about $60,000 in building its plant in addition to which was the cost of five and one-half

miles of railroad. He says that this was a broad gauge railroad starting at Pine Grove Furnace and running out to the slate bed and that it was constructed over a pretty rough part of the country and on a heavy grade. He does not mention how much of the balance of the capital this road cost (case p. 390).

Judge Paxson says that he visited Penn Grove after the railroad was built and that Mr. Fuller was very enthusiastic about the process (case p. 203). Now, if a presumably hardheaded business man, the president of an iron company of the importance of that at Pine Grove, after observing the manufacture of brick under the Simpson-Canfield process at Phillipsburg for three years, thought enough of the process to expend $60,000 in building kilns for its operation and a probably very much larger sum in building a broad gauge railroad from the quarries to the kilns, how can it be insisted that the directors of the company did not, in the light of their own experiments and tests, have reasonable grounds in 1886-7 for believing that the process was of great value?

If anything more is needed to show the attractiveness of this process it will be found in the English prospectus, put in evidence by the other side and printed as Exhibit W. 11, on page 282 of the case.

Whether the English process is the same as the American or not, and whether the latter on this account ever had substantial value, is of no account. The Dickson patent was issued by the United States Patent Office and the directors were advised by counsel that it was valid. It does not appear that its validity has ever been challenged by the English patentee or any other living person. It certainly cannot be held in this action that the patent was in-

valid or that if it was the directors were bound to know it or were guilty of fraud in not finding it out.

It is plain enough, however, that the English process is for manufacturing brick out of refuse slate in a manner not substantially unlike that described in the Simpson-Canfield patent. And if one would know how attractive the process appeared to experts of the highest character in Europe he need only read the testimonials annexed to the prospectus on page 291 &c. of the case. It would seem as if nothing more could be said in favor of a process than is there said in favor of this one and by men of the highest authority. Indeed on page 304 is to be found a statement that the bricks made under the English patent were awarded a silver medal at the International Inventions Exhibit of 1885.

In the light of this testimony of Salmon and Givler and the testimonials annexed to the English prospectus, how purile and altogether ridiculous seems the testimony of Cole and Deitrich to the effect that they never in fact made good brick at Phillipsburg; that a large percentage of that which they attempted to burn went to waste; that the brick warped; that the corners broke off; that the color was bad; and that before Salmon invested his $30,000. or Fuller a large part of his $600,000. The process had conspicuously failed and that under the very eyes of both Salmon and Fuller.

Nor is it of account that a six-tenths interest in the patents was obtained from the patentees by Judge Green for a small sum of money, or that Green divided the same with Paxson, Wilbur and Potter for a small or even for no consideration.

It is the commonest practice of patentees to sell for trifling sums a controlling interest in their patents to persons who furnish the cash, energy and influence necessary for their development. Patents which have turned out to be worth many millions of dollars have been sold for a song time and again, and every experienced lawyer or judge is able to call to mind instances of this kind. So far as we know the courts have uniformly held this circumstance of little or no account in determining the actual value of patents or the good faith of corporations in purchasing the same for a large sum of money.

A notable case of this kind is *Young* v. *Erie Iron Co.* 65 Mich. 111.

There the organizers of a company which took over patents at a large valuation, sold shares of the capital stock at $5., $8. and $12.50 per share in order to get people interested in the company, and they also, for the same reason, gave away a great number of the shares. The court held these circumstances of no account on the question of the good faith of the company in issuing its stock for the patents. This case is worth reading throughout as it has an important bearing on several questions raised in this case.

An equally valuable case in the same court is *Graves* v. *Brooks,* 117 Mich. 425.

See also on the same point

Manhattan Trust Co. of N. Y. v. *Seattle Coal and Iron Co.,* 19 Wash. 492.

Schenck v. *Andrews,* 57 N. Y. 133.

Boynton v. *Andrews,* 63 N. Y. 932.

Nor is the fact that the company was unable to make a profitable use of the patents of particular account in

determining whether or not the directors acted in good faith and upon reasonable grounds when they adjudged that the patents were of the value of $1,000,000.

As already shown, it is proven by the witnesses on both sides that if the process had produced the expected results the patents would have had very great value. And certainly sufficient experiments were made by a majority of the directors in person to justify the belief that the process would produce such result. The question is not what the process appears to-day to have been worth at the time it was acquired by the Brick and Tile Company, but what it then fairly appeared to be worth. Hindsight has long proven to be more valuable than foresight, but it is the foresight and not the hindsight with which we are concerned in this case. If directors and stockholders were to be held liable according as the accuracy of their judgment was verified or disproved by the results attending upon the purchase of such property as oil lands, mineral rights or patent rights, it is sufficient to say that few men of substance would become either stockholders or directors in corporations organized to exploit the same. And yet it is well known that many of the most useful inventions we have to-day would be altogether unknown or unused but for the daring, not to say legitimately speculative spirit of investors. If the directors in this case, after making the investigation which they did make, had purchased these patents from strangers and had paid therefor the sum of $1,000,000, it is hardly likely that any one would have declared that there was so little basis for their judgment as to the value of the patents as to indicate a reckless disregard of their duty or downright bad faith. But there

was nothing unlawful in the acquisition of these patents by the defendants or in their organization of a corporation to operate the same, or in their turning over the patents to such corporation at a fair and reasonable price. Good faith and fair dealing was all that was required of them, and we submit that the evidence shows that they did not fail in this.

We do not claim that where directors buy from themselves, as they did in this case, their judgment as to the value of the thing purchased operates as a bar to a suit like this. We do claim, however, that the rule adopted in *Bickley* v. *Schlag* applies and that the inquiry is whether or not the transaction was fraudulent, for, as there said:

> "If the transaction was an honest one the difference in value between the property constituting the consideration of the sale and the stock has no legal significance."

On this point see the valuable discussion of Williams, *J.*, in *American Tube and Iron Co.* v. *Hayes,* 155 Pa. St. 469, and *Young* v. *Erie Iron Co.,* 65 Mich. 111.

Nor is it of account that the directors failed to record a minute of their action in resolving to issue the stock for the patents.

The evidence of Paxson, Wilbur and Potter is positive that the directors did pass such a resolution and that as a preliminary thereto they canvassed the situation and determined that the patents were worth at least the amount of stock to be issued therefor.

Upon this point the case resembles that of *Kroenert* v. *Johnston,* 19 Wash. 96, and Chief Justice Scott there said:

> "Without setting forth the testimony, the most favorable view proven for the plaintiff is that

there was a fair valuation of the real estate turned in as a partial payment, but that this was offered, agreed upon and accepted without any intention to defraud any one, the corporation being formed for a legitimate and useful purpose. *While the records of these proceedings were not fully kept, and no formal resolution accepting the real estate was shown as of record, it was amply proven that such was the agreement, and the proof was admissible, although the records were deficient.*"

We submit that the decree appealed from should be reversed in so far as it directs an assessment against Wilbur, Paxson and Potter for the payment of the claims of The Easton National Bank and Henry Short.

Respectfully submitted,

SAMUEL DICKSON,

RICHARD V. LINDABURY.

November Term, 1905.

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

Between
THE EASTON NATIONAL BANK,
Complainant and Respondent,
and
THE AMERICAN BRICK AND TILE CO. ET AL.,
Defendants and Appellants.

On Bill, etc.
Appeal from Final Decree.

STATE OF THE CASE.

For Complainant and Respondent,
GEORGE M. SHIPMAN
AND W. S. KIRKPATRICK.

For Elisha P. Wilbur and Edward M. Paxson, Appellants,
LINDABURY, DEPUE & FAULKS.

For Henry A. Potter, Appellant,
GUILD & MARTIN.

For Frederick Green and Frederick Green, Executor,
S. C. SMITH
AND R. C. STEWART.

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NEW JERSEY
Court of Errors and Appeals.

Between
The Easton National Bank,
Complainant and Appellee,
and
The American Brick and Tile Company et al.,
Defendants and Appellants.
} On Bill, &c.

BILL OF COMPLAINT.

(*Filed January 19, 1904.*)

In Chancery of New Jersey.

To His Honor, William J. Magie, Chancellor of the State of New Jersey:

Complaining, shows unto your Honor, your orator, The Easton National Bank, a corporation duly incorporated under the laws of the United States of America, and doing business at the city of Easton, in the State of Pennsylvania, creditor of The American Brick and Tile Company, a corporation duly organized and incorporated under the laws of the State of New Jersey, for and on behalf of itself and of such other creditors

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of the said The American Brick and Tile Company, who shall come in and contribute to the expense of this suit, says and complains:

First.—That the said American Brick and Tile Company, the defendant corporation, was organized and incorporated under the laws of the State of New Jersey on the thirteenth day of April, 1886, for the purpose of manufacturing bricks and tile from raw materials and to sell the same.

Second.—That by the terms of the laws under which the said company was organized they were authorized to raise by subscription a capital stock of one million dollars ($1,000,000.00), to be divided into ten thousand shares of the par value of one hundred dollars each, and that said company were authorized to issue certificates of stock and to possess all the power and be subject to all the liabilities stated in the laws under which said corporation was organized.

Third.—That all of the capital stock was actually subscribed for at the time of said company's incorporation; that all of the stock subscribed for was not in fact issued to the subscribers, but that only eight thousand two hundred and twenty-four shares were actually issued, and that there was paid by the several subscribers and stockholders the sum of forty thousand dollars. That the balance of said stock was retained in the treasury after the stock had been actually issued; that afterwards, at a meeting of the Board of Directors of said corporation, on April 25th, 1891, a resolution was passed calling for an assessment of four dollars per share on the stock then issued and outstanding; that on account of this assessment various sums were paid, but a larger part of this assessment is still unpaid, and no part of the balance due upon the several holdings and subscriptions for stock for which certificates are outstanding as aforesaid has ever been paid or called for.

Fourth.—That your orator is a creditor of the said corporation, defendant, upon three certain promissory notes, to wit: one dated July 10th, 1900, for six hun-

dred dollars ($600.00), at Easton, Pa., payable three months after said date to the order of Henry Green and by him endorsed; one dated July 30th, 1900, for five thousand dollars, at Easton, Pa., payable one month after date to the order of Henry Green and by him endorsed, and a third dated August 2d, 1900, for nine thousand two hundred dollars ($9,200), at Easton, Pa., payable one month after date to the order of Henry Green and by him endorsed, which notes were each duly presented for payment at maturity and payment thereof refused, whereupon said notes were each protested for non-payment. That no part of said notes has been paid to your orator, and there is still due upon the same in the aggregate the sum of fourteen thousand eight hundred dollars ($14,800.00), together with lawful interest from the date of the maturity of said notes, respectively.

Fifth.—That after their organization said company purchased real estate near Phillipsburg, in the county of Warren and State of New Jersey, and erected buildings thereon and put therein machinery suitable for making brick and tile, and carried on said business for a few years and until about the first day of May, 1896, when they stopped business entirely and have not resumed business since that time.

Sixth.—That the said corporation has been since the time it ceased business, and still is, hopelessly insolvent. That it is largely indebted to other persons and corporations besides your orator, and that said corporation has no funds wherewith to pay said indebtedness other than the balances due upon its capital stock, and that no effort has ever been made, or is being made, to collect the said unpaid subscriptions upon said stock; that the real estate has been disposed of and that the machinery is of little value and the buildings were destroyed by fire.

Seventh.—Your orator is informed that the other liabilities of said company, besides the indebtedness to your orator, amount to sixty thousand dollars, and that

said company have no funds whatever with which to meet said indebtedness.

Eighth.—Your orator charges that the said company is insolvent, and that they have been in a state of insolvency for a long time, and have not the funds to pay their large indebtedness as aforesaid or to carry on their ordinary business, and have not had for many years.

In tender consideration whereof, and forasmuch as your orator is without adequate remedy without the assistance of this Court, your orator prays:

That the said company may full, true and perfect answer make to all and singular the matters and things hereinbefore stated, and that they may set forth the rights and credits, moneys and effects due to them, and property of every kind and description due to the said corporation, and that your orator and other creditors of said company may be paid what is due to them justly, and that said American Brick and Tile Company may be decreed to be insolvent, and that a receiver may be appointed according to the form of the statute in such case made and provided, and that your orator may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpœna issuing out of and under the seal of this honorable Court, to be directed to the said The American Brick and Tile Company, therein and thereby commanding the said corporation to appear before your Honor according to law and the course of this Court at a certain day and under a certain penalty therein to be expressed, then and there to answer the premises, and to stand to, abide and perform such decree as to your Honor shall seem meet.

And your orator will ever pray, &c.

GEO. M. SHIPMAN,

Solicitor for and of Counsel with Complainant.

STATE OF PENNSYLVANIA, }
COUNTY OF NORTHAMPTON. } *ss.*

Henry G. Siegfried, of full age, being duly sworn, on his oath says that he is the cashier of the Easton National Bank, and by the said bank duly authorized to make this affidavit. Deponent says he has heard the above bill of complaint read; that the facts, matters and things therein stated, so far as they relate to the Easton National Bank, are true, and that the American Brick and Tile Company is indebted to said bank in the sum of fourteen thousand eight hundred dollars, with interest, as stated in said bill; that the money is due upon three several promissory notes protested and now under protest as thereon stated, and that no part has been paid to said bank.

Deponent further says that the statements of said bill in reference to the organization and incorporation of the American Brick and Tile Company are true, and that said company is insolvent; that the said company ceased doing business about the time stated in said bill of complaint, and that the said corporation has no property except as stated in the bill of complaint.

Deponent further says that Judge Henry Green was the last person elected president of said corporation; that Frederick Green, his son, was elected secretary and treasurer; that the said Judge Green is dead, but that the said Frederick Green is still alive and an officer of said company.

That all the statements in reference to the indebtedness of said American Brick and Tile Company in said bill of complaint to other persons besides the Easton National Bank are true as deponent is informed.

HENRY G. SIEGFRIED.

Sworn and subscribed before me January 16th, 1904.

[L. S.] HENRY D. MAXWELL,
Commissioner of Deeds for New Jersey in Penn.

In Chancery of New Jersey.

Between
The Easton National Bank,
Complainant,
and
The American Brick and Tile Company,
Defendants.

PETITION OF RECEIVER.

(*Filed July 12, 1904.*)

To the Honorable William J. Magie, Chancellor of the State of New Jersey:

The petition of William M. Davis, the receiver in the above-entitled cause.

1. That he has accepted the appointment as receiver heretofore made of the American Brick and Tile Company, and has qualified therefor by giving bond and taking the oath of office prescribed by the order of his appointment and by the statute, and that he has taken upon himself the burden of the trusts committed to him.

2. That after his appointment and on the tenth day of February, in the year nineteen hundred and four, an order was made in this cause that the creditors of The American Brick and Tile Company should present their respective claims to your petitioner and make proof of the same under oath or affirmation to the satisfaction of your petitioner within three months from the date of the said order, or that in default thereof they be barred and excluded from the benefit of such dividend as may be declared by the Court upon the proceeds of the effects of said corporation and from participating in the distribution of the assets of said corporation, and providing for the publication of notice of said order; and your

petitioner shows that notice of the said order was published as in said order required, and that on the thirty-first day of May, nineteen hundred and four, by another order made in this cause, it was recited that notice of the order to limit creditors had been published as was in said order directed, and it was thereupon ordered that all creditors and any of the creditors of the said The American Brick and Tile Company who had not filed and proved their respective claims against said company within the said three months, being the time limited by said order, should be barred from making proof thereof, and such creditors should be barred from sharing in or receiving any of the assets of said corporation, or any of the proceeds thereof which might come to the hands of the said receiver or be divided under the order of the Court. Your petitioner begs leave to refer to said decree or orders and to all the files and records in this cause, in this court, when it shall be necessary so to do.

3. That the following claims have been presented to him against the said company:

The Easton National Bank, claiming eighteen thousand one hundred and eighty-five dollars and seventy-five cents, besides interest to be computed from the date of certain notes.

Henry Short, claiming the sum of two thousand dollars, together with interest from the thirteenth day of February, nineteen hundred.

Frederick Green, executor of the estate of Henry Green, deceased, claiming twenty-two thousand nine hundred and forty-seven dollars and eighty-eight cents. And another claim filed by Frederick Green, executor of the estate of Henry Green, deceased, for thirty thousand one hundred dollars.

Frederick Green, claiming six thousand six hundred and fifty-five dollars.

That petitioner prays leave to refer to said claims whenever it shall be necessary so to do. That your petitioner has accepted the said claims and placed them

on file, and that he has admitted them as claims against the corporation.

4. That your petitioner has received into his possession the books of said corporation, including

Day book,
Cash book,
Record,
Ledger,
Stock books,

besides a number of papers, consisting of receipts, checks, memoranda and so forth.

That petitioner has received no property of any kind or description of said corporation, except the books as aforesaid, and that the only assets of said corporation known to your petitioner are the stock subscriptions hereinafter mentioned.

5. That the said The American Brick and Tile Company was organized and incorporated under the laws of the State of New Jersey on the thirteenth day of April, A. D. eighteen hundred and eighty-six, for the purpose of manufacturing bricks and tiles from raw materials and to sell the same. That your petitioner has obtained a certified copy of the said certificate of incorporation of the said The American Brick and Tile Company, and has set out the same herein in the following words:

This is to certify that we, Lenox Simpson, M. P. Canfield, Henry A. Potter, Henry Green, Edward M. Paxson and Elisha P. Wilbur do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An act concerning corporations," approved April 7th, 1875, and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do, by this our certificate, set forth:

First: That the name we have assumed to designate such company and to be used in its business and dealings is "THE AMERICAN BRICK AND TILE COMPANY."

Second: That the places in this State where the business of such company is to be conducted are the township of Lopatcong, near Phillipsburg, in the county of Warren; Jersey City and the city of Hoboken, in the county of Hudson, and the places out of this State where the same is to be conducted are the city of New York, in the State of New York, and the borough of Easton, in the county of Northampton and State of Pennsylvania. The principal part of the business of said company within this State is to be transacted at the place of manufacture, in the township of Lopatcong, near Phillipsburg, and that the objects for which the company is formed are to manufacture bricks and tiles from the raw material and to sell the same, and to buy lands and to erect thereon buildings and machinery for the purposes of such manufacture. The portion of the business of said company which is to be carried on at New York is the selling of the manufactured products of said company, and at Easton the maintenance of an office for the use of said company.

Third: That the total amount of the capital stock of said company is one million dollars; the number of shares into which the same is divided is ten thousand, and the par value of each share is one hundred dollars. The amount with which said company will commence business is twenty-five thousand dollars, which is divided into two hundred and fifty shares of a par value of one hundred dollars each.

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

Lenox Simpson, Pittsburg, Pennsylvania, three thousand shares;

Morris P. Canfield, Tyrone, Pennsylvania, one thousand shares;

Henry A. Potter, East Orange, New Jersey, one thousand shares;

Henry Green, Easton, Pennsylvania, three thousand shares;

Elisha P. Wilbur, of South Bethlehem, Pennsylvania, one thousand shares;

Edward M. Paxson, of Philadelphia, Pennsylvania, one thousand shares.

Fifth: The period at which said company shall commence is the fifth day of April, A. D. eighteen hundred and eighty-six, and the period at which it shall terminate is the fifth day of April, A. D. nineteen hundred and thirty-six.

In witness whereof, we have hereunto set our hands and seals the thirtieth day of March, A. D. eighteen hundred and eighty-six.

Lenox Simpson.	[L. S.]
Morris P. Canfield	[L. S.]
Henry A. Potter.	[L. S.]
Edward M. Paxson.	[L. S.]
Henry Green.	[L. S.]
E. P. Wilbur.	[L. S.]

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

Be it remembered, that on this thirtieth day of March, eighteen hundred and eighty-six, before me, Thomas H. Dudley, a Master of the Court of Chancery of the State of New Jersey, personally appeared Lenox Simpson, Morris P. Canfield, Henry Green and Henry A. Potter; and on the second day of April Elisha P. Wilbur and Edward M. Paxson, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and I, having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Thomas H. Dudley,
M. C. C.

Indorsed—"Rec'd in the Clerk's Office of the County of Warren, N. J., on the 6th day of April, 1886, and recorded in Book of Corporations No. 2, page 116, &c.
THEO. P. HOPLER, *Clerk.*"

That the same was organized as a corporation on the day aforesaid by the execution of the certificate of incorporation by Lenox Simpson, Morris P. Canfield, Henry A. Potter, Henry Green, Elisha P. Wilbur, Edward M. Paxson. That the capital stock of said corporation was one million dollars ($1,000,000.00) divided into ten thousand shares of the par value of one hundred dollars ($100.00) each, all of which was actually subscribed for at the incorporation of said company; that thereby Lenox Simpson subscribed for three thousand shares; that Henry Green subscribed for three thousand shares, and that Morris P. Canfield, Henry A. Potter, Elisha P. Wilbur and Edward M. Paxson each subscribed for one thousand shares.

6. That all the stock subscribed for was not, in fact, issued to the said subscribers in the amounts hereinbefore stated, but by mutual agreement, surrender and transfers only eight thousand two hundred and twenty-four shares were actually issued, and the balance, to wit, seventeen hundred and seventy-six shares was retained in the treasury. The stock actually issued and the holders thereof are in the proportions, numbers of shares and amounts as follows:

Certificate.	*Name.*	*Shares.*	*Date.*
1.	Edward M. Paxson,	1400	Sept. 27, '87.
2.	E. P. Wilbur,	1400	" " "
8.	H. A. Potter,	1500	Nov. 20, "
9.	R. P. Linderman,	500	" " "
10.	W .A. Wilbur	500	" " "
11.	C. A. Mayer,	100	Jan. 20, '88.
12.	P. W. Sheafer,	200	June 11, "
14.	Henry Green,	1750	July 11, "
15.	"	374	

Certificate.	*Name.*	*Shares.*	*Date.*
17.	Samuel Knight,	34	
18.	Wm. H. Knight,	100	
19.	Elizabeth Knight,	100	
20.	R. S. Knight,	33	
21.	F. H. Knight,	33	
351.	Edward M. Paxson,	100	Sept. 27, '87.
352.	E. P. Wilbur,	100	" " "
		8224 shares	

The above statement is made of list of stockholders, subject to correction by proof.

7. That there were paid by the several stockholders for and on account of said stock and their subscriptions therefor, various amounts aggregating forty thousand dollars, as follows:

1896.			
Apr. 6,	E. P. Wilbur,	$2,500	
June 2,	" "	2,500	
1897.			
Sept. 17,	" "	2,500	
Oct. 27,	" "	1,250	
Nov. 9,	" "	1,250	
			$10,000
1896.			
Apr. 6,	H. A. Potter,	$2,500	
June 4,	" "	2,500	
1888.			
Jan. 17,	" "	700	
Feb. 1,	" "	1,000	
Feb. 17,	" "	1,000	
Mch. 31,	" "	500	
Apr. 14,	" "	250	
Aug. 10,	" "	1,550	
			10,000

1886.				
May 12,	Edward M. Paxson,		$2,500	
June 25,	"	"	1,000	
July 3,	"	"	1,500	
1887.				
Oct. 1,	"	"	2,500	
Dec. 2,	"	"	2,500	
				10,000
Judge Henry Green, chargeable in his account with				10,000
Total,				$40,000

The above statement of payments is made by your petitioner, subject to correction by proof.

8. That afterwards, to wit, on the twenty-fifth day of April, A. D. eighteen hundred and ninety-one, at a meeting of the directors of said corporation regularly called and held, a resolution was passed calling an assessment of four dollars per share on the stock then issued and outstanding on account, of which said assessment there were paid various sums and at different times. A part of said assessment is still unpaid and no part of the balance due upon the several holdings and subscriptions of stock for which certificates are outstanding as aforesaid has ever been paid or called for. That the following is a list of the payments made on account of said assessment of four dollars, and by whom made:

1891.					
May 1.	E. M. Paxson,	1st	installment,	$1,500	
Aug. 4.	"	"	2d "	1,500	
1892.					
Jan. 20.	"	"	3d "	1,500	
				$4,500	
	Unpaid,				$1,500
1891.					
May	E. P. Wilbur,	1st	installment,	$1,500	
July 13.	"	"	2d "	1,500	
Nov. 3.	"	"	3d "	1,500	

1893.				
Oct. 28.	E. P. Wilbur, 3d installment,.....	$500		
Jan. 15, '94	" " 4th "	1,000		
			6,000	
	All paid.			
1891.				
Nov 25.	H. A. Potter on acct., ...	$1,000		
1896.				
Mar. 24.	" " "	500		
Apr. 27.	" " "	300		
			1,800	
	Unpaid, ...			4,200
1891.				
May 25.	H. Green, 1st installment,.....	$2,124		
July 27.	" " 2d "	2,124		
Dec. 24.	" " "	400		
Dec. 24.	" " 3d "	1,724		
			6,372	
	Chargeable to his account, ...			2,124
1891.				
May 4.	W. A. Wilbur, 1st installment,.....	$500		
Oct. 24.	" " 2d "	500		
1892.				
June 4.	" " 3d "	500		
1894.				
Feb. 26.	" " 4th "	500		
			2,000	
	All Paid:			
1891.				
May 5.	J. T. Knight, 1st installment, ...	$300		
1892.				
June 11.	" " 2d & 3d "	600		
			900	
	Unpaid, ...			300
1891.				
May 16.	R. P. Linderman, 1st installment,....	$500		
Sept. 26.	" " 2d "	500		
1892.				
Feb. 17.	" " 3d "	500		
1894.				
Feb. 15.	" " 4th "	500		
			2,000	
	All paid.			
1891.	Estate of			
June 2.	P. W. Sheafer, 1st installment, ...	$200		
1893.				
Feb 1.	P. W. Sheafer, 2d & 3d installments,..	400		
			600	
	Unpaid, ...			200

1891.					
July 8.	C. A. Mayer, 1st installment, ...		$100	100	
	Unpaid, ...				300
				$24,272	$8,624

Cash assessments paid,	$24,272	Total, ...	$8,624
Charged Judge Green, .	2,124	Less charge H. Green, .	2,124
Unpaid, ...	6,500		
		Total unpaid, ...	$6,500
Total assessments, .	$32,896		

This statement is made subject to correction by proof hereafter.

9. That by force of the statute the persons who hold stock by assignment and sale are liable, as well as the persons who originally subscribed for the stock of such corporation.

10. Your petitioner further shows that the Board of Directors of said corporation have never since its incorporation made any calls upon said incorporators or upon the stockholders of the said company requiring them to pay into the treasury of said company any sums of money on account of their subscriptions, except as above stated, and that the said eight thousand two hundred and twenty-four shares which are issued as hereinabove stated are claimed by the holders thereof to have been issued for property purchased, but in some way unknown to your petitioner.

11. That after the organization of said company and the issuing of the stock hereinabove mentioned Henry Green departed this life, leaving a last will and testament, by which he appointed Frederick Green, his son, his executor, and that he has taken upon himself the burden of said estate. That the said Frederick Green, as such executor, is a shareholder of said corporation and is liable for the subscription of stock made by the said Henry Green, deceased. Your petitioner shows that he is informed that the estate of Henry Green is largely insolvent, and that no part of any assessment which may be levied ever can be collected.

The said Robert P. Linderman is dead and Ruth May Linderman is the executrix of his estate. Peter Sheafer is dead and the executors of his estate are Arthur W. Sheafer, William L. Sheafer and Henry Sheafer. Fletcher H. Knight is dead and the Easton Trust Company and Mary B. Knight are the executors of his estate. That each and every one of said executors are shareholders of said corporation and each and all liable for the subscription of stock made by the said several deceased.

11½. That Henry A. Potter is a resident of the State of New Jersey, and that each one of the other stockholders are not residents of this State, but live in the State of Pennsylvania and elsewhere.

12. That in addition to the claims hereinbefore mentioned your petitioner, as receiver of said corporation, has become bound for the costs and expenses of the administration of the affairs of said insolvent corporation, including the costs of suit, counsel fees and costs in the various proceedings instituted by your petitioner for recovering the assets of said corporation, amounting to the aggregate, as nearly as your petitioner can estimate, to upwards of ten thousand dollars.

Wherefore, your petitioner prays that he may have the direction of the court in the premises, and that the said Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter, Ruth May Linderman, executrix of the estate of Robert P. Linderman, deceased, Warren A. Wilbur, Charles A. Mayer, Arthur W. Sheafer, William L. Sheafer and Henry Sheafer, executors of Peter W. Sheafer, deceased; Frederick Green, executor of Henry Green; Samuel Knight, William H. Knight, Elizabeth Knight, Robert S. Knight, the Easton Trust Company and Mary B. Knight, executors of Fletcher H. Knight, deceased, may answer this petition, but without oath. That this Court will either levy an assessment upon said stockholders of the said corporation, or direct your petitioner to do so, requiring them severally to pay to

your petitioner such amount of their several and respective unpaid subscriptions to the capital stock of the said company as may be necessary to pay the debts of the said corporation, with interest, and the expenses to the winding up of said corporation's affairs by your petitioner as its receiver, together with the costs of this petition and orders made thereon, and that your petitioner have leave to take proceedings in this court, or in the courts of the United States, to procure said assessment, and that your petitioner have leave, when such assessment has been made or directed, to bring actions at common law or in equity, as your petitioner is advised is necessary, to recover the money so assessed against the stockholders, and that your petitioner be permitted to take such proceedings in this court, or to procure said assessment to be made, to the end that the same may be applied under the direction of the Court to the payment of the debts of the said corporation, with interest and the said expenses, and that your petitioner have such other relief as the nature of the case requires and as may be agreeable to equity.

GEORGE M. SHIPMAN,
Solicitor for and of Counsel with Petitioner.

WARREN COUNTY: *ss.*

William M. Davis, being duly sworn, on his oath says that the matters set out in the foregoing petition are true, to the best of his knowledge, information and belief.

WM. M. DAVIS.

Sworn and subscribed before me this 5th day of July, 1904.

O. D. MCCONNEL,
Master in Chancery of N. J.

In Chancery of New Jersey.

Between
The Easton National Bank,
Complainant,
and
The American Brick and Tile Company et al.,
Defendants.

PETITION AS AMENDED.

(*Filed March 14, 1904.*)

To the Honorable William J. Magie, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor your orator, William M. Davis, receiver of The American Brick and Tile Company, defendants named in the above-entitled cause:

1. That he has accepted the appointment as receiver heretofore made of The American Brick and Tile Company, and has qualified therefor by giving bond and taking the oath of office prescribed by the order of his appointment and by the statute, and that he had taken upon himself the burden of the trusts committed to him.

2. That after his appointment and on the tenth day of February, in the year nineteen hundred and four, an order was made in this cause that the creditors of The American Brick and Tile Company should present their respective claims to your orator and make proof of the same, under oath or affirmation, to the satisfaction of your orator within three months from the date of the said order, or that in default thereof they be barred and excluded from the benefit of such dividend, as may be declared by the Court upon the proceeds of the effects of said corporation, and from participating in the distribution of the assets of said corporation, and provid-

ing for the publication of notice of said orator, and your orator shows that notice of the said order was published, as in said order required, and that on the thirty-first day of May, nineteen hundred and four, by another order made in this cause, it was recited that notice of the order to limit creditors had been published as was in said order directed, and it was thereupon ordered that all creditors and any of the creditors of the said The American Brick and Tile Company, who had not filed and proved their respective claims against said company within the said three months, being the time limited by said order, should be barred from making proof thereof, and such creditors should be barred from sharing in or receiving any of the assets of said corporation, or any of the proceeds thereof which might come to the hands of the said receiver, or be divided under the order of the Court. Your orator begs leave to refer to said decree or orders and to all the files and records in this cause in this court when it shall be necessary so to do.

3. That the following claims have been presented to him against the said company:

The Easton National Bank, claiming eighteen thousand one hundred and eighty-five dollars and seventy-five cents, besides interest to be computed from the date of certain notes.

Henry Short, claiming the sum of two thousand dollars, together with interest from the thirteenth day of February, nineteen hundred.

Frederick Green, executor of the estate of Henry Green, deceased, claiming twenty-two thousand nine hundred and forty-seven dollars and eighty-eight cents. And another claim filed by Frederick Green, executor of the estate of Henry Green, deceased, for thirty thousand one hundred dollars.

Frederick Green, claiming six thousand six hundred and fifty-five dollars.

That orator prays leave to refer to said claims whenever it shall be necessary so to do. That your orator

has accepted the said claims and placed them on file and that he has admitted them as claims against the corporation.

4. That your orator has received into his possession the books of said corporation, including

Day book,
Cash book,
Record,
Ledger,
Stock book,

Besides a number of papers, consisting of receipts, checks, memoranda and so forth.

That your orator has received no property of any kind or description of said corporation, except the books as aforesaid, and that the only assets of said corporation known to your orator are the stock subscriptions hereinafter mentioned.

5. That the said The American Brick and Tile Company was organized and incorporated under the laws of the State of New Jersey on the thirteenth day of April, A. D. eighteen hundred and eighty-six, for the purpose of manufacturing bricks and tiles from the raw materials and to sell the same. That your orator has obtained a certified copy of the said certificate of incorporation of the said The American Brick and Tile Company, and has set out the same herein in the following words:

This is to certify that we, Lenox Simpson, M. P. Canfield, Henry A. Potter, Henry Green, Edward M. Paxson and Elisha P. Wilbur do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An act concerning corporations," approved April 7, 1875, and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do, by this our certificate, set forth:

First: That the name we have assumed to designate

such company and to be used in its business and dealings is "THE AMERICAN BRICK AND TILE COMPANY."

Second. That the places in this State where the business of such company is to be conducted are the township of Lopatcong, near Phillipsburg, in the county of Warren; Jersey City and the city of Hoboken, in the county of Hudson, and the places out of this State where the same is to be conducted are the city of New York, in the State of New York, and the borough of Easton, in the county of Northampton and State of Pennsylvania. The principal part of the business of said company within this State is to be transacted at the place of manufacture, in the township of Lopatcong, near Phillipsburg. And that the objects for which the company is formed are to manufacture bricks and tiles from the raw material and to sell the same, and to buy lands and to erect thereon buildings and machinery for the purposes of such manufacture. The portion of the business of said company which is to be carried on at New York is the selling of the manufactured products of said company, and at Easton the maintenance of an office for the use of said company.

Third: That the total amount of the capital stock of said company is one million dollars; the number of shares into which the same is divided is ten thousand, and the par value of each share is one hundred dollars. The amount with which the said company will commence business is twenty-five thousand dollars, which is divided into two hundred and fifty shares of a par value of one hundred dollars each.

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

Lenox Simpson, Pittsburg, Pennsylvania, three thousand shares;

Morris P. Canfield, Tyrone, Pennsylvania, one thousand shares;

Henry A. Potter, East Orange, New Jersey, one thousand shares;

Henry Green, Easton, Pennsylvania, three thousand shares;

Elisha P. Wilbur, of South Bethlehem, Pennsylvania, one thousand shares;

Edward M. Paxson, of Philadelphia, Pennsylvania, one thousand shares.

Fifth: The period at which said company shall commence is the fifth day of April, A. D. eighteen hundred and eighty-six, and the period at which it shall terminate is the fifth day of April, A. D. nineteen hundred and thirty-six.

In witness whereof, we have hereunto set our hands and seals the thirtieth day of March, A. D. eighteen hundred and eighty-six.

LENOX SIMPSON,	[L. S.]
MORRIS P. CANFIELD,	[L. S.]
HENRY A. POTTER,	[L. S.]
EDWARD M. PAXSON,	[L. S.]
HENRY GREEN,	[L. S.]
E. P. WILBUR.	[L. S.]

STATE OF NEW JERSEY, *Camden County.* } *ss.*

Be it remembered that on this thirtieth day of March, eighteen hundred and eighty-six, before me, Thomas H. Dudley, a Master of the Court of Chancery of the State of New Jersey, personally appeared Lenox Simpson, Morris P. Canfield, Henry Green and Henry A. Potter, and on the second day of April, Elisha P. Wilbur and Edward M. Paxson, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

THOMAS H. DUDLEY,
M. C. C.

Indorsed—"Rec'd in the Clerk's office of the County of Warren, N. J., on the 6th day of April, 1886, and recorded in Book of Corporations No. 2, page 116, &c.
THEO. P. HOPLER, *Clerk.*"

That the same was organized as a corporation on the day aforesaid by the execution of the certificate of incorporation by Lenox Simpson, Morris P. Canfield, Henry A. Potter, Henry Green, Elisha P. Wilbur, Edward M. Paxson. That the capital stock of said corporation was one million dollars ($1,000,000.00) divided into ten thousand shares of the par value of one hundred dollars ($100.00) each, all of which was actually subscribed for the incorporation of said company; that thereby Lenox Simpson subscribed for three thousand shares; that Henry Green subscribed for three thousand shares, and that Morris P. Canfield, Henry A. Potter, Elisha P. Wilbur and Edward M. Paxson each subscribed for one thousand shares.

6. That all the stock subscribed for was not, in fact, issued to the said subscribers in the amounts hereinbefore stated, but by mutual agreement, surrender and transfers only eight thousand two hundred and twenty-four shares were actually issued, and the balance, to wit, seventeen hundred and seventy-six shares, was retained in the treasury. The stock actually issued and the holders thereof are in the proportion, numbers of shares and amounts as follows:

Certificate.	*Name.*	*Shares.*	*Date.*
1.	Edward M. Paxson,	1400	Sept. 27, '87.
2.	E. P. Wilbur,	1400	" " "
8.	H. A. Potter,	1500	Nov. 20, '87.
9.	R. P. Linderman,	500	" " "
10.	W. A. Wilbur,	500	" " "
11.	C. A. Mayer,	100	Jan. 20, '88.
12.	P. W. Sheafer,	200	June 11, '88.
14.	Henry Green,	1750	July 11, '88.

Certificate.	*Name.*	*Shares.*	*Date.*
15.	Henry Green,	374	
17.	Samuel Knight,	34	
18.	Wm. H. Knight,	100	
19.	Elizabeth Knight,	100	
20.	R. S. Knight,	33	
21.	F. H. Knight,	33	
351.	Edward M. Paxson,	100	Sept. 27, '87.
352.	E. P. Wilbur,	100	" " "
		8224	shares.

The above statement is made of list of stockholders subject to correction by proof.

7. That there were paid by the several stockholders for and on account of said stock and their subscriptions therefor, various amounts aggregating forty thousand dollars, as follows:

1896.			
Apr. 6, E. P. Wilbur,	.....	$2,500	
June 2, " "	.....	2,500	
1897.			
Sept. 17, " "	.....	2,500	
Oct. 27, " "	.....	1,250	
Nov. 9, " "	.....	1,250	
			10,000
1896.			
Apr. 6, H. A. Potter,	.....	$2,500	
June 4, " "	.....	2,500	
1888.			
Jan. 17, " "	.....	700	
Feb. 1, " "	.....	1,000	
Feb. 17, " "	.....	1,000	
Mar. 31, " "	.....	500	
Apr. 14, " "	.....	250	
Aug. 10, " "	.....	1,550	
			10,000

1886.				
May, 12,	Edward M. Paxson,	.....	$2,500	
June 25,	"	"	 1,000	
July 3,	"	"	 1,500	
1887.				
Oct. 1,	"	"	 2,500	
Dec. 2,	"	"	 2,500	
				10,000
Judge Henry Green, chargeable in his account with, ...				10,000
Total, ...				$40,000

The above statement of payment is made by your orator, subject to correction by proof.

8. That afterwards, to wit, on the twenty-fifth day of April, A. D. eighteen hundred and ninety-one, at a meeting of the directors of said corporation, regularly called and held, a resolution was passed calling for an assessment of four dollars per share on the stock then issued and outstanding, on account of which said assessment there were paid various sums and at different times. A part of said assessment is still unpaid, and no part of the balance due upon the several holdings and subscriptions of stock, for which certificates are outstanding as aforesaid, has ever been paid or called for. That the following is a list of the payments made on account of said assessment of four dollars and by whom made:

1891.				
May 1,	E. M. Paxson,	1st installment,	$1,500	
Aug. 4,	"	2d installment,	1,500	
1892.				
Jan. 20,	"	3d installment,	1,500	
				$4,500

Unpaid, $1,500.

1891.
May, E. P. Wilbur, 1st installment, $1,500
July 13, " 2d installment, 1,500
Nov. 3, " 3d installment, 1,500
1893.
Oct. 28, " " 500
Jan. 15, 1894, " 4th installment, 1,000
——— $6,000

All paid.

1891.
Nov. 25, H. A. Potter, in account, ... $1,000
1896.
Mch., " " 500
Apr. 27, " " 300
——— $1,800

Unpaid, $4,200.

1891.
May 1. E. M. Paxson, 1st installment,..... $1,500
Aug. 4. " " 2d " 1,500
1892.
Jan. 20. " " 3d " 1,500
——— $4,500
Unpaid, ... $1,500

1891.
May E. P. Wilbur, 1st installment,..... $1,500
July 13. " " 2d " 1,500
Nov. 3. " " 3d " 1,500
1893.
Oct. 28. " " " 500
Jan 15, '94 " " 4th " 1,000
——— 6,000

All paid.

1891.
Nov. 25. H. A. Potter on acct., ... $1,000
1896.
Mar " " " 500
Apr. 27. " " " 300
——— 1,800
Unpaid, ... 4,200

1891.
May 25. H. Green, 1st installment,..... $2,124
July 27. " " 2d " 2,124
Dec. 21. " " " 400
Dec. 24. " " 3d " 1,724
——— 6,372
Chargeable to his account, ... 2,124

1891.					
May 4.	W. A. Wilbur, 1st installment,.....	$500			
Oct. 24.	" " 2d "	500			
1892.					
June 4.	" " 3d "	500			
1894.					
Feb. 26.	" " 4th "	500			
			2,000		
1891.					
	All paid.				
May 5.	J. T. Knight, 1st installment, ...	$300			
1892.					
June 11.	" " 2d & 3d "	600			
			900		
	Unpaid, ...			300	
1891.					
May 16.	R. P. Linderman, 1st installment,....	$500			
Sept. 26.	" " 2d "	500			
1892.					
Feb. 17.	" " 3d "	500			
1894.					
Feb. 15.	" " 4th "	500			
			2,000		
1891.	Estate of				
June 2.	P. W. Sheafer, 1st installment, ...	$200			
1893.					
Feb. 1.	P. W. Sheafer, 2d & 3d installments,..	400			
			600		
	Unpaid, ...			200	
1891.					
July 8.	C. A. Mayer, 1st installment, ...	$100	100		
	Unpaid, ...			300	
			$24,272	$8,624	

Cash assessments paid,	$24,272	Total, ...	$8,624
Charged Judge Green,	2,124	Less charge H. Green,	2,124
Unpaid, ...	6,500		
		Total unpaid, ...	$6,500
Total assessments,	$32,896		

This statement is made subject to correction by proof hereafter.

9. That by force of the statute the persons who held stock by assignment and sale are liable, as well as the persons who originally subscribed for the stock of such corporation.

10. Your orator further shows that the Board of Directors of said corporation have never, since its in-

corporation, made any calls upon said incorporators, or upon the stockholders of the said company, requiring them to pay into the treasury of said company any sums of money on account of their subscriptions, except as above stated, and that the said eight thousand two hundred and twenty-four shares which were issued as hereinabove stated are claimed by the holders thereof to have been issued for property purchased, but in some way unknown to your orator.

11. That after the organization of said company and the issuing of the stock hereinabove mentioned Henry Green departed this life, leaving a last will and testament, by which he appointed Frederick Green, his son, his executor, and that he has taken unto himself the burden of said estate. That the said Frederick Green, as such executor, is a shareholder of said corporation and is liable for the subscription of stock made by the said Henry Green, deceased. Your orator shows that he is informed that the estate of Henry Green is largely insolvent and that no part of any assessment which may be levied ever can be collected.

The said Robert P. Linderman is dead and Ruth May Linderman is the executrix of his estate. Peter Sheafer is dead and the executors of his estate are Arthur W. Sheafer, William L. Sheafer and Henry Sheafer. Fletcher H. Knight is dead and the Easton Trust Company and Mary B. Knight are the executors of his estate. That each and every one of said executors are shareholders of said corporation and each and all liable for the subscription of stock made by the said several deceased.

11½. That Henry A. Potter is a resident of the State of New Jersey, and that each one of the other stockholders are not residents of this State, but live in the State of Pennsylvania and elsewhere.

12. That in addition to the claims hereinbefore mentioned your orator as receiver of said corporation has become bound for the costs and expenses of the administration of the affairs of said insolvent corporation,

including the costs of suit, counsel fees and costs in the various proceedings instituted by your orator for recovering the assets of said corporation amounting to the aggregate, as nearly as your orator can estimate, to upwards of ten thousand dollars.

13. Your orator further shows that after the certificates of incorporation of said company had been filed the said stock was apportioned to the stockholders in accordance with a scheme arranged by Henry Green, and that fifteen hundred shares of the stock of said company were issued to Elisha P. Wilbur, Edward M. Paxson and Henry A. Potter and twenty-one hundred and twenty-four shares to Henry Green, and that certificates of stock were issued to each one of said defendants for the said stock, and that the said certificates of stock were stamped "issued for property purchased" except two certificates each for one hundred shares which were issued, one certificate to Edward M. Paxson and one certificate to Elisha P. Wilbur, and that the said certificates of stock were issued in this way as for property purchased without any consideration, and for the purpose of creating a contract between the company and the said stockholders that they might escape any assessment which might be made against them on account of their subscriptions for the capital stock of said corporation by the creditors of said corporation, but that there was no consideration for the said contract, and that the stock was not issued for the purchase of property to the amount and value thereof, but that said stock was issued for the purpose of carrying out an arrangement made by Henry Green by which four thousand two hundred shares of the capital stock of said corporation should be issued for certain patents for making brick, tile and other fabrics from slate, and for improvements in brick kilns which said patents were afterwards assigned to the said company in fulfillment of the said arrangement and that certificates were issued for the whole of the said capital stock as full paid stock and (excepting the said two certificates for one hundred

shares each), stamped "issued for property purchased," that there was no property for which said stock was issued except said patents, that the said patents were of no value whatever, and the said defendants knew it, and that their conduct in having said patents transferred to the company was fraudulent and as part of a device to issue to said defendants said stock for which they had not or did not expect to pay in money or money's worth. That no action of the Board of Directors of said corporation was ever taken for the purchase of the said patents or property of any kind, but that by a private arrangement and agreement between the said defendants aforesaid the whole amount of the capital stock of said corporation was issued as for property purchased and so stamped, and that the said contract attempted to be made by the said company with its stockholders was without any consideration and was fraudulent and void as against the rights and claims of creditors of said company.

In consideration whereof and for as much as your orator is without remedy except in this court where matters of this sort are cognizable.

To the end therefore that the said Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter, Warren A. Wilbur, Charles A. Mayer, Frederick Green, executor of Henry Green, deceased; Samuel Knight, William H. Knight, Elizabeth Knight and Robert S. Knight, and The Easton Trust Company and Mary B. Knight, executors of Fletcher H. Knight, deceased; Ruth M. Linderman, executrix of Robert P. Linderman, deceased; Arthur Shaefer, William Leslie Shaefer and Henry Shaefer, executors of Peter W. Shaefer, deceased, may true and perfect answers make, to all the above bill of complaint and that without oath, and that the contract between the company and its stockholders by which the stock was issued for property purchased may be decreed to be fraudulent and void as to the creditors of said company and in derogation of their rights, and that the said defendants the holders of the said stock may be decreed

to pay on account of their holdings in addition to what they have paid in cash to your orator as receiver a sum sufficient to pay off the debts of the said company together with the costs and expenses of the receivership, and that this court will either levy an assessment upon said stockholders or by decree compel them severally to pay to your orator as receiver such amount as will be sufficient to pay the debts of the said corporation with interest and the expenses necessary to wind up the affairs of said corporation by your orator with the costs of this suit, and that your orator be directed to take proceedings in the courts of the United States to collect said moneys and that your orator have leave to take such means as shall be necessary for the collection of said money, and that if necessary your orator be directed to bring his action in the courts of the United States, if jurisdiction be not obtained in this court to procure the payment of the said money to the end that the same may be applied under directions of this court to the payment of the debts of said corporation with interest and expenses, and that your orator may have such other and further relief in the premises as to your Honor shall seem meet and as shall be in accordance with equity and good conscience.

May it please your Honor the premises considered to grant unto your orator the State's writ of subpœna issuing out of and under the seal of this honorable court to be directed to the said Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter, Warren A. Wilbur, Charles A. Mayer, Frederick Green, executor of Henry Green, deceased; Samuel Knight, William H. Knight, Elizabeth Knight and Robert S. Knight, and The Easton Trust Company and Mary B. Knight, executors of Fletcher H. Knight, deceased; Ruth M. Linderman, executrix of Robert P. Linderman, deceased; Arthur Shaefer, William Leslie Shaefer and Henry Shaefer, executors of Peter W. Shaefer, deceased, commanding them by a certain day and under a certain penalty therein to be expressed to be and appear before your

Honor in this honorable court then and there to answer all and singular the said premises and to stand to and abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator will ever pray, etc.

GEO. M. SHIPMAN,
Solicitor for and of Counsel with the Complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendants.

ANSWER OF ELISHA P. WILBUR.

(Filed December 6th, 1904.)

The answer of Elisha P. Wilbur to the petition of William M. Davis, Receiver:

1. This respondent has no knowledge of the matters alleged in paragraphs 1, 2, 3, 4 and 12 of said petition, except as he is informed thereof by said petition, and he therefore neither admits nor denies the same, but leaves the petitioner to make such proof thereof as he may be able and be advised.

2. This respondent admits that said corporation was organized and incorporated as alleged in paragraph 5 of said petition, but he has no knowledge of the matters alleged in paragraph 6 except as hereinafter set forth.

3. This respondent admits that he has paid to said corporation the sums mentioned in paragraph 7 of said petition, but he alleges that such payments were made under the circumstances and for the purposes herein-

after set forth. This respondent has no knowledge as to what payments, if any, have been made by the other persons mentioned in said paragraph, or for what purpose, except as hereinafter set forth, such payments were made, and as to such payments this respondent leaves said petitioner to make such proof thereof as he may be able and be advised.

4. This respondent admits that a resolution was adopted at a meeting of the directors of said corporation, held at the time stated in said petition, calling for an assessment upon the stock then outstanding, and that payments were made thereon by this respondent as mentioned in paragraph 8 of said petition, but this respondent alleges that said resolution was in the following words: "*Resolved,* That an assessment of four dollars ($4.00) per share upon the outstanding stock of the company be called, payable ($1.00) one dollar per share, May 1st, and the balance as directed by the executive committee, and if any shareholders fail to respond to the call, the stock in treasury be pledged as collateral for any sums advanced under the said call." Respondent says that said assessment was entirely voluntary, and was so understood by all the directors and stockholders, and was made in the hope of putting said corporation upon a sound basis, and was not called because of any supposed liability of said stockholders to pay the same. This respondent has no information as to what payments were made thereon by the other persons mentioned in said paragraph, and he leaves the petitioner to make such proof thereof as he may be able and be advised.

5. This respondent denies that he is liable, by force of the statute, or otherwise, to an assessment upon the stock held by him, as alleged in paragraph 9 of the petition.

6. This respondent admits the matters alleged in paragraph 10 of said petition, save that respondent claims that only 8,024 shares of the stock of said corporation were issued for property purchased, and that the remaining 200 shares were issued for cash, as hereinafter stated.

7. This respondent admits that Henry Green departed this life after the organization of said corporation and the issue of stock therein, and that Frederick Green is his executor. He also admits that Robert P. Linderman, Fletcher H. Knight and Peter W. Sheafer are dead, but he has no information as to who are their executor, and denies that they, or any of the persons mentioned in paragraph 11 of said petition are liable for subscriptions of stock in said corporation as therein alleged, or otherwise.

8. This respondent says, that before the incorporation of said company Lenox Simpson and Morris P. Canfield, of Pittsburg, Pennsylvania, were the owners of certain patents for making brick, tile and other fabrics, and for certain processes employed therein, and had applied for other patents for improvements in brick kilns, which patents and processes were considered to be, and were, in fact, of great value, and were believed to be worth, and were, in fact, worth upwards of $1,000,000; that said Henry Green had agreed with said Simpson and Canfield to establish a plant for the purpose of putting said processes into practical use and for the manufacture of brick and tile thereunder, and had agreed to introduce the products of said plant to the public, in consideration for which the said Simpson and Canfield had agreed to transfer to said Green a controlling right in said patents and processes; that on or about the twelfth day of March, 1886, an agreement in writing was entered into between Simpson and Canfield, of the first part, and said Green, of the second part, in which agreement it was provided that a corporation should be formed upon the basis of said patents and to carry the same into practical effect; that said corporation should have a capital stock of $1,000,000, and that said patents should be transferred to said corporation in exchange for said capital stock, of which $600,000 was to be issued to said Henry Green and $400,000 to said Simpson and Canfield. It was further provided

in said agreement that said Henry Green should pay to said Simpson and Canfield the sum of $5,000 in cash, together with certain stock of said corporation, and should pay to said corporation or expend in building and equipping a plant for said corporation the sum of $20,000. It was further provided in said agreement that said Henry Green and said Simpson and Canfield should return to the treasury of said corporation 800 shares of said capital stock, to be used and sold from time to time, for the purpose of raising working capital for said corporation.

9. This respondent further says, that in carrying out said agreement said Henry Green interested Edward M. Paxson, Henry A. Potter and this respondent in said processes, and proposed to them to join with him in putting the same to practical use; that said Henry Green was not in active business life, and said Edward M. Paxson, Henry A. Potter and this respondent were men of extensive business interests and connections, and said Henry Green agreed that if said Paxson, Potter and this respondent would join with him in organizing said corporation and assist in the introduction of the products to be obtained from the employment of said patented processes, he would admit them upon substantially the same basis as himself, and would pay for their subscriptions out of his interest in said patents and processes, provided said Paxson and this respondent would take and pay for 100 shares each of treasury stock, and said Potter would share with said Henry Green in the cash payment to be made to said company, and that said Paxson, Potter and this respondent, believing that said patents and processes were of great value, accepted said proposition.

10. This respondent says that the said American Brick and Tile Company was thereupon incorporated and organized in accordance with said agreement, and that said Henry Green, Morris P. Canfield, Edward M. Paxson, Henry A. Potter and this respondent were elected directors of said corporation; that thereafter said

directors, after a careful examination of said patents and processes and careful consideration of the value thereof, determined and concluded that they were worth the sum of, at least, $802,400, and authorized the issue of 8,024 shares of the stock of said corporation of the par value of $802,400, to the said Lenox Simpson and Morris P. Canfield, or their nominees, in exchange for said patents, patent rights and processes and applications therefor, and payment to said corporation by said Green, on behalf of said Simpson and Canfield, of the sum of $20,000 in cash. This respondent says that thereupon and contemporaneously with the issue of said stock, said patents, patent rights and processes and applications were duly assigned to said corporation and said sum of $20,000 paid thereto in cash, and the certificates of all of said shares of stock were marked "issued for property purchased"; that thereafter the said Henry Green purchased from said Lenox Simpson, 1,669 shares of stock in said corporation held by the latter, and from Morris P. Canfield, 557 shares held by him, and the said Edward M. Paxson, Henry A. Potter and this respondent each purchased from the said Henry Green 500 of said shares, and thereafter certificates of stock in said corporation, representing the final issue of the shares thereof, so issued in exchange for said patents, patent rights and processes, were executed by Henry Green, President, and Frederick Green, Secretary, of said corporation, as follows:

No. 1. 1,400 shares, dated September 27, 1887, to Edward M. Paxson.

No. 2. 1,400 shares, dated September 27, 1887, to E. P. Wilbur.

No. 3. 1,481 shares, dated September 27, 1887, to Lenox Simpson.

No. 6. 493 shares, dated September 27, 1887, to M. P. Canfield.

No. 8. 1,500 shares, dated November 28, 1887, to H. A. Potter.

No. 14. 1,750 shares, dated July 11, 1888, to Henry Green.

That at or about the same time, and in addition thereto, said Paxson and this respondent each took and received 100 shares of treasury stock from said corporation, and each paid therefor to said corporation the sum of $10,000 in cash, being the par value thereof, for which certificates, not marked "issued for property purchased," were issued as follows:

No. 351. 100 shares, dated September 27, 1887, to Edward M. Paxson.

No. 352. 100 shares, dated September 27, 1887, to E. P. Wilbur.

11. This respondent further says, that in purchasing said patents and patented processes and issuing stock therefor, said directors acted in good faith, fully believing said property to be worth more than the value of the stock issued therefor, and having good grounds for said belief; that said processes were in fact very valuable, and said corporation thereafter engaged in manufacturing tile and brick of a high quality under said patents and sold said bricks at a very high profit, and was conducting its business successfully until its plant was destroyed by fire, and there being no insurance upon the plant the corporation was unable to rebuild and to continue business.

12. This respondent is informed and believes, that after the incorporation of the said company and the issue of said certificates, said Henry Green purchased the remaining shares of stock originally issued to Simpson and Canfield, and that the same, or some of them, were subsequently transferred to various persons to whom certificates numbered 9, 10, 11, 12 and 13 were finally issued, certificate number 15 being issued to said Green for the balance of said stock retained by him.

13. As to the claims presented by Frederick Green, as executor of the estate of Henry Green, deceased, one for $22,947.88, and another for $30,000, this respondent submits that inasmuch as the said Henry Green

procured the said corporation to be organized and as a member of the board of directors and president of said company took part in the purchase of the said patents and patent rights and in the issue therefor and in consideration thereof of the issued capital stock of said company other than the part thereof issued for cash as aforesaid, and himself caused the said certificates of stock to be issued as for property purchased, he was thereafter in his lifetime estopped, and his estate since his decease has been and is now estopped from questioning the *bona fides* of the said transaction, or alleging that the said stock was not fully paid and non-assessable. As to the claim of the said Frederick Green, on his own behalf, amounting to $6,655, respondent says that the said claim was contracted by the said Frederick Green with the full knowledge that all the issued capital stock of said company had been issued either for cash or property at par, not only, but that the said Frederick Green was both secretary and treasurer of the said corporation at the time the said stock was issued, and signed the certificates therefor, and that he cannot now be heard to allege anything to the contrary of the statements contained on the face of said certificates, or to impeach the *bona fides* of the transaction, with the full knowledge of which he contracted the obligation which he now seeks to have satisfied by an assessment upon the said stock.

14. This respondent further answering says, that he is advised, and therefore avers, that any liability that may be asserted against him as the holder of 1,400 shares of the stock of said corporation, cannot be based upon any contractual obligation upon his part, but only a statutory liability in favor of creditors, and that the claimants are now precluded by their laches and by the statute of limitations from asserting or enforcing the same.

And this respondent prays to be hence dismissed, with his proper costs.

E. P. WILBUR.

STATE OF PENNSYLVANIA,
County of Northampton, } *ss.*

ELISHA P. WILBUR, of full age, being duly sworn on his oath says, that the matters and things in the foregoing answer set forth, so far as they relate to his own acts are true, and so far as they relate to the acts of others, he believes them to be true.

E. P. WILBUR.

Sworn and subscribed before me, this 25th day of October, A. D. 1904.

HARVEY M. UEBERROTH,
[L. S.] *Notary Public.*
My Commission Expires Jan. 19, 1907.

IN CHANCERY OF NEW JERSEY.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendants.

ANSWER OF EDWARD M. PAXSON.

(*Filed October 13, 1904.*)

The answer of Edward M. Paxson to the petition of William M. Davis, Receiver:

1. This respondent has no knowledge of the matters alleged in paragraphs 1, 2, 3, 4 and 12 of said petition, except as he is informed thereof by said petition, and he therefore neither admits nor denies the same, but leaves the petitioner to make such proof thereof as he may be able and be advised.

2. This respondent admits that said corporation was organized and incorporated as alleged in paragraph 5 of said petition, but he has no knowledge of the matters alleged in paragraph 6, except as hereinafter set forth.

3. This respondent admits that he has paid to said corporation the sums mentioned in paragraph 7 of said petition, but he alleges that such payments were made under the circumstances and for the purposes hereinafter set forth. This respondent has no knowledge as to what payments, if any, have been made by the other persons mentioned in said paragraph, or for what purpose, except as hereinafter set forth, such payments were made, and as to such payments this respondent leaves said petitioner to make such proof thereof as he may be able and be advised.

4. This respondent admits that a resolution was adopted at a meeting of the directors of said corporation held at the time stated in said petition, calling for an assessment upon the stock then outstanding, and that payments were made thereon by this respondent as mentioned in paragraph 8 of said petition, but this respondent alleges that said resolution was in the following words: "Resolved that an assessment of four dollars ($4.00) per share upon the outstanding stock of the company be called, payable ($1.00) one dollar per share May 1st, and the balance as directed by the executive committee, and if any shareholders fail to respond to the call the stock in treasury be pledged as collateral for any sums advanced under the said call." Respondent says that said assessment was entirely voluntary and was so understood by all the directors and stockholders, and was made in the hope of putting said corporation upon a sound basis, and was not called because of any supposed liability of said stockholders to pay the same. This respondent has no information as to what payments were made thereon by the other persons mentioned in said paragraph, and he leaves the petitioner to make such proof thereof as he may be able and be advised.

5. This respondent denies that he is liable by force of the statute, or otherwise, to an assessment upon the stock held by him, as alleged in paragraph 9 of the petition.

6. This respondent admits the matters alleged in paragraph 10 of said petition, save that respondent claims that only 8,024 shares of the stock of said corporation were issued for property purchased, and that the remaining 200 shares were issued for cash, as hereinafter stated.

7. This respondent admits that Henry Green departed this life after the organization of said corporation and the issue of stock therein, and that Frederick Green is his executor. He also admits that Robert P. Linderman, Fletcher H. Knight and Peter W. Sheafer are dead, but he has no information as to who are their executors and denies that they, or any of the persons mentioned in paragraph 11 of said petition, are liable for subscriptions of stock in said corporation as therein alleged or otherwise.

8. This respondent says that before the incorporation of said company Lenox Simpson and Morris P. Canfield, of Pittsburg, Pa., were the owners of certain patents for making brick, tile and other fabrics, and for certain processes employed therein, and had applied for other patents for improvements in brick kilns, which patents and processes were considered to be, and were in fact of great value, and were believed to be worth, and were, in fact, worth upwards of $1,000,000; that said Henry Green had agreed with said Simpson and Canfield to establish a plant for the purpose of putting said processes into practical use and for the manufacture of brick and tile thereunder, and had agreed to introduce the products of said plant to the public, in consideration for which the said Simpson and Canfield had agreed to transfer to said Green a controlling right in said patents and processes; that on or about the 12th day of March, 1886, an agreement in writing was

entered into between said Simpson and Canfield, of the first part, and said Green, of the second part, a copy whereof is hereto annexed and made a part hereof; in said agreement it was provided that a corporation should be formed upon the basis of said patents and to carry the same into practical effect; that said corporation should have a capital stock of $1,000,000, and that said patents should be transferred to said corporation in exchange for said capital stock, of which $600,000 was to be issued to said Henry Green and $400,000 to said Simpson and Canfield. It was further provided in said agreement that said Henry Green should pay to said Simpson and Canfield the sum of $5,000 in cash, together with certain stock of said corporation, and should pay to said corporation or expend in building and equipping a plant for said corporation the sum of $20,000. It was further provided in said agreement that said Henry Green and said Simpson and Canfield should return to the treasury of said corporation 800 shares of said capital stock, to be used and sold from time to time for the purpose of raising working capital for said corporation.

9. This respondent further says that in carrying out said agreement said Henry Green interested Elisha P. Wilbur, Henry A. Potter and this respondent in said processes and proposed to them to join with him in putting the same to practical use; that said Henry Green was not in active business life and said Elisha P. Wilbur, Henry A. Potter and this respondent were men of extensive business interests and connections, and said Henry Green agreed that if said Wilbur, Potter and this respondent would join with him in organizing said corporation and assist in the introduction of the products to be obtained from the employment of said patented processes, he would admit them upon substantially the same basis as himself, and would pay for their subscriptions out of his interest in said patents and processes, provided said Wilbur and this respondent would take and pay for 100 shares each of

treasury stock and said Potter would share with said Henry Green in the cash payment to be made to said company, and that said Wilbur, Potter and this respondent, believing that said patents and processes were of great value, accepted said proposition.

10. This respondent says that the said American Brick and Tile Company was thereupon incorporated and organized in accordance with said agreement and that said Henry Green, Morris P. Canfield, Elisha P. Wilbur, Henry A. Potter and this respondent were elected directors of said corporation; that thereafter said directors, after a careful examination of said patents and processes and careful consideration of the value thereof, determined and concluded that they were worth the sum of at least $802,400, and authorized the issue of 8,024 shares of the stock of said corporation of the par value of $802,400 to the said Lenox Simpson and Morris P. Canfield, or their nominees, in exchange for said patents, patent rights and processes and applications therefor, and payment of said corporation by said Green on behalf of said Simpson and Canfield of the sum of $20,000 in cash. This respondent says that thereupon and contemporaneously with the issue of said stock, said patents, patent rights and processes and applications were duly assigned to said corporation and said sum of $20,000 paid thereto in cash, and the certificates of all of said shares of stock were marked "issued for property purchased"; that thereafter the said Henry Green purchased from said Lenox Simpson 1,669 shares of stock in said corporation held by the latter and from Morris P. Canfield 557 shares held by him, and the said Elisha P. Wilbur, Henry A. Potter and this respondent each purchased from the said Henry Green 500 of said shares, and thereafter certificates of stock in said corporation, representing the final issue of the shares thereof, so issued in exchange for said patents, patent rights and processes, were executed by

Henry Green, President, and Frederick Green, Secretary, of said corporation, as follows:

No. 1. 1,400 shares, dated September 27, 1887, to Edward M. Paxson.

No. 2. 1,400 shares, dated September 27, 1887, to E. P. Wilbur.

No. 3. 1,481 shares, dated September 27, 1887, to Lenox Simpson.

No. 6. 493 shares, dated September 27, 1887, to M. P. Canfield.

No. 8. 1,500 shares, dated November 28, 1887, to H. A. Potter.

No. 14, 1,750 shares, dated July 11, 1888, to Henry Green. That at or about the same time, and in addition thereto, said Wilbur and this respondent each took and received 100 shares of treasury stock from said corporation and each paid therefor to said corporation the sum of $10,000 in cash, being the par value thereof, for which certificates, not marked "issued for property purchased," were issued as follows:

No. 351. 100 shares, dated September 27, 1887, to Edward M. Paxson.

No. 352. 100 shares, dated September 27, 1887, to E. P. Wilbur.

11. This respondent further says that in purchasing said patents and patented processes and issuing stock therefor, said directors acted in good faith, fully believing said property to be worth more than the value of the stock issued therefor, and having good grounds for said belief; that said processes were in fact very valuable and said corporation thereafter engaged in manufacturing tile and brick of a high quality under said patents and sold said brick at a very high profit, and was conducting its business successfully until its plant was destroyed by fire, and there being no insurance upon the plant the corporation was unable to rebuild and to continue business.

12. This respondent is informed and believes that after the incorporation of the said company and the issue of said certificates, said Henry Green purchased

the remaining shares of stock originally issued to Simpson and Canfield, and that the same, or some of them, were subsequently transferred to various persons to whom certificates numbered 9, 10, 11, 12 and 13 were finally issued, certificate number 15 being issued to said Green for the balance of said stock retained by him.

13. As to the matters stated in the third paragraph of said petition, this respondent says that he is informed and believes, and therefore avers, that the claim of the Easton National Bank, amounting to $18,185.57, with certain allowances of interest, is based upon notes which are claimed to have been given to the said bank by the American Brick and Tile Company for money borrowed, and this respondent says that the said loans were not authorized by the board of directors of said company, and he is advised that it was not within the scope of the authority of the president of the company, or of any other officer thereof, to contract said loans or to issue the notes of the company therefor, and he submits that the said claim should not be allowed. As to the claims presented by Frederick Green, as executor of the estate of Henry Green, deceased, one for $22,947.88 and another for $30,000, this respondent submits that inasmuch as the said Henry Green procured the said corporation to be organized and as a member of the board of directors and president of said company took part in the purchase of the said patents and patent rights and in the issue therefor and in consideration thereof of the issued capital stock of said company other than the part thereof issued for cash as aforesaid, and himself caused the said certificates of stock to be issued as for property purchased, he was thereafter in his lifetime estopped, and his estate since his decease has been and is now estopped from questioning the *bona fides* of the said transaction, or alleging that the said stock was not fully paid and non-assessable. As to the claim of the said Frederick Green on his own behalf, amounting to $6,655, respondent says that the said claim was contracted by the said

Frederick Green with the full knowledge that all the issued capital stock of said company had been issued either for cash or property at par, not only, but that the said Frederick Green was both Secretary and Treasurer of the said corporation at the time the said stock was issued, and signed the certificates therefor, and that he cannot now be heard to allege anything to the contrary of the statements contained on the face of said certificates, or to impeach the *bona fides* of the transaction, with the full knowledge of which he contracted the obligation which he now seeks to have satisfied by an assessment upon the said stock. Annexed hereto as Exhibit "A" is a copy of defendant's certificate for 1,400 shares hereinbefore referred to.

14. This respondent, further answering, says that he is advised, and therefore avers, that any liability that may be asserted against him as the holder of 1,400 shares of the stock of said corporation cannot be based upon any contractual obligation upon his part, but only a statutory liability in favor of creditors, and that the claimants are now precluded by their laches and by the statute of limitations from asserting or enforcing the same.

And this respondent prays to be hence dismissed with his proper costs.

LINDABURY, DEPUE & FAULKS,
Solicitors for Edward M. Paxson.

STATE OF NEW JERSEY, }
County of Mercer. } *ss:*

Edward M. Paxson, above named, being duly sworn, on his oath says, that the matters and things in the foregoing answer contained, so far as they relate to his own acts, are true, and so far as they relate to the acts of others he believes them to be true.

EDWARD M. PAXSON.

Sworn and subscribed to before me October 13, 1904.

J. J. BERGEN,
M. C. C. of N. J.

EXHIBIT "A."

Issued for property purchased. 1,400 shares.

THE AMERICAN BRICK AND TILE COMPANY.

Capital, $1,000,000. Shares $100 each.

This is to certify, That Edward M. Paxson is entitled to fourteen hundred shares of full-paid capital stock of The American Brick and Tile Company. Transferable only on the books of the company in person or by attorney on surrender of this certificate.

(Seal) Sept. 27, 1887.

HENRY GREEN, *President.*

FRED. GREEN, *Secretary.*

Articles of agreement made and concluded the 12th day of March, 1886, between Lenox Simpson and M. P. Canfield, of Pittsburg, Pennsylvania, of the first part and Henry Green, of Easton, Pennsylvania, of the second part, witness:

Whereas the said Simpson and Canfield have acquired the ownership of a certain patent issued by the United States to Henry Dickson for making brick, tile and other fabrics out of slate and for a process of converting slate into brick, tiling and other fabrics by pulverizing, tempering and molding and burning said slate in accordance with the claim set forth in said patent and the application therefor. And whereas the said Simpson has applied for two patents for improvements in kilns particularly described in said application, the object of which is to obtain a uniform heat in the burning of brick, tile and other analogous articles and it is expected that patents for the same will shortly be issued.

And whereas it is proposed to form a corporation for the purpose of putting said patents into practical use and producing the fabrics and results aforesaid and

the said Green is willing to undertake to place the stock of said corporation upon such terms as may be agreed upon between him and the purchasers thereof.

Now, therefore, it is hereby agreed by and between the said parties as follows, to wit:

First: That a corporation shall be formed and established upon the basis of the said patents and to carry the same into practical effect under the laws of New York, Pennsylvania, New Jersey or such other State as may be thought best with a capital stock of not less than one million dollars divided into shares of one hundred dollars each.

Second: The said Green, upon paying into the treasury of said corporation the sum of twenty thousand dollars and to the said Simpson and Canfield the sum of five thousand dollars, shall be entitled to have and take six-tenths of the said capital stock and the said Simpson and Canfield shall, upon assigning and transferring to the said corporation all of the said patents, be entitled to have and take the remaining four-tenths of the said capital stock. Out of the six-tenths of said capital stock to be taken by said Green he shall deliver to said Simpson and Canfield twenty thousand dollars worth of the same at the par value thereof, upon the assignment and transfer to the said corporation of the said patents by the said Simpson and Canfield and the said Green shall also deliver into the treasury of the said corporation fifty-five thousand dollars worth of the stock at par value thereof, to be used and sold from time to time as may be required for the purpose of raising working capital for conducting the operations of said corporations.

Third: The said Simpson and Canfield agree to assign and transfer to said corporation the said patents and all right, title and interest of themselves therein and all improvement and inventions which they or either of them may make therein or thereon, either in mixing said slate with foreign substances or in chemical or mechanical improvements relating thereto or in any other manner whatsoever, said transfer to be made as soon

as said company shall be incorporated, and also to deliver into the treasury of said company twenty-five thousand dollars worth of stock at par out of their four-tenths of said stock, to be used and sold as working capital.

Fourth: As some delay will necessarily transpire before said patents applied for by said Simpson will be issued and before the said corporation shall be established, and as it is very desirable that the plant for manufacturing brick under the said patents shall be erected as speedily as possible, it is further agreed that any moneys which shall actually be expended by said Green and others co-operating with him in the purchase of ground and in the purchase and erection of the necessary machinery and buildings for carrying on the operations of said corporations shall be deemed and taken as part of the aforesaid sum of twenty thousand dollars to be paid into the treasury of said corporation, and said plant shall be conveyed to said corporation, when established, at and for the actual cost thereof, as part payment of the said sum of twenty thousand dollars.

Witness our hands the 12th day of March A. D., 1886.

LENOX SIMPSON,
M. P. CANFIELD,
H. GREEN.

In Chancery of New Jersey.

Between
The Easton National Bank,
Complainant,
and
The American Brick and Tile Company,
Defendant.

ANSWER OF HENRY A. POTTER.

(Filed October 13, 1904.)

The answer of Henry A. Potter, respondent, to the petition of William M. Davis, Receiver of American Brick and Tile Company, praying for an assessment upon the stock of said corporation:

1. This respondent has no knowledge of the matters alleged in paragraphs 1, 2, 3, 4 and 12 of said petition, except as he is informed thereof by said petition, and therefore neither admits nor denies them, but leaves said Receiver to make such proof thereof, and of the validity of the claims mentioned in paragraph 3 of said petition, as he may be advised.

2. This respondent admits that said corporation was organized and incorporated as alleged in paragraph 5 of said petition, but he has no knowledge of the matters alleged in paragraph 6 except as hereinafter set forth.

3. This respondent admits that he paid to said corporation the sums mentioned in paragraph 7 of said petition, but he alleges that such payments were made under the circumstances and for the purposes hereinafter set forth. This respondent has no knowledge as to what payments, if any, have been made by the other persons mentioned in said paragraph, or for what purpose, except as hereinafter set forth, and as to such pay-

ments this respondent leaves said petitioner to make such proof as he may be advised.

4. This respondent admits that a resolution was adopted at a meeting of the directors of said corporation calling for an assessment on the stock then otustanding, and that payments were made thereon by this respondent, as mentioned in paragraph 8 of said petition, but this respondent alleges that said resolution was in the following words:

"*Resolved,* That an assessment of four dollars ($4.00) per share upon the outstanding stock of the company be called, payable ($1.00) one dollar per share, May 1st, and the balance as directed by the executive committee, and if any stockholders fail to respond to call, the stock in treasury be pledged as collateral for any sums advanced under the said calls," and that said assessment was entirely a voluntary assessment and was so understood by all the directors and stockholders, made in the hope of putting said corporation upon a sound basis, and was not called because of any supposed liability of said stockholders to pay the same. This respondent has no information as to what payments were made thereon by the other persons mentioned in said paragraph, and leaves the petitioner to make such proof as he may be advised.

5. This respondent, for the reasons hereinafter set forth, denies that he is liable, by force of the statute or otherwise, as alleged in paragraph 9 of said petition.

6. This respondent admits the matters alleged in paragraph 10 of said petition.

7. This respondent admits that Henry Green departed this life after the organization and issuing of the stock of said corporation, and that Frederick Green is his executor, and that Robert P. Linderman, Peter Sheafer and Fletcher H. Knight are dead, but this respondent has no information as to who are their executors, and leaves said petitioner to make such proof as he may be advised. This respondent alleges that said Henry Green died on or about the eighteenth day of Au-

gust, 1900; and this respondent denies that any of the persons mentioned in paragraph 11 of said petition are liable for subscriptions of stock in said corporation, as therein alleged, or otherwise.

8. This respondent admits the matters alleged in paragraph 11½ of said petition.

9. This respondent alleges that before the incorporation of said company, Lenox Simpson and M. P. Canfield, of Pittsburg, Pennsylvania, were the owners of a certain patent for making brick tile and other fabrics, and for certain processes, and had applied for other patents for improvements in kilns, which patents and processes were considered and were of great value, and were believed to be worth $1,000,000 or upwards; and that said Henry Green had agreed with said Simpson and Canfield to establish a plant to put said processes into practical use and to manufacture and market said products and to introduce the same to the public, in consideration of a controlling interest in said patent rights and processes; and that on or about the twelfth day of March, 1886, an agreement in writing was entered into between said Lenox Simpson and M. P. Canfield, of the first part, and said Henry Green, of the second part, a copy whereof is hereto annexed and made a part thereof, whereby it was agreed that a corporation should be formed upon the basis of said patents, and to carry them into practical effect with a capital stock of $1,000,000, and that said patents should be transferred to said corporation in exchange for said capital stock, of which $600,000 was to be issued to said Henry Green and $400,000 was to be issued to said Simpson and Canfield; and it was further provided in said agreement that said Henry Green should pay to said Simpson and Canfield the sum of $5,000 in cash, together with certain stock of said corporation, and should pay to said corporation, or expend in building and equipping a plant for said corporation, the sum of $20,000; and it was further provided in said agreement that said Henry Green and said Simpson and Canfield should deliver into the treasury

of said corporation certain stock to be used and sold from time to time, for the purpose of raising working capital for said corporation.

10. This respondent alleges that in carrying out said agreement said Henry Green interested Edward M. Paxson, Elisha P. Wilbur and this respondent in said processes, and proposed to them to join with said Henry Green in putting said processes to practical use; and that as said Henry Green was not in active business life, and the said Edward M. Paxson, Elisha P. Wilbur and this respondent were men of extensive business interests, and this respondent was a relative of said Henry Green, said Henry Green agreed that if said Paxson, Wilbur and this respondent would join with him in organizing said corporation and take an active interest in its success, he would admit them on substantially the same basis as himself, and would pay for their subscription out of his interest in said patents and processes, provided said Paxson and Wilbur would take and pay for 100 shares each of treasury stock, and this respondent would share with said Henry Green the cash payment to be made by him to said company; and that the said Paxson, Wilbur and this respondent believing said patents and processes to be of great commercial value, accepted said proposition.

11. This respondent alleges that said American Brick and Tile Company was thereupon incorporated and organized in accordance with said agreement, and that Henry Green, M. P. Canfield and Elisha P. Wilbur, Edward M. Paxson and this respondent were elected directors of said corporation, and that the stock subscriptions of the incorporators, except the treasury stock subscriptions of said Paxson and Wilbur, were paid by the purchase of property, as follows:

The said directors after said incorporation, and after due and careful consideration of said patents, patent rights and processes, determined that the same were worth upwards of the sum of $800,000, and were worth at least the sum of $802,400. Said directors thereupon

authorized the issue of 8,024 shares of stock of said corporation, of the par value of $802,400 to the said Lenox Simpson and M. P. Canfield, or their nominees, in exchange for said patents, patent rights and processes and applications therefor, to be delivered upon the assignment of the same to said corporation and the payment to said corporation by or on behalf of said Simpson and Canfield of the sum of $20,000 in cash, or in the construction or equipment of a plant for manufacture thereunder. That said sum of $20,000 was so paid, or caused to be paid to said corporation, being the payments credited in said petition to said Green and this respondent, and said patents, patent rights and processes and applications were so assigned to said corporation by said Simpson and Canfield; and thereupon and simultaneously therewith said 8,024 shares of stock were issued therefor, and the certificates for all of said 8,024 shares of stock were marked "issued for property purchased." That of said shares certificates for 4,200 shares were issued to said Simpson and Canfield, as follows:

No. 3 for 1481 shares to Lenox Simpson, dated September 27, 1887.
No. 4 for 1669 shares to Lenox Simpson, dated September 27, 1887.
No. 5 for 557 shares to M. P. Canfield, dated September 27, 1887.
No. 6 for 493 shares to M. P. Canfield, dated September 27, 1887.

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That after the action of said directors in authorizing said issue of stock, and before the certificates therefor were actually issued, said Henry Green, for some consideration unknown to this respondent, purchased from said Lenox Simpson 1669 shares of stock, and from said M. P. Canfield 557 shares, and in order to carry out his agreement with this respondent and Paxson and

Wilbur to admit them on equal terms, said Green transferred to said Paxson, Wilbur and this respondent each 500 shares thereof. That in order to cause said transaction to appear in the stock certificate book of said corporation, said Green caused the certificates for said shares so purchased, being numbers 4 and 5, to be assigned in blank by said Simpson and Canfield and cancelled, and that therefor certificates of stock in said corporation representing the final issue of stock for such property so purchased, were executed by Henry Green, President, and Frederick Green, Secretary; of said corporation, as follows:

No. 1. 1400 shares, dated September 27, 1887, to Edward M. Paxson.
No. 2. 1400 shares, dated September 27, 1887, to E. P. Wilbur.
No. 3. 1481 shares, dated September 27, 1887, to Lenox Simpson.
No. 6 493 shares, dated September 27, 1887, to M. P. Canfield.
No. 8 1500 shares, dated November 28, 1887, to H. A. Potter.
No. 14. 1750 shares, dated July 11, 1888, to Henry Green.

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That at or about the same time, and in addition thereto, said Paxson and Wilbur each took and received 100 shares of treasury stock, and each paid therefor to said corporation the sum of $10,000 in cash, being the par value thereof, for which certificates, not marked "issued for property purchased," were executed as follows.

No. 351. 100 shares, dated September 27, 1887, to Edward M. Paxson.
No. 352 100 shares, dated September 27, 1887, to E. P. Wilbur.

12. That in purchasing the property conveyed to said corporation by said assignments and issuing stock therefor said directors acted in good faith, fully believing said property so purchased to be worth more than the par value of the stock issued therefor, and having good and sufficient cause for such belief. That said processes were very valuable, and said corporation thereafter engaged in manufacturing tile and brick of a high quality thereunder, and sold said brick at a very high profit, and was conducting its business successfully until its plant was destroyed by fire, and there being no insurance on the plant, the corporation was unable to rebuild and continue business.

13. This respondent alleges that after such incorporation and said issue of certificates of stock, said Henry Green purchased the remaining shares of said Simpson and Canfield and sold a portion of the same to various parties, for which certificates numbers 9 to 13 were issued, and certificate number 15 issued to said Green for the balance, all of which certificates were also marked "issued for property purchased."

14. This respondent further alleges that on or about the sixth day of July, 1896, said corporation being in need of funds to meet an outstanding indebtedness, and being unable to secure credit for the same, issued its promissory note for the sum of $5,000, dated July 6, 1896, which note was endorsed by this respondent and others for the accommodation of said corporation and was discounted with the Phillipsburg National Bank. That said note was renewed from time to time by said corporation with the same endorsements until the fifth day of July, 1900, when said corporation executed its note for $5,000, dated July 5, 1900, a copy whereof is hereto annexed and made a part hereof, which note was payable to the order of H. Green, H. A. Potter (this respondent) and H. A. Sage. That said corporation applied to said payees to endorse the same for the accommodation of said corporation, to be used in renewal of the last preceding note. That said payees did so en-

dorse the same and said note was discounted by said corporation in the Phillipsburg National Bank and the proceeds thereof applied to the credit of said corporation and used in renewal of said preceding note. That afterwards, and on or about the eighteenth day of July, 1900, the said Henry Green departed this life as aforesaid, and thereafter, and on the fifth day of October, 1900, upon the maturity of said note of July 5, 1900, the same was protested for non-payment, and this respondent thereafter, and on the the twenty-seventh day of November, 1900, was obliged to pay and did pay said note of $5,000, with interest thereon and protest fees, amounting in all to the sum of $5,047.13. That no part of said payment has been repaid to this respondent by said corporation or by any other person or persons, and that said corporation is still indebted to this respondent in the said sum of $5,047.13, with interest thereon, from the twenty-seventh day of November, 1900, which sum this respondent charges should be credited against any supposed liability of this respondent on account of his ownership of said shares of stock.

Wherefore, this respondent prays to be hence dismissed, with his costs of suit.

GUILD & MARTIN,
Solicitors for Henry A. Potter, Respondent.

Articles of agreement made and concluded the 12th day of March, 1886, between Lenox Simpson and M. P. Canfield, of Pittsburg, Pennsylvania, of the first part, and Henry Green, of Easton, Pennsylvania, of the second part, witness:

Whereas the said Simpson and Canfield have acquired the ownership of a certain patent issued by the United States to Henry Dickson for making brick, tile and other fabrics out of slate and for a process of converting slate into brick, tiling and other fabrics by

pulverizing, tempering and molding and burning said slate in accordance with the claim set forth in said patent and the application therefor. And whereas the said Simpson has applied for two patents for improvements in kilns particularly described in said application, the object of which is to obtain a uniform heat in the burning of brick, tile and other analogous articles, and it is expected that patents for the same will shortly be issued.

And whereas it is proposed to form a corporation for the purpose of putting said patents into practical use and producing the fabrics and results aforesaid and the said Green is willing to undertake to place the stock of said corporation upon such terms as may be agreed upon between him and the purchasers thereof.

Now, therefore, it is hereby agreed by and between the said parties as follows, to wit:

First. That a corporation shall be formed and established upon the basis of the said patents and to carry the same into practical effect under the laws of New York, Pennsylvania, New Jersey or such other States as may be thought best with a capital stock of not less than $1,000,000, divided into shares of $100 each.

Second. The said Green, upon paying into the treasury of said corporation the sum of $20,000 and to said Simpson and Canfield the sum of $5,000, shall be entitled to have and take six-tenths of the said capital stock and the said Simpson and Canfield shall, upon assigning and transferring to the said corporation all of the said patents, be entitled to have and take the remaining four-tenths of the said capital stock. Out of the said six-tenths of said capital stock to be taken by said Green he shall deliver to said Simpson and Canfield $20,000 worth of the same at the par value thereof, upon the assignment and transfer to the said corporation of the said patents by the said Simpson and Canfield, and the said Green shall also deliver into the treasury of the said corporation $55,000 worth of the stock at par value thereof, to be used and sold from time to time as may

be required for the purpose of raising working capital for conducting the operations of said corporations.

Third. The said Simpson and Canfield agree to assign and transfer to said corporation the said patents and all rights, title and interest of themselves therein and all improvement and inventions which they or either of them may make therein or thereon, either in mixing said slate with foreign substances or in chemical or mechanical improvements relating thereto or in any other manner whatsoever, said transfer to be made as soon as said company shall be incorporated, and also to deliver into the treasury of said company $25,000 worth of stock at par out of their four-tenths of said stock, to be used and sold as working capital.

Fourth. As some delay will necessarily transpire before said patents applied for by said Simpson will be issued and before the said corporation shall be established, and as it is very desirable that the plant for manufacturing brick under the said patents shall be erected as speedily as possible, it is further agreed that any moneys which shall actually be expended by said Green and others co-operating with him in the purchase of ground and in the purchase and erection of the necessary machinery and buildings for carrying on the operations of said corporations shall be deemed and taken as part of the aforesaid sum of $20,000 to be paid into the treasury of said corporation and said plant shall be conveyed to said corporation, when established, at and for the actual cost thereof, as part payment of the said sum of $20,000.

Witness our hands the 12th day of March A. D., 1886.

LENOX SIMPSON,
M. P. CANFIELD,
H. GREEN.

(Copy of Respondent's Stock Certificate.)

"ISSUED FOR PROPERTY PURCHASED.

No. 8. 1,500 Shares.

THE AMERICAN BRICK AND TILE COMPANY.

Capital, $1,000,000. Shares, $100 Each.

This is to certify that Henry A. Potter is entitled to 1,500 shares of full-paid capital stock of The American Brick and Tile Company, transferable only on the books of the company in person or by attorney on the surrender of this certificate.

(Seal) November 28, 1887.

HENRY GREEN, *President.*

FRED. GREEN, *Secretary.*"

(Copy of Respondent's Note.)

"$5,000.00. $1.00 in Rev. Stamps.

Phillipsburg, July 5, 1900.

Three months after date we promise to pay to the order of H. Green, H. A. Potter and H. A. Sage, $5,000, at the Phillipsburg National Bank, without defalcation for value received.

AMERICAN BRICK AND TILE COMPANY,

H. GREEN, *President.*"

"Credit the drawer,

H. GREEN,

H. A. POTTER,

H. A. SAGE."

"Endorsed,

H. GREEN,

H. A. POTTER,

H. A. SAGE."

In Chancery of New Jersey.

Between
The Easton National Bank,
Complainant,
and
The American Brick and Tile Company,
Defendant.

PROOF OF CLAIM OF EASTON NATIONAL BANK.

To William M. Davis, Esq., Receiver of the American Brick and Tile Company:

The Easton National Bank claims there is due to it from the American Brick and Tile Company the sum of fourteen thousand eight hundred dollars, besides interest, being the amount due upon three several promissory notes and upon an overdraft upon said bank, as follows, viz.:

The first note is dated July 10th, 1900, was made by the American Brick and Tile Company, payable at the Easton National Bank, three months after the date thereof, for the sum of six hundred dollars.

The second note is dated July 30th, 1900, was made by the American Brick and Tile Company, payable at the Easton National Bank, one month after date for the sum of five thousand dollars.

The third note is dated August 2d, 1900, is made by the American Brick and Tile Company, payable one month after date at the Easton National Bank for the sum of nine thousand two hundred dollars.

Each of these notes is payable to the order of Henry Green and endorsed by him.

In addition to said notes, there is also due from the said American Brick and Tile Company, upon an overdraft by said company, upon said Easton National

Bank, on June 7th, 1900, the sum of one hundred and ninety-eight dollars and ninety-one cents, which amount the said American Brick and Tile Company then and there promised and undertook to repay to the said Easton National Bank together with lawful interest thereon from said last named date.

Amount of principal due on first note,	$600 00	
Interest from October 10, 1900, until April 5, 1904,	125 50	
		$725 50
Amount of principal on second note,	$5,000 00	
Interest from August 30, 1900, to April 5, 1904,	1,079 00	
		6,079 00
Amount due on principal on third note,	$9,200 00	
Interest from September 2, 1900, to April 5, 1904,	1,936 60	
		11,136 60
Amount of principal of overdraft,	$198 91	
Interest from June 7, 1900, to April 5, 1904,	45 74	
		244 65
		$18,185 75

That the amount due the said bank for the principal and interest on the fifth day of April, 1904, is the sum of eighteen thousand one hundred eighty-five dollars and seventy-five cents; that no part of this sum has been paid, but that the whole remains due and owing to the said bank, and that the said bank claims interest upon the principal sum of said notes until the same is fully paid and satisfied.

The following is a copy of the notes above referred to:

$600 EASTON, PA., July 10, 1900.
12c U. S. Rev.
Stamp Cancelled.

Three months after date we promise to pay to the order of Henry Green, six hundred dollars at the Easton National Bank without defalcation for value received.

AMERICAN BRICK AND TILE COMPANY,
Credit the drawer, H. GREEN, *President.*
H. GREEN.

(Endorsed) Protest waived July 10, 1900. 10
H. GREEN.

$5,000. EASTON, PA., July 30, 1900.
$1.00 U. S. Rev.
Stamp Cancelled.

One month after date we promise to pay to the order of H. Green five thousand dollars at the Easton National Bank without defalcation for value received.

(Signed)
AMERICAN BRICK AND TILE COMPANY,
Credit the drawer, H. GREEN, *President.* 20
H. GREEN.

(Endorsed) PProtest waived July 30, 1900.
H. GREEN.

$9,200. EASTON, PA., Aug. 2, 1900.
184 U. S. Revenue
Stamp Cancelled.

One month after date we promise to pay to the order of H. Green nine thousand two hundred dollars at the Easton National Bank without defalcation for value received. 30

(Signed)
AMERICAN BRICK AND TILE COMPANY,
Credit the drawer, H. GREEN, *President.*
H. GREEN.

(Endorsed)
H. GREEN.
(Certificate of protest attached.)

[SEAL.] THE EASTON NATIONAL BANK,
HENRY G. SIEGFRIED,
Cashier.

STATE OF PENNSYLVANIA, }
NORTHAMPTON COUNTY, } *ss.*

Henry G. Siegfried, of full age, being duly sworn, on his oath says, he is the cashier of the Easton National Bank, that the above and foregoing contains a true statement of the claim of the Easton National Bank against the American Brick and Tile Company, and that the whole sum above stated of eighteen thousand one hundred eighty-five dollars and seventy-five cents is now due and owing to said bank from said company besides interest until the claim is fully paid and satisfied.

HENRY G. SIEGFRIED.

Sworn and subscribed before me April fifth, 1904.

HENRY D. MAXWELL,
[L. S.] *Commissioner of Deeds,*
For New Jersey in Pennsylvania.

IN CHANCERY OF NEW JERSEY.

THE EASTON NATIONAL BANK
vs.
AMERICAN BRICK AND TILE COMPANY.

PROOF OF CLAIM BY HENRY SHORT.

STATE OF PENNSYLVANIA, }
COUNTY OF NORTHAMPTON. } *ss.*

Henry Short, being duly sworn according to law before me, a Justice of the Peace in and for said county, deposes and says that on the 13th day of February, A.D.

1892, the American Brick and Tile Company, the defendant above named, did, for a valuable consideration, make, execute and deliver to said Henry Short its certain promissory note, a true, full and correct copy of which said note is as follows, to wit:

EASTON, Feb. 13, 1892.

One year after date the American Brick and Tile Company promises to pay to the order of Henry Short Two Thousand Dollars, with defalcation and with six per cent. interest from date.

THE AMERICAN BRICK AND TILE COMPANY,
per H. GREEN, *Prest.*

I hereby guarantee the payment of the written note.

H. GREEN.

That the said The American Brick and Tile Company did pay interest on the said note on the 13th day of February, A.D. 1900, to said date, that the said Henry Short has received no other payment on the same whatever, and that there is due on the said note of and from the said The American Brick and Tile Company to the said Henry Short the said sum of $2,000, together with interest thereon from the said 13th day of February, A.D. 1900, at the rate of six per centum per annum, and that no part of the said note has been paid, except as aforesaid, that there is no offset or counter-claim of any kind against the same.

HENRY SHORT.

Sworn and subscribed before me this 25th day of April, A.D. 1904.

HENRY WILLIAMS, *J. P.*

[L. S.] My commission expires May, A.D. 1905.

STATE OF PENNSYLVANIA,
COUNTY OF NORTHAMPTON. } *ss.*

I, L. F. GIERING, Prothonotary in and for the County of Northampton and Clerk of the Court of Common Pleas, do hereby certify that the said Court is a Court of record; that I have official cognizance of the fact, that Henry Williams, Esq., before whom the foregoing was taken was, at the time of taking such, a Justice of the Peace in and for said County, duly commissioned and qualified, and duly authorized and empowered to take and certify oaths and affirmations and [L. S] the proof and acknowledgment of deeds by the laws of said State of Pennsylvania. And further, that I am well acquainted with the handwriting of such Justice of the Peace and verily believe that the signature to the said acknowledgment is genuine. I further certify, that said instrument is executed and acknowledged in all respects according to the laws of the State of Pennsylvania. That his commission began first Monday of May, 1900, and will expire first Monday of May, 1905.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said office, at Easton, this 4th day of May, A.D. 1904.

L. F. GIERING, *Prothonotary.*
per THOMAS A. L. HAY, *Deputy.*

Filed May 4, 1904.
WM. M. DAVIS.

IN CHANCERY OF NEW JERSEY.

Between
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendant.

CLAIM OF FREDERICK GREEN, EXECUTOR, &c.

To William M. Davis, Esq., Receiver.

The undersigned hereby files his claim with you against The American Brick and Tile Company, and represents as follows:

That The American Brick and Tile Company is indebted to Frederick Green, executor of the last will and testament of Henry Green, deceased, in the sum of twenty-two thousand nine hundred and forty-seven dollars and eighty-eight cents ($22,947.88), with interest from March 3, 1900, for moneys loaned by Henry Green to The American Brick and Tile Company, which said company promised to repay him; a true and correct statement of the dates when said moneys were loaned to the said company, and the several amounts of same, being as follows:

1886.		
Aug. 14.	Cash advanced, ...	$500 00
Oct. 23.	" "	250 00
Nov. 13.	" "	1,000 00
1887.		
Mar. 12.	" "	500 00
April 4.	" "	2,000 00
" 18.	" "	700 00
May 12.	" "	2,000 00
June 14.	" "	550 00

June 18.	Cash advanced,	.....	$700 00
July 16.	" "	.....	200 00
Aug. 13.	" "	.....	1,200 00
" 20.	" "	.....	380 00
Sept. 17.	" "	.....	450 00
1888.			
Mar. 24.	" "	.....	100 00
June 16.	" "	.....	800 00
1889.			
April 13.	" "	.....	500 00
May 20.	" "	.....	500 00
June 15.	" "	.....	800 00
" 22.	" "	.....	300 00
July 13.	" "	.....	800 00
Oct. 28.	" "	.....	50 00
Dec. 30.	" "	.....	3,000 00
1890.			
May 3.	" "	.....	1,000 00
Oct. 13.	" "	.....	500 00
Nov. 15.	" "	.....	600 00
1892.			
Mar. 22.	" "	.....	500 00
May 21.	" "	.....	500 00
Sept. 29.	" "	.....	400 00
Nov. 12.	" "	.....	100 00
Nov. 18.	" "	.....	500 00
1893.			
Jan. 9.	" "	.....	500 00
Feb. 18.	" "	.....	250 00
April 1.	" "	.....	47 00
June 30.	" "	.....	500 00
Aug. 18.	" "	.....	300 00
Sept. 11.	" "	.....	400 00
" 29.	" "	.....	600 00
1894.			
Mar. 13.	" "	.....	500 00
April 2.	" "	.....	1,000 00
April 14.	" "	.....	400 00

May 2.	Cash advanced,		$300 00
" 12.	"	"	900 00
June 6.	"	"	500 00
June 20.	"	"	500 00
July 30.	"	"	300 00
Aug. 11.	"	"	300 00
Aug. 29.	"	"	500 00
Sept. 12.	"	"	500 00
Sept. 26.	"	"	1,000 00
Oct. 22.	"	"	500 00
Dec. 6.	"	"	1,000 00
1895.			
Jan. 3.	"	"	500 00
Jan. 28.	"	"	400 00
Mar. 1.	"	"	300 00
" 26.	"	"	300 00
April 29.	"	"	200 00
May 20.	"	"	200 00
June 10.	"	"	150 00
" 20.	"	"	300 00
July 15.	"	"	300 00
Aug. 29.	"	"	300 00
Dec. 11.	"	"	300 00
Dec. 31.	"	"	300 00
1896.			
Jan. 18.	"	"	300 00
Mar. 6.	"	"	200 00
July 1.	"	"	1,800 00
" 22.	"	"	300 00
Oct. 10.	"	"	250 00
Nov. 16.	"	"	250 00
Nov. 30.	"	"	200 00
Dec. 23.	"	"	200 00
1897.			
Jan. 2.	"	"	150 00
Feb. 6.	"	"	200 00
Mar. 1.	"	"	150 00
" 16.	"	"	200 00

April 3.	Cash advanced,		$1,000 00
" 23.	"	"	150 00
May 20.	"	"	200 00
June 18.	"	"	150 00
July 20.	"	"	500 00
Nov. 15.	"	"	250 00
1898.			
Jan. 4.	"	"	200 00
" 10.	"	"	200 00
Mar. 28.	"	"	300 00
Jan. 11.	"	"	1,500 00
April 2.	"	"	200 00
July 11.	"	"	300 00
Aug. 8.	"	"	200 00
Sept. 23.	"	"	200 00
Dec. 1.	"	"	300 00
" 30.	"	"	300 00
1899.			
Mar. 2.	"	"	300 00
1900.			
Mar. 7.	"	"	100 00
	Total cash,		$46,277 00
1887.			
Sept. 17.	For lot,		2,500 00
1886.			
Dec. 1.	Net proceeds of moulding sand from lot,		1,841 10
			$50,618 10

Less:

1886.			
Sept. 25.	Cash repaid,	$500 00	
Dec. 7.	" "	1,250 00	
1887.			
Sept. 30.	" "	1,000 00	
Oct. 3.	" "	1,000 00	

1888.			
Oct. 23.	Cash repaid, ...	$500 00	
1889.			
Dec. 30.	" "	1,000 00	
" 31.	Brick, ...	433 72	
1890.			
Dec. 30.	"	8 40	
1891.			
May 25.	Cash repaid, ...	2,124 00	
May 27.	" "	3,000 00	
July 27.	" "	2,524 00	
Aug. 4.	" "	300 00	
1893.			
April 6.	Subscription, ...	10,000 00	
	4th Assessment, ...	2,124 00	
1888.			
Feb. & Mar.	Coal, ...	106 10	
1900.			
Mar. 3.	Cash repaid, ...	1,800 00	
		27,670 22	
	Balance due, ...		$22,947 88

That no part of the above balance has, at any time, been paid by the said The American Brick and Tile Company, and that there is no collateral of any kind held by the said Henry Green or by me, his executor, for any of the moneys loaned as aforesaid.

FREDERICK GREEN,
Ex'r of Henry Green, Dec'd.

STATE OF NEW JERSEY, }
COUNTY OF WARREN. } *ss.:*

Frederick Green, of full age, being duly sworn, on his oath says that he is the executor of Henry Green, the party above referred to, and that The American Brick and Tile Company is indebted to the said Henry Green's estate in the sum of twenty-two thousand nine hundred

and forty-seven dollars and eighty-eight cents ($22,-947.88), with interest from March 3, 1900, for money loaned by the said Henry Green to The American Brick and Tile Company, and that all statements with reference to said indebtedness in above claim are true and correct, as deponent is informed.

FREDERICK GREEN.

Sworn and subscribed to before me this
day of April, A. D. 1904.

IN CHANCERY OF NEW JERSEY.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendant.

CLAIM OF FREDERICK GREEN.

To William M. Davis, Esq., Receiver.

The undersigned hereby files his claim with you, against The American Brick and Tile Company, and represents as follows:

That The American Brick and Tile Company is indebted to Frederick Green, in the sum of thirty-eight hundred dollars, with interest from the maturity of the notes held by him, less the interest payments, endorsed on them, true and correct copies of which are as follows:

$400— EASTON, Pa. Aug. 15 1890

One month after date we promise to pay to the order of F. Green Four hundred Dollars at the Easton National Bank without defalcation for value received.

AMERICAN BRICK AND TILE CO.

Due..... per H. GREEN, *Presdt.*

.....

Endorsed as follows:
Oct. 31 1891 Recd. $28 in full of 14 mos. Int. to Oct. 15. 1891. F. GREEN
1898 Recd. Acct of Int. $25.
1900 Mch. 6th Recd. on acct. Int. on three Notes $400. $400. $300. the sum of $130.
Dec. 17. 1900 do do $50.

$400— EASTON, Pa. Oct. 13 1890
One month after date we promise to pay to the order of F. Green Four hundred Dollars at the Easton National Bank without defalcation for value received.
AMERICAN BRICK AND TILE CO.
Due..... per H. GREEN, *Presdt.*
.....

Endorsed as follows:
Dec. 31, 1891 Recd $28 Interest in full to Dec. 13, 1891.
Jan. 1. 1896 Acct. Int. $20.

$3000 EASTON May 28. 1891.
Six months after date The American Brick & Tile Company promises to pay to the order of H. Green Three Thousand dollars with interest without defalcation for value received.
THE AMERICAN BRICK AND TILE COMPANY
per H. GREEN, *Presdt.*

Endorsed as follows:
Pay to the order of Fred Green
H. Green
Nov. 27. 1891 Recd 6 mos Int..... $90—
Aug. 8 1896 " Acct. Int..... 50—
Mch. 6 1900 " Acct. Int..... 130—

Also in the sum of three hundred dollars, with interest from March 22, 1892, for money loaned by him, to The American Brick and Tile Company, on the last mentioned day, which sum the said Company promised to repay him, less the interest paid March 6, 1900, on

this loan, and on the above notes—that no part of the above principal sums has, at any time, been paid by the said, The American Brick and Tile Company, but they have paid interest on account, on all of said notes and sums, within the past six years, to wit, on the days and years above mentioned, and that there is no collateral of any kind, held by me, for said moneys loaned.

FRED GREEN.

STATE OF NEW JERSEY, }
COUNTY OF WARREN, }

Frederick Green, of full age, being duly sworn, on his oath, says, that he is the party above referred to, and that The American Brick and Tile Company is indebted to him in the sum of six thousand six hundred and fifty-five dollars ($6,655.00), upon the notes and loans above referred to, and that all the statements, in reference to indebtedness of said, The American Brick and Tile Company, to him, in above claim, are true, as deponent is informed.

FRED GREEN.

Sworn and subscribed to before me, this day of April, A. D. 1904.

In Chancery of New Jersey.

Between
The Easton National Bank,
Complainant,
and
The American Brick and Tile Company,
Defendant.

PROOF OF CLAIM OF HENRY A. POTTER.

State of New Jersey, } *ss.*
County of Essex. }

Henry A. Potter, being duly sworn, on his oath, says that he resides at East Orange, New Jersey. That The American Brick and Tile Company is indebted to him in the sum of $5,047.13, with interest from the twenty-seventh day of November, 1900, for money laid out by him in paying and satisfying a note of said corporation under the following circumstances.

On or about the eighteenth day of July, 1896, said corporation being obliged to raise the sum of $5,000 for the purpose, as this deponent is informed and believes, of satisfying a note of like amount then falling due, executed its note for $5,000 and applied to H. Green, H. A. Potter and H. A. Sage to endorse the same for accommodation, and to enable said corporation to discount the same, and deponent did so endorse the same for the accommodation of the maker, and said note was discounted by the Phillipsburg National Bank and the proceeds thereof paid to said maker, or its order; that said note was not paid at maturity, but was renewed from time to time until on or about the fifth day of July, 1900, the same was again renewed by a note of said corporation for $5,000, dated July 5, 1900, payable three months after date, a copy whereof is hereto attached and made a part thereof; that said last-mentioned note was endorsed by said H. Green, H. A. Potter and H. A.

Sage for the accommodation of said maker, and was discounted with said Phillipsburg National Bank and the proceeds thereof applied by said corporation to the renewal of the last preceding note; that said note of July 5, 1900, was not paid at maturity, but was protested for non-payment, and this deponent was thereafter obliged to pay, and on or about the twenty-seventh day of November, 1900, did pay the same, with interest amounting to $43.33 and protest fees amounting to $3.80, making in all the sum of $5,047.13 paid by this defendant.

Deponent further says that no part of said sum has ever been repaid to said deponent by said corporation, or by any person or persons for it; that there are no set-offs or counter-claims to the same, and that said corporation is now indebted to deponent in the sum of $5,047.13, with interest from the twenty-seventh day of November, 1900, amounting in all to the sum of $6,210.42.

H. A. POTTER.

Sworn and subscribed before me, this 13th day of October, 1904.

J. H. THAYOR MARTIN,
Master in Chancery of New Jersey.

$1.00 in
$5000. Rev. stamps PHILLIPSBURG, July 5, 1900.

Three months after date we promise to pay to the order of H. Green, H. A. Potter and H. A. Sage, Five Thousand Dollars, at the Phillipsburg National Bank, without defalcation, for value received.

AMERICAN BRICK AND TILE CO.
H. GREEN, *Prest.*

Credit the drawer
H. GREEN,
H. A. POTTER,
H. A. SAGE.

(Endorsed.)
H. GREEN,
H. A. POTTER,
H. A. SAGE.

In Chancery of New Jersey.

Between
The Easton National Bank,
Complainant,
and
The American Brick and Tile Company,
Defendant.
} On Bill, &c.

PROOF OF CLAIM OF E. P. WILBUR TRUST COMPANY.

State of Pennsylvania,
County of Northampton,
} *ss.*

Arnon P. Miller, being duly sworn according to law, on his oath says:

1. I am the Second Vice-President of the E. P. Wilbur Trust Company.

2. Heretofore, to wit, on the 20th day of April, 1889, the American Brick and Tile Company, the defendant above named, made its certain promissory note, a copy of which is hereto annexed, payable to the order of H. Green, for eight thousand dollars ($8,000), payable one month after the date thereof, and thereafter, and before the maturity of the said note, the said H. Green, the payee thereof as aforesaid, endorsed the same for value to the E. P. Wilbur Trust Company, whereby the said E. P. Wilbur Trust Company became the holder in due course thereof.

3. Heretofore, also, to wit, on the 27th day of April, 1889, the American Brick and Tile Company, defendant as aforesaid, made its certain other promissory note, a copy of which is hereto annexed, payable in one month after the date thereof to the order of H. Green, for forty-five hundred dollars, and thereafter, and before the maturity of the said note, the said H. Green, the

payee thereof as aforesaid, endorsed the same for value to the E. P. Wilbur Trust Company, whereby the said E. P. Wilbur Trust Company became the holder in due course thereof.

4. Neither the whole or any part thereof of the amount due upon the face of either of these notes has ever been paid by the said American Brick and Tile Company, or by any other person on its behalf, to the said E. P. Wilbur Trust Company, or to any other person to its use, but on the contrary both principal and interest on each of the said notes from the respective dates of maturity thereof remains due and payable to the said E. P. Wilbur Trust Company.

5. The E. P. Wilbur Trust Company therefore claims of the American Brick and Tile Company the sum of twelve thousand five hundred dollars ($12,500), principal of the said promissory notes, together with interest upon eight thousand dollars, parcel of the said twelve thousand five hundred dollars, from May 20th, 1899, to the day of the date hereof, amounting to twenty-five hundred seventy-three and thirty-three one-hundredths dollars ($2,573.33), and interest upon forty-five hundred dollars, other parcel of the said twelve thousand five hundred dollars, from May 27th, 1899, to the day of the date hereof, amounting to fourteen hundred forty-two and twenty-five one-hundredths dollars ($1,442.25).

6. There are no offsets or counter-claims whatever thereto.

ARNON P. MILLER.

Subscribed and sworn to before me, a notary public in and for Pennsylvania, this first day of October, 1904.

HARVEY M. UEBERROTH,

[L. S.] *Notary Public,*

My Commission Expires Jan. 19, 1907.

STATE OF PENNSYLVANIA, }
COUNTY OF NORTHAMPTON, } *ss.*

I, L. F. Giering, Prothonotary in and for the county of Northampton and Clerk of the Court of [L. S.] Common Pleas, do hereby certify that the said court is a court of record; that I have official cognizance of the fact that Harvey M. Ueberroth, Esq., before whom the foregoing was taken was, at the time of taking such, a notary public in and for said county, duly commissioned and qualified, and duly authorized and empowered to take and certify oaths and affirmations and the proof and acknowledgment of deeds by the laws of said State of Pennsylvania. And further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to the said acknowledgment is genuine. I further certify, that said instrument is executed and acknowledged in all respects according to the laws of the State of Pennsylvania. That his commission is dated January 19, 1903, and will expire January 19, 1907.

In testimony whereof, I have hereunto set my hand and affixed the seal of said office, at Easton, this first day of October, A. D. 1904.

L. F. GIERING, *Prothonotary.*
Per THOMAS A. L. HAY, *Deputy.*

$8,000. SOUTH BETHLEHEM, April 20, 1899.

One month after date we promise to pay to the order of H. Green, eight thousand dollars at the E. P. Wilbur Trust Company, South Bethlehem, Pa., without defalcation, for value received.

AMERICAN BRICK & TILE CO.
H. GREEN, *Presdt.*

Credit the drawer
H. GREEN.

(Endorsed) H. GREEN.
Protest waived April 30, 1899.

$4,500. SOUTH BETHLEHEM, PA., April 27, 1899.

One month after date we promise to pay to the order of H. Green, forty-five hundred dollars at the E. P. Wilbur Trust Company, without defalcation, for value received.

AMERICAN BRICK & TILE COMPANY.
H. GREEN, *Presdt.*

Credit the drawer
(Endorsed) H. GREEN.

Protest waived Apr. 27, 1899.

IN CHANCERY OF NEW JERSEY.

BETWEEN
EASTON NATIONAL BANK,
Complainant,
and
AMERICAN BRICK AND TILE COMPANY,
Defendant.
} On Bill for Receiver.

PROOF OF CLAIM OF LEHIGH NATIONAL BANK.

STATE OF PENNSYLVANIA,
COUNTY OF NORTHAMPTON. } *ss.*

Geo. A. Reed, of full age, being duly sworn according to law, on his oath says:

1. I am the cashier of the Lehigh Valley National Bank.

2. Heretofore, to wit, on the ninth day of July, 1900, the American Brick and Tile Company, the defendant above named, made its certain promissory note, a copy of which is hereto annexed, payable to the order of H. Green, for eight hundred dollars ($800.00), payable in two months after the date thereof, and thereafter and before the maturity of said note, the said H. Green, the

payee thereof as aforesaid, endorsed the same for value to the Lehigh Valley National Bank, whereby the said Lehigh Valley National Bank became the holder in due course thereof.

3. Thereafter, to wit, on the tenth day of September, 1900, the said note was duly presented for payment at the place for that purpose designated in the said note, but payment thereof was refused, and the said note was thereupon duly protested for such non-payment.

4. Neither the whole, or any part thereof, of the amount due upon the said note has ever been paid by the American Tile Company, or by any other person on its behalf, to the said Lehigh Valley National Bank, or to any other person for its use, but, on the contrary, both principal and interest on said note from date of maturity thereof remains due and payable to the said Lehigh Valley National Bank, together with the cost for protestation thereof.

5. The Lehigh Valley National Bank therefore claims of the American Brick and Tile Company the sum of eight hundred dollars ($800.00) principal of the said promissory note, together with interest thereon from September tenth, 1900, down to the day of the date hereof, amounting to two hundred dollars ($200); and also protest fees thereon amounting to two dollars and thirty-one cents ($2.31).

6. There are no off-sets or counterclaims whatsoever thereto.

GEO. A. REED.

Subscribed and sworn to before me, a Notary Public in and for the State of Pennsylvania, this 29th day of November, A. D. 1904.

R. W. LEIBERT,

[L. S.] *Notary Public.*

My commission expires Feb. 1, 1907.

(Internal Revenue
stamp, 16c.)

$800.00 BETHLEHEM, July 9, 1900.

Two months after date we promise to pay to the order of H. Green, Eight Hundred Dollars, at the Lehigh Valley National Bank, of Bethlehem, Pa., without defalcation, for value received.

AMERICAN BRICK AND TILE CO.

Credit the drawer H. Green. H. GREEN, *Presdt.*

(Endorsed) H. GREEN.

IN CHANCERY OF NEW JERSEY.

Between

THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendant.

PETITION.

The petition of Edward M. Paxson respectfully shows:

That your petitioner is the holder of fifteen hundred shares of stock of the American Brick and Tile Company, the defendant in the above-entitled cause; that the said corporation was adjudged insolvent by an order made in this honorable court on the 26th day of January, 1904; that on the 10th day of February, 1904, an order was made in this cause that the creditors of the American Brick and Tile Company present their respective claims to William M. Davis, who was appointed receiver of the said corporation in this cause, and make proof of the same under oath to the satisfaction of the said receiver; that pursuant to said order the following claims have been presented to the said receiver and allowed by him, namely: One by the Eas-

ton National Bank for $18,185.75, one by Henry Short for $2,000, one by Frederick Green, as executor of the estate of Henry Green, deceased, for $22,947.88; a second by the said Frederick Green, as executor of the estate of Henry Green, deceased, for $30,100; one by Frederick Green, in his individual capacity, for $6,655; one by Henry A. Potter for $6,210.42, and one by the E. P. Wilbur Trust Company for $16,515.58.

Your petitioner, although a stockholder in said defendant corporation, had no notice of the said adjudication of insolvency, or of the appointment of the said receiver, or of the order for the presentation of claims, or of the presentation or allowance of the said claims until the service of the rule to show cause why an assessment should not be made against the stockholders made in this cause on the petition of the said receiver and served on or about the 12th day of July, 1904.

Your petitioner is aggrieved by the proceedings and determination of the said receiver in the allowance of the said several claims, and hereby appeals to this honorable Court from the allowance of the said claims and each of them.

Respectfully submitted,

EDWARD M. PAXSON.

TESTIMONY.

Transcript of stenographer's notes of evidence, taken in the above-entitled cause before his Honor, James J. Bergen, Vice-Chancellor, at the Chancery Chambers, Trenton, N. J., October 13th, 1904, at 10:30 A. M.

Appearances—Mr. George M. Shipman, for William M. Davis, receiver; Mr. W. S. Kirkpatrick, of the Northampton county, Pennsylvania, Bar, for the Easton National Bank, a creditor; Mr. R. V. Lindabury and Mr. Samuel Dickson, of the Pennsylvania Bar, for Edward M. Paxson and Charles A. Meyer and for E. P. Wilbur, individually, defendants; Mr. R. C. Stewart,

of the Northampton county Bar of Pennsylvania, for a creditor, Fred. Green, individually, and also as executor of the estate of Henry Green, deceased; Mr. W. H. Walters and Mr. E. J. Fox, of the Pennsylvania Bar, for the Easton Trust Company, and Mary B. Knight, executrix of Fletcher H. Knight, and Elizabeth Knight and Samuel Knight; Mr. J. H. T. Martin, for Henry A. Potter; Mr. James Buchanan, for the E. P. Wilbur Trust Company.

Mr. Lindabury—If the Court please, it seems to me that with these claims coming in and those already in the hands of the receiver not acted upon we, perhaps, would be embarrassed in this proceeding, and so, too, in regard to some doubts that have arisen in the minds of counsel, that a full inquiry of the claims presented could be made under this proceeding. My clients did not know of the appointment of the receiver until about the time the rule to show cause was made in this proceeding, and did not know, therefore, of the presentation and allowance of the claims, except as they were informed by the solicitor of the receiver in the cause.

The answers by Judge Paxson, and, in fact, all the answers filed challenge all these things. It is said that they were outlawed, and presented too late, and other defenses set up, such as a want of authority on the part of the corporation to contract some of the debts or claims. Well, those are questions that go to the validity of the claims altogether, and while it may be, and I am inclined to think it is, true that parties against whom this assessment is asked would have the right to challenge those claims in this proceeding, and to deny their validity for any purpose, yet I think it would be more in accordance with the practice of this Court, if they should appeal from the allowance of the claims by the receiver, inasmuch as the appeal is to this Court, and the appeals would naturally be heard by the same Judge who hears this cause, it seems to me that in the interests of safety it would be well to apply now for leave to take the appeals, and then they could be in-

stantly brought on and tried so that there would not be any delay. Or, if your Honor cannot hear them now, then that we should have a day fixed where the formal trial of the appeals could be had. And I suggest that it would be a saving of our time if they were immediately brought on and tried, along with the other proceedings in this cause, so that whatever testimony may be put in should be applicable to the testing of these claims, and be so applied and they could be adjudicated as well, on the appeal itself, as on this proceeding, and in that way we would have a final and satisfactory finding of what, if anything, is owing by these creditors, and also whether these people are liable for the assessment or not. What have you to say about that, Mr. Shipman?

Mr. Shipman—As I understand it, the appeal should be taken before this; the time has elapsed; has gone. You ought to appeal within a certain time, under the statute, which time, I think, is three months. Notices were sent to all the creditors, and the notice was printed according to the rules of the Court and published in two newspapers—one in the State of Pennsylvania and one in New Jersey. The rule required claimants to file their claims within certain time, and a notice was sent to each and all the creditors. Now, of course, the receiver took the claims and acted upon them, and has come here to this Court to ask for the money to pay them with. One answer I have read this morning; that was the answer of Col. Potter. It does not attack any claim, as far as I can see. I do not know what the answer of Judge Paxson attacks—

Mr. Lindabury—It attacks all the claims.

Mr. Shipman—Well, it may be within the discretion of your Honor to allow an appeal. I am not sure that it is. But, of course, the receiver is an officer of this Court, and if your Honor thinks these matters should be looked into and the claim proved, then we are ready to go on and do it. The creditors are here ready to prove their claims, but we did not feel that these gen-

tlemen have any right to come here and attack these claims at this time; it is too late, but the matter is in the hands of your Honor, as far as that is concerned, and we do not care and would rather not have the day go by; that is, lose the day. The creditors are here with their claims, and, as I understand, ready to go on and prove them.

Court—When you undertake to penalize people, as you do here, then they are entitled to be heard, and, if there is any statute in the way of it, we would have to find some other way to give them a chance to be heard.

Mr. Shipman—Do I understand that this matter is an attack against all the claims?

Court—The only matter we are now considering is the question—assuming that these defendants, or the persons you seek to assess, have appealed from the determination of the receiver, as to the allowance of claims—let us settle that first. I want to know first what claims there are. Some of these claims may not be objected to, but I don't know how that is.

Mr. Shipman—This objection sets out the claims of the Wilbur Trust Company as $12,500. That claim has not been proved yet. There are other creditors here who will prove their claims. Now, if your Honor thinks well to take that matter into consideration, we had better go on with that—

Court—I think it would be well to let the whole matter be heard now, but if you should require these people to file their appeals in the regular way I shall have to give them time to do so.

Mr. Shipman—We do not want to insist upon that.

Court—You may go on, then, and prove the claims.

Henry G. Siegfried, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Kirkpatrick.

Q. You are cashier of the Easton National Bank?

A. Yes, sir.

Q. How long have you held that position?

A. Since last April, a year ago.

Q. Prior to that time who was cashier of that bank?

A. Mr. Hackett.

Q. And he was the cashier for how many years?

A. I cannot tell exactly; I should suppose twenty—twenty some odd years.

Q. Upwards of twenty years?

A. Yes, sir; upwards of twenty years.

Q. Look at the three notes I now show you and say whether they are the last renewals of the series of notes of the American Brick and Tile Company?

Mr. Lindabury—I object to the question; that is not the way to prove that, if they are renewals of a series of notes.

Mr. Kirkpatrick—We will withdraw the witness then and require you to take the appeal in the formal way, unless you give us an opportunity to supply the truth that may be requisite.

Court—I said that you could do so; you may go on.

Mr. Lindabury—I do not want him to swear that this is the last series of renewals, because he does not know that, unless some one has told him that, and he may be mistaken about it.

Mr. Kirkpatrick—I suppose that objection is well taken. Question withdrawn.

Q. Are these the notes upon which the claim before the receiver were filed?

A. Yes, sir.

Q. They were the notes that were in the possession of the bank at the time they were handed to the attorney for collection?

A. These were the notes; yes, sir.

Q. And they were entered upon the books of the bank, and the transactions leading up to them appear on the books of the bank?

A. Yes, sir.

Q. These books are not here?

A. No, sir.

Q. State whether or not you had any notice or objection or opposition made to the claim prior to this time?

Mr. Lindabury—I object to the question—it makes no difference whether he had notice or not, so far as the validity of the claim goes.

Mr. Kirkpatrick—I understand that, and the books are not here. Question withdrawn.

Q. These are the notes upon which the claim was filed?

A. Yes, sir; these are the notes upon which the claim was filed.

Mr. Kirkpatrick—I offer these notes in evidence, as follows:

Note dated July 13th, 1900, $5,000. Marked *Exhibit C 1.*

Note dated July 10th, 1900, $6,000. Marked *Exhibit C 2.*

Note dated August 2d, 1900, $9,200. Marked *Exhibit C 3.*

Court:

Q. To whose credit did the proceeds of these notes go?

A. To the American Brick and Tile Company.

Q. What is the meaning of that printing and writing there, which says: "To the credit of H. Green"?

A. I don't know anything about the writing on these notes to the credit of H. Green.

Mr. Kirkpatrick—Credit the drawer.

A. "Credit the drawer"—he became the endorser of the note, showing that they were accommodation notes of the American Brick and Tile Co., endorsed by H. Green.

Cross-examination by Mr. Lindabury.

Q. Were these notes discounted at this time, at any time, these particular notes—were they discounted?

A. Yes, sir.

Q. When?

A. At the time of the date of the notes.

Q. At their date?

A. Yes, sir.

Q. Who presented them for discount, do you know?

A. No, sir; I do not know who presented them for discount.

Q. You were there, I understand?

A. Yes, sir.

Q. And you have no knowledge of the transaction, then, yourself?

A. No, sir; not of that particular transaction.

Q. How are you able to say they were discounted then?

A. Because they were in the possession of the bank, and show on our books, and, as an official of the bank, I would see on our books the record of their being placed on the credit.

Q. If they were placed to the credit of the American Brick and Tile Co., they were so placed at the time of the discount of the notes, were they not?

A. Yes, sir.

Q. Was any money paid at that time to the American Brick and Tile Co., or by the American Brick and Tile Co. to the bank?

A. Not to my knowledge.

Q. Were other notes on the American Brick and Tile Company paid out of the discount?

A. What notes do you mean?

Q. Well, something has been said about these perhaps being renewals; do you know whether at this time the American Brick and Tile Company had any other notes in the bank which were paid out of the discount of these notes?

A. I think they were; I am unable to say because these notes were renewals; that is, renewed from time to time.

Q. I am not asking you whether they were renewals

from time to time or not, beyond your own knowledge, and I only ask you whether or not, at this time, when you were there, notes of the American Brick and Tile Company were presented and paid out of the proceeds of the discount of these notes, whether there were notes of the American Brick and Tile Company presented and paid out of the proceeds of the discount of these notes; do you know or not?

A. Yes, sir; other notes were charged up.

Q. Had they been held previously by the bank or by outsiders?

A. By the bank.

Q. No money passed in the transaction at all?

A. No, sir.

Q. Now, had these notes that were then paid off been discounted during your incumbrancy—while you were cashier of the bank?

A. No, sir; not while I was cashier.

Q. How long have you been in the bank?

A. Twenty-four years.

Q. What was your position before you become cashier?

A. Teller.

Q. How long were you teller?

A. Eight years.

Q. As such, did you have anything to do with the discount of the notes?

A. Not except in the absence of the cashier.

Q. Or anything to do with the presentation or protest or payment of the notes?

A. I looked after the protesting of the notes.

Q. Had you had anything to do with the renewal of the notes of which you said these were the end of the series?

A. No, sir.

Q. Nothing personally?

A. No, sir.

Re-direct by Mr. Kirkpatrick:

Q. You stated that these notes were discounted in renewal of other notes?

A. Yes, sir.

Q. At that time was the discount paid?

Mr. Lindabury—I object to the question; he said there was not, and you go ahead and tell him there was; that is not proper examination.

Mr. Kirkpatrick—He said no money was paid.

Witness—No money was paid, but the transaction was the renewal of former notes.

Court:

Q. I understand the witness said that these notes were discounted and the money credited to the company; is not that so?

A. Yes, sir. The discount would be paid by charging it up in the account.

Mr. Lindabury—I object to this. What would naturally happen is not always the fact. If the witness had a recollection of the particular fact, I would not have any objection, but he is arguing on what would naturally happen, and you are trying to tell him what did happen.

Mr. Kirkpatrick:

Q. I am asking him now, what arrangement was made about the discount—

Mr. Lindabury:

Q. Well, do you have any recollection—do you recollect what, if anything, was done about the discount of these last notes?

A. I cannot say positively about these notes, nor have I any recollection of these notes. When I spoke before I only told you what the custom of the bank was, in doing business of this kind.

Mr. Lindabury—That is what I inferred.

A. Yes, sir; that is all I can tell you.

Mr. Kirkpatrick—I infer from the course of the examination of this witness, that full technical proof will be required for these claims. Inasmuch as we have only received the notice of the appeal from these claims this morning, and as we are without the books of the bank, and without the memoranda necessary to go fully into this examination, and as I desire to offer further and more complete evidence upon this subject at a future time, I shall have to ask your Honor for more time to produce evidence on this claim.

Court—If you desire further time, I shall give you full opportunity to put in your evidence.

Mr. Kirkpatrick—Very well, your Honor. I will retain the notes, and as I have no further proof to offer at the present time on this branch of the case, we will try some other branch.

Court—Very well, take up the next subject.

Frederick Green, a witness produced in behalf of the claim of Fred. Green, individually, and as executor of H. Green, being duly sworn according to law, on his oath saith:

Examined by Mr. R. C. Stewart:

Q. You reside in Easton?

A. Yes, sir.

Q. What connection had you with this corporation, the American Brick and Tile Company?

A. I was secretary and treasurer.

Q. For what period of time?

A. From the beginning, 1886, I think it was.

Q. Down until the time of the appointment of the receiver?

A. Yes, sir.

Q. What books have you there?

A. Cash book of the American Brick and Tile Company.

Q. What books had you in your possession, prior to the appointment of receiver?

A. I had all the books of the company, all the papers of the company, the cash book, day book, ledger and the record book.

Q. Is that what you call the minute book?

A. Yes, sir; that is what I call the minute book.

Q. Now, what book contains the account of the company with Henry Green?

A. The cash book.

Q. I wish you would turn to your cash book, under date of August 14th, 1886, and see what entries you find there with reference to the transactions with Henry Green?

A. August 14th, 1886, there was a loan to the company of $500.

Q. Under date of October 23d, of the same year, what do you find?

A. A loan to the company of $250, by Henry Green.

Q. Under the date of November 13th of the same year, what have you?

A. November 13th, 1886, a loan of $1,000 to the company by Henry Green.

Mr. Lindabury—What was the date of the organization of this company?

Mr. Stewart—It was organized on the 30th of March, 1886.

Q. Now, go into 1887, March 12th, what do you find there?

A. Another loan by H. Green to the company of $500.

Q. Now, turn to April 4th, 1887, what do you find there?

A. Well, there, there was a payment by Henry Green to the company of $2,000.

Mr. Lindabury:

Q. What is the entry?

A. "To cash received from H. Green, $2,000."

Q. Is not the entry of the same character as the other

entries—you speak of some as loans—that is the reason I ask you?

A. The word "Loan" appears in some of the entries, and it is not so in this entry.

Court:

Q. What is the entry?

A. "To cash received from H. Green, $2,000."

Mr. Stewart:

Q. In order that there may be no misunderstanding, does the book read as the stenographer has just read it?

A. Yes, sir.

Mr. Lindabury—I do not object to his recollection; of course he is entitled to characterize the transaction according to his memory, but I do not want him to do it in such a way that we cannot tell whether he is doing that or giving what is written on the book.

Mr. Stewart—He is giving it as written on the book.

Q. Now, take the 18th of April, 1887, what have you there?

A. "To cash received from H. Green, $700."

Q. Now turn to May 12th, 1887, what have you there?

A. "To cash received from H. Green, $2,000."

Q. Now, June 14th, 1887, what have you there?

A. "To cash received from H. Green, $550."

Mr. Lindabury—We have a copy of that, and I think we can save all of our time—how does it total up at the end?

Mr. Stewart—There was $46,277, the money advanced by Judge Green from August 14th, 1886, down to the 7th of March, 1900.

Mr. Lindabury—That does not agree with our figures. How much have you down for January 11th, 1898; that is where our total comes down to.

Mr. Stewart—I am giving you the cash items and then comes the other items—

Mr. Lindabury—What are your totals of cash?

Mr. Stewart—$46,277—is yours any more than that?

Mr. Lindabury—Our statement shows that they stop at January 11th, 1898, and they amount to—

Mr. Stewart—Our total claims amount to $50,618.10, less the sum of $27,670.22.

Mr. Lindabury—What have you after January 11th, 1898—

Mr. Stewart:

Q. Turn to the year 1898 and take April 2d of that year—what do you find there?

A. Have you March 28th there?

Q. Begin in January, 1898?

A. "To cash from H. Green, January 4th, loan, $200." On the 10th of January, "To cash from H. Green, loan, $200."

Mr. Lindabury:

Q. Do I understand that some of these entries are for loans, and some entered as cash advanced?

A. Some in the early years of the company were entered just as "cash." And all these subsequent entries were "loans," and the word "loan" appears in this first item of January 4th, "cash from H. Green, $200."

Mr. Stewart:

Q. Now, go on?

A. There is an entry here of January 11th, 1898. "Paid note, Chestnut Street Bank, $1,100." Same date, "Cash received from H. Green, paid Wilson note, $400."

Mr. Lindabury—That makes $1,500. Now, there I stop. You must have something more to make up the two or three thousand dollars that you have more than I have.

Witness—Yes; there is more than that.

Mr. Stewart:

Q. Give us those items?

A. "March 6th, 1900, cash received from H. Green, loan, $100."

Mr. Lindabury—You need not have the witness go all through the book. With regard to any of the items before the one of January 11th. The two or three thousand dollars you have before that, you can prove that in your own way.

Mr. Stewart:

Q. Now, take April 7th, 1898, what have you there?

A. That $200 item I cannot find it on the cash book or the check book stubs of the Easton National Bank. But the company had an account with the Phillipsburg National Bank, of New Jersey. I cannot say whether it is there or not; I have not got that book with me.

Q. Well, take the one of July 11th, 1898?

A. In the stub of the check book there is this item: "Deposit July 11th, 1898, loan, H. Green, $300."

Court—Why were not these items put in your cash book?

A. I never completed the entries in the book—that was all.

Mr. Stewart:

Q. You are reading now off of the check book of the American Brick and Tile Company?

A. Yes, sir.

Q. Were you not there and did you not enter your cash items when the money was paid to you?

A. No, sir; they were all entered in here whenever I had leisure.

Q. Now, August 8th, is the next entry?

A. On the check book appears this entry, "August 8th, loan, H. Green, $200."

Q. Now, September 23d?

A. "September 23d, loan of H. Green, $200."

Q. Now, December 1st of the same year, what have you there?

A. "December 1st, loan of H. Green, $300."

Q. Now, December 30th, what have you there?

A. "Deposit, December 30th, loan, H. Green, $300."

Q. Now, March 2d, 1899, what have you there?

A. "March 2d, deposit, loan, H. Green, $300."

Q. And March 7th, 1899?

A. That is 1900. "Deposit, March 3rd, 1900, Loan H. Green, $100."

Q. The last twelve items that you have given, state whether or not they are all since 1898. I think perhaps in asking for some of the items I did not include the year in question?

A. These items are all since 1898, but they are not all of the items. Some of them are omitted. I find here one of October 21st, 1898, for $200, which is not on that statement. And there are some others also.

Mr. Lindabury:

Q. You have given them consecutively, or undertaken to give them consecutively, as I understand you?

A. Yes, sir.

It is admitted that in the claim presented on behalf of Judge Green's estate to the Receiver, the items begin with the item of August 14th, 1886, for $500, down to the item of January 11th, 1898, $1,500, are correctly copied from the cash book, which the witness has produced, and need not therefore be further verified in that respect.

Mr. Stewart:

Q. Have you any personal knowledge as to these moneys which are entered upon the cash book, to which the admission just entered refers to; have you any personal knowledge as to where the money went?

Mr. Lindabury—Do you mean has he any personal knowledge—

Mr. Stewart—Yes, as an officer of the company.

A. My father gave me checks for each one of these amounts, and I deposited them to the credit of the company in the Easton National Bank or in the Phillipsburg National Bank.

Mr. Stewart:

Q. And with reference to these items that are contained in the Receiver's claim filed in this cause, from the 11th of January on down, as we have just given them to the Stenographer, including the items September 17th, 1887, for a lot, and December 1st, 1886, "net proceeds of moulding sand"—were those items gathered into the Company's treasury?

A. All of them.

Q. As secretary and treasurer of the company—were you treasurer also?

A. Yes, sir.

Q. As secretary and treasurer of the company, you testify to the correctness of all these items presented to the Receiver?

A. Yes, sir.

Q. State what credit your company concedes as against the claim of the executor of Judge Green?

A. We concede what is shown on the claim presented to the Receiver.

Court:

Q. What is the amount of it?

Mr. Stewart—$27,670.22.

Mr. Stewart:

Q. Is that the correct amount?

A. That is the correct amount.

Mr. Stewart—I will state for the information of the Court that we filed another claim with

the Receiver, setting out that Judge Green was liable upon various notes as endorser. For instance, he was liable as endorser upon the notes held by the Easton National Bank; he is liable as endorser upon the notes held by the Wilbur Trust Company, that Mr. Lindabury represents.

Mr. Lindabury—No, I do not represent the Wilbur Trust Company. I understand Mr. Buchanan represents that company.

Mr. Stewart—He is also liable upon the notes held by the Lehigh Valley National Bank.

Court—That make up that claim of $30,000, does it not?

Mr. Stewart—Yes, sir. Then the liability for the $30,000 is contingent?—

Mr. Lindabury—Upon their paying—but they haven't paid it all. How can you claim it in that way?

Mr. Stewart—The endorsement imports the liability.

Court—I don't want any misunderstandings about this. This $30,000 claim is based upon the contingent liability of an insolvent estate, for endorsements on notes, held by the Wilbur Trust Company, and others, who have also proved their claims.

Mr. Stewart—Yes, sir; I suppose they will prove their claims.

Court—I suppose we may consider them in for the purposes of this cause?

Mr. Stewart:

Q. Are you familiar with the promissory notes that have been issued by the American Brick and Tile Company?

A. Yes, sir.

Q. Have you any record of a promissory note dated July 10th, 1900, drawn by the American Brick and Tile Company?

A. We had a note-book containing notes payable and notes receivable. I have not got that book with me. That has a record of all the notes of the company.

Q. Look at *Exhibit C 2*, what is that (handing witness note)?

A. It is a note of the American Brick and Tile Company for $6,000, dated July 10th, 1900, payable to the Warren National Bank.

Q. Who is it endorsed by?

A. It is endorsed by H. Green.

Q. That is a certificate—what is it you have in your hand?

A. A certificate of protest on the same note on the 10th of October, 1900, by John S. Noble, Notary Public.

Q. Look at *Exhibit C 1*, what is that?

A. That is a promissory note of the American Brick and Tile Company, dated July 30th, 1900, payable one month after date, to the order of H. Green, and endorsed "H. Green."

Mr. Lindabury—I admit that the three Exhibits produced in behalf of the Easton National Bank, are signed in the handwriting of H. Green, who at the time he signed them was president of the American Brick and Tile Company, and that they are payable to his order, and endorsed by him in his handwriting.

Mr. Stewart—Why not put it this way. It is admitted they are signed by the American Brick and Tile Company, "H. Green, president, credit drawer H. Green," and endorsed by "H. Green."

Mr. Lindabury—I deny that they are signed by the American Brick and Tile Company, and I deny that such is the signature of the American Brick and Tile Company, or that the American Brick and Tile Company is bound by it. But I will admit the fact that Henry Green signed that in his own handwriting, that it is his

handwriting, and that it has his handwriting on the back of the note.

Mr. Stewart—That it is endorsed by him. You admit that the notes offered and marked as *C 1, C 2* and *C 3* were endorsed by Henry Green and that when due they were properly protested—do you admit that?

Mr. Lindabury—No, I do not. I admit that Henry Green's name is written on the back of the notes, in his own handwriting. You can call it endorsement or whatever you please. And the protest is shown by the certificate; it is not necessary to admit that.

Mr. Stewart—I offer the Exhibits heretofore marked *C 1, C 2 and C 3* in evidence in behalf of the claim of the estate of Judge Henry Green.

Mr. Martin—It appears to me that these claims ought not to be proved twice, as with the possible exception that the notes that are included in this claim of the estate of Henry Green are all proved, and while there is undoubtedly a contingent liability of the estate of Henry Green, that liability cannot be proved in this Court, and entitled to a dividend on the same notes which are already before the Receiver, as proved in behalf of the Easton National Bank, there certainly cannot be double dividends on these notes.

Court—If the Easton National Bank and the E. P. Wilbur Trust Company take what there is there would not be much dividend going to Judge Green's estate towards the $30,100 to be turned over by him to the other people who have already proved their claims. I do not see what you gain by it.

Mr. Stewart—Suppose that the Easton National Bank should withdraw their claims before your Honor, or before the Receiver, and would make the estate of Henry Green upon

the settlement of that estate pay these notes in full—

Court—Do you think they would have a right to do that—to pay their claim in full and hold you for these notes after they were protested?

Mr. Stewart—I do not see why they could not.

Court—Well, in most cases the men primarily liable would have to pay, at least in most of the States that is usual. I do not know what they do in Pennsylvania.

Mr. Stewart—I think it is proper that these claims should be put in.

Court—Go ahead, then; you may put them in.

Mr. Stewart:

Q. Are there any records of endorsements of any other paper of the company by Henry Green?

A. Yes, sir; he has endorsed other notes of the company, discounted at the E. P. Wilbur Trust Company, at South Bethlehem.

Court—How do you make up the $18,185 claim outside of the notes you have already proved? To make up your $18,185 of the Easton National Bank claim you have the notes of $5,000, $9,200 and $600, making the $14,800 altogether. Now, what is the balance composed of?

A. The balance is the interest.

Mr. Kirkpatrick—The Easton National Bank's claim is made up of three notes and interest calculated from the date of the maturity of the notes.

Court—What is the amount of interest?

Mr. Kirkpatrick—It is composed of several items but it makes up a difference between the

sum of the principal of the notes you have there and the full amount of the claim of $18,-185 up to the date of the filing of this claim, and in addition to that, there is an overdraft which we have not attempted to prove, because we have not the books here.

Court—The difference between the $18,185 and the $14,800, the proof of the three notes, is the interest and the over-draft you mentioned amounting to $198.91.

Mr. Kirkpatrick—Yes, sir; that is it.

Mr. Stewart:

Q. Do you know what notes of your company were endorsed by Judge Green?

A. Well, I know certain notes that were endorsed, but I cannot give you the amount without looking at some memoranda on the books of the company.

Q. Well, look at that?

A. It would have to be the note-book, which I haven't got here.

Mr. Stewart—We shall have to wait until we get the notes or get the memoranda.

Q. Are you the holder of certain notes of the American Brick and Tile Company?

A. Yes, sir.

Q. Just produce them, please.

Witness produces three notes.

Mr. Stewart—I offer these three notes in evidence, one dated May 28th, 1891, for $3,000. Marked *Exhibit G 1.* Another dated October 13th, 1890, for $400. Marked *Exhibit G 2.* Another dated August 15th, 1890, for $400. Marked *Exhibit G 3.*

Mr. Stewart—This is the claim of Frederick Green, the amount of which is $6,655.

Court—What is the claim based on; give me the amounts of the notes.

A. They are three promissory notes. One dated Easton, May 28th, 1891, $3,000; another dated October 13th, 1890, $400; another dated August 15th, 1890, $400.

Court:

Q. Is that all?

A. No, sir; there is another loan. On the 22d of March, 1892, I loaned the company $300. I have a check to show for it.

Mr. Stewart:

Q. Is there any interest paid on that?

A. Yes, sir; there is interest been paid on the notes.

Q. Are these the four claims upon which the $6,655 is based?

A. Yes, sir.

Q. And the difference between the $4,100 and the $6,655 is interest?

A. Yes, sir.

Q. From what time did you calculate the interest?

Mr. Stewart—There are some credits allowed on the notes.

Court—He has not testified to them.

Mr. Stewart:

Q. Taking the note of May 28th, marked *Exhibit G 1*?

A. On November 27th, 1891, I received six months' interest, $90. On August 8th, 1896, on account of interest, $50. March 6th, on account of interest, $130.

Q. Taking *Exhibit* marked *G 2?*

A. December 31st, 1891, $28, interest in full to December 13th, 1891. June 1st, 1896, on account of interest, $20. On March 6th, 1900, received on account of interest on three notes, $400, $400 and $300, the sum of $130.

Q. That is on the note of October 13th?

A. Yes, sir.

Q. And also on the note of August 13th?

A. Yes, sir.

Q. Now, on *Exhibit G 3,* that is the last note, what are the endorsement?

A. It is dated August 15th, 1890. There is an endorsement "October 31st, 1891, receiver, $28, in full of fourteen months' interest to October 15th, 1891; 1898, received on account of interest, $25.00; 1900, March 6th, received on account of interest on three notes, $400, $400 and $300, the sum of $130; December 17th, 1900, ditto, $50."

Q. In whose handwriting are these notes?

A. I wrote that on there.

Q. But the signature I am speaking of—who are they signed by?

A. They are signed by my father, "American Brick and Tile Company, per H. Green, President."

Q. Does that appear on each of the notes?

A. Yes, sir; on all the notes.

Cross-examination, by Mr. Lindabury:

Q. Mr. Green, how old are you?

A. Forty-five.

Q. You were the secretary and also the treasurer of this company from the beginning, were you not?

A. Yes, sir; from March or April, 1886.

Q. Who was the most active in its organization, do you remember?

A. Well, I suppose my father was.

Q. Where was it organized—that is it, what happened or took place, or where was the organization effected, at Phillipsburg or Easton?

A. I cannot tell you that.

Q. Well, you had a part in it also, and were present aiding your father and helping in the organization, were you not?

A. No, sir; not at all.

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Q. What were you doing at the time it was organized?

A. Well, that is pretty far back; I cannot tell you.

Q. Were you in some other business?

A. I was practising law.

Q. After you became secretary and treasurer of this company, after its organization, did you devote yourself to its affairs?

A. I was secretary and treasurer, and I took charge of the money.

Q. That does not quite answer the question, unless you mean that is all you did?

A. That is all I did.

Q. Who was the active manager of the company?

A. At the start N. P. Canfield was the superintendent.

Q. He was the former owner of the patented processes, which the company employed, was he not?

Mr. Stewart—I object to that as immaterial, and not cross-examination.

Court—This man is trying to justify his claim and I think it is proper cross-examination. I will take it.

A. Well, I supposed he was the owner of the patents, but personally I do not know it.

Mr. Lindabury:

Q. Well, the company got an assignment of patents from him, didn't they?

A. Not to my knowledge; I don't know what they got.

Q. You don't know anything at all about it?

A. No, sir; I had nothing to do with it.

Q. Didn't you have the papers of the company?

A. I had them in a box; various papers of the company.

Q. Don't you know, as a matter of fact, that the company got an assignment from him, and from others; that is, a paper assignment of the patents?

Mr. Shipman—I object to this as not cross-examination, and as an attempt to prove the contents of a paper, when the paper would be the best evidence.

Court—I suppose you cannot prove the contents of a paper in that way.

Question withdrawn.

Mr. Lindabury:

Q. Have you that paper here?

A. I haven't any papers of the company at all. I passed them all over to the receiver.

Q. When was it you got this first note from your father?

A. Well, if you will let me have it, I can tell you by the date.

Q. August 15th, 1890; is that the first one?

A. That is the date of it?

Q. Yes.

A. That was the day I loaned them the money.

Q. The $400?

A. Yes, sir; the $400.

Q. And the next loan you made was in October, 1900, following?

A. If that is the date.

Q. Another $400?

A. Yes, sir.

Q. Were these loans for the use of the company, as you understood?

A. Yes, sir; they got the money.

Q. Who got the money?

A. The company.

Q. How did they get the money?

A. I drew my check to the order of myself as treasurer of the company, and deposited them to the company's account in the bank.

Q. And in 1891 you got another note for $3,000?

A. Yes, sir; for $3,000.

Q. And was that for a loan also?

A. Yes, sir; for a loan to the company.

Q. And how did the company get that money?

A. My check deposited to the account of the company.

Q. And then, in 1892, you seem to have given yourself as treasurer, a check for $300?

A. Yes, sir.

Q. That does not seem to have been through the bank, does it?

A. Oh, yes, it does.

Q. Did it go through the bank?

A. Yes, sir; and was cancelled.

Q. And the company got the money?

A. Yes, sir; the company got the money.

Q. Well, you never got any interest at all, apparently, on the $300 check?

A. Yes, sir; I received a payment on account of interest at different times.

Q. When—why didn't you endorse them on the check or memoranda check, I will call it?

A. Well, I have an explanation of it.

Q. Well, is it too long or for some private reasons you don't want to give it; I won't press you for it?

A. Not at all, I have it in my pocket.

Q. When did you write it out?

A. If you will look at it you will understand it.

Witness hands paper to counsel.

Q. The explanation is in the shape of a note from the company to you for the amount of that check, bearing the same date, is it not?

A. Do you read it that way—that is what I did at first.

Q. Well, I thought so—did you write it?

A. Yes, sir.

Q. And you were a little chary about producing it because you wrote it for $3.00 instead of $300; is that it?

A. Well, I thought it was no use producing it.

Q. Your father signed it—did you write it?

A. Yes, sir.

Q. And the same date you wrote the check?

A. Yes, sir.

Q. And by an error you made it for $3.00 instead of $300?

A. Yes, sir.

Q. Three dollars in the written part, but $300 in the margin?

A. Yes, sir.

Q. You did endorse the payment of interest on the back of that, did you?

A. Yes, sir.

Q. The first payment of interest on that note is dated in 1895; that is the first time you got any interest on that note, is it?

A. If that is the date?

Q. Yes; that is the date?

A. That is the first time then.

Q. The $3,000 note you seem to have got the first payment in 1891, on that?

A. Yes, sir.

Q. And the next note in 1896?

A. Yes, sir.

Q. And no more until 1900?

A. No, sir.

Q. And you got one payment of $130?

A. Yes, sir.

Q. How did you get that payment of March 6th, 1900, of $130?

A. Well, what do you mean by "how did you get that payment"?

Q. Well, how did you get the payment?

A. By check of the company's.

Q. Where is that check?

A. Well, Mr. Davis has got it.

Mr. Lindabury—Have you got it, Mr. Davis?

Mr. Davis—I don't have any of the checks with me.

Mr. Lindabury—I would like to have that

check by which the payments of the interest were made.

Q. When did the company cease business?

A. The works were destroyed by fire somewhere in 1898, or somewhere along there.

Q. Can you give the date?

A. No, sir; it was in 1898, as near as I can remember.

Q. Did you stop business before the works burned up or not?

A. Yes, sir; there was no business of any kind going on, quite a while before that.

Q. Well, how long before?

A. Well, if you will allow me to explain. There was business in this way; they were experimenting in enameled brick; they had a superintendent there in the mill or works, and they were making experimental enameled brick. That went on for probably a year or more, before the works were destroyed.

Q. Do you remember that the fire was—Mr. Dickson shows me a letter from you in which you state that the fire was on February 7th, 1897?

A. I wrote to Mr. Dickson at one time—did I give the date of the fire there?

Q. Yes; just about the middle of the page, there, you will find it (handing witness paper)?

A. Oh, yes, the 7th of February, 1897, that is the date.

Q. Well, you did no business after that, I take it?

A. No, sir; not any.

Q. Where were the works of the company?

A. They were right adjoining the town of Phillipsburgs, in Warren county.

Q. And consisted of a number of buildings, or one large building?

A. There was one large building and some brick kilns for burning brick.

Q. Altogether uninsured?

A. At that time they were uninsured.

Q. Well, uninsured at the time of the fire?

A. Yes, sir.

Q. So you got no insurance money?

A. No, sir, we got no insurance money.

Q. When did the company become insolvent?

A. I cannot tell you when it did become insolvent; I don't know how you will get at it.

Q. Well, you were a lawyer, when did its assets become less than its liabilities—at the time of the fire, before the fire, or at the fire?

A. Well, I think it is impossible to answer the question.

Mr. Stewart—I object to the question as immaterial, and as not cross-examination.

Court—I have looked at this cash book, and there does not appear to be any kind of a cash account kept. There are entries here in March and in January, and then nothing again until 1900. I understand that the interest was paid on these notes to validate these notes. Now, to do that, I think the books ought to show something of it.

Mr. Lindabury:

Q. Now, where did you get the money to pay yourself this interest on the notes?

A. The company had some money at that time in its treasury; they had sold a lot on which the works had been located for $2,500.

Q. When did they sell the lot for $2,500?

A. We got the money from the sale of the lot March 3rd, 1900, $2,500; that is in the book.

Q. It is entered on this claim of your father's estate as of the 17th of September, 1887, is it not?

A. My father sold this lot to the company and got a credit on his contribution to the company of $2,500, and that is the date of that entry.

Q. And the date of that sale was September 17th, 1887—well, then, when do you say they sold that lot again?

A. That lot was sold.

Q. In March?

A. It seems to be March 3rd, 1900; that was about the time, I think.

Q. Did you receive that money as treasurer of the company?

A. As treasurer I got the $2,500.

Q. Show me the entry of it in the cash book?

A. It is not entered in the cash book.

Court—Yes, it is in here.

Witness—Oh, yes, it is here, $2,500 (handing book to counsel).

Mr. Lindabury:

Q. Under date of March 3rd, 1900?

A. Yes, sir.

Q. Well, on the 6th of March, three days later, you borrowed one hundred dollars from your father, did you?

A. Yes, sir.

Q. What did you borrow that for?

A. Well, I suppose there were payments to be made; I don't know.

Q. Don't you remember what you borrowed it for?

A. No, sir.

Q. You did not borrow it to pay your own interest on the notes, to keep them alive, did you?

A. Well, there was a payment made to me at that time, when this lot was sold on March 7th.

Q. Well, you haven't entered on your cash book a single one of these payments to you in 1898,, have you?

A. Let me look at it. (Book handed to witness.)

Q. I cannot find any—you show the receipt of the $2,500 and the one hundred dollars from your father to you—now I ask you whether or not you entered on the other page the disbursement which you say the company made to you for interest?

A. Well, there does not seem to be anything after April 26th.

Q. Of what year?

A. Apparently 1899.

Q. Is there a payment of interest to you on April 26th, 1899?

A. Oh, no, sir, not a payment of interest.

Q. I asked you whether or not this cash book shows any payments of interest to you after the 1st of January, 1898?

A. No, sir; I do not see it.

Q. Now, the payments were made to you by check, were they not?

A. Yes, sir.

Q. Drawn by yourself?

A. Yes, sir.

Q. As treasurer?

A. Yes, sir.

Q. To your own order?

A. Yes, sir.

Q. That was the way it was done every time?

A. Yes, sir.

Q. And you haven't those checks here?

A. No, sir; I haven't any of them.

Q. But you have the company's stub check-book?

A. Yes, sir.

Q. Now, find the stub of the checks?

A. March 7th, 1900.

Q. Well, there is one of $260?

A. Yes, sir.

Q. On account of interest of loans?

A. Yes, sir.

Q. How did you divide that up?

A. Why, I endorsed on the one note $130 and on the other three notes $130.

Q. Now, of course, these checks were sent through the bank?

A. That one check, yes, sir.

Q. All the checks you drew in that way went through the bank, didn't they?

A. Do you mean to me personally?

Q. Yes, the interest checks?

A. Yes, sir.

Q. Can you produce them?

A. Mr. Davis, the receiver, has them.

Mr. Lindabury—Have you got those checks here, Mr. Davis?

Mr. Davis—I brought no checks with me; I only brought the stub check-book.

Mr. Lindabury:

Q. Did you speak to any of the directors about making the payments?

A. My father told me to take $260 on account of interest.

Q. And you did it under his direction, then?

A. Yes, sir.

Q. And not by any authority of the Board of Directors?

A. Well, the Board of Directors did not meet—

Q. Did not your father call the Board of Directors together?

A. No, sir.

Q. Did you as secretary ever call the Board of Directors together—did you ask them to meet, in other words?

A. I cannot recall that I did.

Q. Did you submit this matter of the paying of interest in 1898 to yourself on these notes to the Board of Directors at any time?

A. No, sir.

Q. Or get authority from the Board of Directors at any time to pay yourself the interest?

A. No, sir.

Q. So without any authority, except what you say your father gave you, you as treasurer of the company, drew these checks to you own order?

A. Yes, sir.

Q. And took the funds of the company?

A. Yes, sir.

Q. Did your father say why you should take the $260, rather than any other sum?

A. I think that is about all the treasury could pay on that day.

Court—That could not be. According to your check-book you paid your father $1,800 out of the $2,500.

Q. What did you pay your father the $1,800 for?

A. On account of loans he made to the company.

Q. That also was done without any authority from the Board of Directors, was it not?

A. Well, there was no meeting of the Board of Directors at that time, that I had any knowledge of.

Q. That brings me to this first claim to which you spoke—then a part of this $1,800 paid to your father on account of his loans, as you call them, was paid out of the $100 that he at the same time loaned to the company—is that right?

A. Well, no, I do not think that is so.

Q. You have entered on your account here a credit to your father for a loan of $100 under date of March 7th, 1900?

A. That is March 3rd, 1900.

Q. You have it on your memorandum here as of March 7th, 1900, $100.

A. Yes, sir; but he was paid the $1,800 on March 3rd, 1900.

Q. What was the $100 borrowed for?

A. Well, I suppose, for the use of the company, I seem to have gotten it.

Q. What was the $100 borrowed for—what did you pay out of that amount?

A. With the deposit of March 7th?

Q. Yes?

A. I paid the interest to myself and to the Lehigh Valley National Bank, $10.72.

Q. That is, you paid that $260 you paid to yourself

entirely out of the $100 your father loaned you—is that what you say?

A. It seems to be that way, yes, sir.

Q. Now, go to these credits on the claim of your father's estate—well, there is no credit on this claim of $22,000, presented by your father's estate, that bears date later than January 1st, 1898, except the $1,800, is there?

A. That is the last payment.

Q. I say, there is none after January 1st, 1898, but that, is there?

A. No, sir; that seems to be the last one.

Q. Now, then, I understand that that payment was made in this way—that the lot was sold for $2,500?

A. Yes, sir.

Q. What authority did your father have for selling that lot—were the Board of Directors called together?

A. Well, it seems to me that there was a meeting in my office.

Q. Of the directors?

A. Of my father and of Mr. Potter and myself.

Q. The three directors?

A. Yes, sir.

Q. Were any resolutions passed?

A. Yes, sir.

Q. Where are the minutes of the company; are they on the minute-book?

A. There is a memorandum of that meeting written out, yes, sir.

Q. And not on the minutes?

A. Not on the minute-book.

Q. On somewhere outside of it?

A. Well, it was in the minute-book, but it had never been copied out by me.

Mr. Lindabury—Have you that minute authorizing the sale of the lot?

Mr. Stewart—We will look for it.

Mr. Lindabury:

Q. Did that authorize the sale of the lot?

A. Yes, sir.

Q. Did the meeting take any action looking to the use of the proceeds?

A. I don't think it did.

Q. Did the meeting provide that your father should have $1,800 out of that sum?

A. Well, if you get the memorandum it will show you; I don't recollect that it did, no, sir.

Q. So, that without submitting the matter to the Board of Directors, your father told you to give him $1,800, and you did it?

A. Yes, sir.

Q. And that was the history of the transaction?

A. Yes, sir.

Q. It was not a payment of any particular loan or any transaction, but a payment of $1,800, so far as it would go on account of his loans?

A. Yes, sir, on account.

Recess.

Mr. Lindabury:

Q. Did you make the entries in the cash-book in favor of your father's estate that are embraced in the proof of claim, for these loans or cash payments?

A. Yes, sir; I made all the entries in the cash book.

Q. At the time of the loans or afterwards, as they were made, or did you write that up later from some memorandum?

A. I cannot say that I entered every loan on exactly the day the loan was made; no, sir, I cannot say that.

Q. Was it your practice to do it, or was it your practice to write that up at odd times, when they got behind, do you remember?

A. I think the practice was to make the entries in the check book and then I would enter from there, into the

cash book, maybe the same day or several days afterwards, and it may have been longer than that.

Q. Were the checks drawn by you?

A. Yes, sir.

Q. Universally?

A. I should say that all the checks were drawn by me.

Q. And were signed by your father?

A. No, sir; I signed all the checks.

Q. I am speaking now of advances made by your father to the company?

A. On his checks?

Q. Those were his checks?

A. They were his checks.

Q. And signed by him?

A. Oh, yes, sir.

Q. And did you write those up from the stub check book into the cash book?

A. No, sir.

Q. From what did you make the entry in your cash book?

A. As I said before, from the check book of the American Brick and Tile Company.

Q. How did they get on that check book?

A. I made the entries on the stubs of their check book.

Q. As you deposited the checks?

A. I think always; yes, sir.

Q. That was the practice when you got a check from your father, the first entry you made was on the stub of the company's check book?

A. Yes, sir.

Q. And from there, as a kind of posting, you carried it into the cash book?

A. Yes, sir; I entered it from there into the cash book at different times.

Court:

Q. I don't understand that they were all entered in the cash book?

A. Oh, yes, sir; they were all entered in the cash book.

Mr. Stewart—Every one of Judge Green's advances were entered in the cash book.

Cross-examination, by Mr. Martin:

Mr. Martin—This is not in the nature of a cross-examination, but I think it would save a little time if I ask a few questions in regard to Col. Potter's claim.

Court—All right, you may do so.

Mr. Martin:

Q. Do you know, as an officer of the American Brick and Tile Company, anything about the note which was paid by Col. Potter?

A. I know there was a note there in the bank that he was endorser on for $5,000, and that note came due shortly after my father's death, and that note Col. Potter took up.

Q. And do you know, as such officer, whether the proceeds of that note, when it was discounted, were applied to the credit of the American Brick and Tile Company?

A. Oh, yes, sir.

Mr. Lindabury:

Q. Do you know about his paying this note?

A. Well, I have a sort of recollection that I had something to do with going over to the bank, but I cannot say positively about it.

Q. You and Col. Potter are related, are you not?

A. He is my brother-in-law.

Mr. Lindabury—We will let him swear to it, then.

Henry A. Potter, being duly sworn in his own behalf, according to law, on his oath saith:

Examined, by Mr. Martin:

Q. You reside where?

A. East Orange, N. J.

Q. Were you an endorser of a note of the American Brick and Tile Company at the date of Henry Green's death?

A. I was.

Q. Can you tell where that note is?

A. The original note?

Q. Yes.

A. No, sir; I don't know where it is.

Q. Have you made any search for it?

A. I have made a search for it, but it seems to have been lost.

Q. Do you recollect the terms of that note?

A. Well, what do you mean by the terms of the note? I remember that it was a note for $5,000, drawn to the order of H. Green, H. A. Sage and H. A. Potter; they might not have been in that order; it was signed by the American Brick and Tile Company, H. Green, President, and endorsed by H. Green, Mr. Sage and myself.

Q. Can you tell why the note was made to the order of those three gentlemen?

A. It was for the accommodation of the company.

Q. You endorsed it then simply for accommodation?

A. Yes, sir; it was endorsed simply for accommodation.

Q. Do you recollect when the note fell due?

A. The last note fell due about, I think, on the 5th of November, or the 5th of October, I forget which.

Q. Was it paid?

A. No, sir; it went to protest.

Q. Was it afterwards paid?

A. It was afterwards paid in November; I paid the note.

Q. Do you recollect how much you paid?

A. I paid the whole thing.

Q. I mean with the interest and protest fees?

A. Why the interest was—

Mr. Lindabury—I don't think, on our part, there is any question, but that this note is a good claim.

Court:

Q. This is the note for $5,000 that was in the Easton National Bank claim?

A. No, sir.

Mr. Lindabury—It is not the claim of the executor. Fred Green has a $5,000 claim, which he was speaking about; it has nothing to do with that claim.

Mr. Kirkpatrick—This is his own matter.

Q. This note purports to be signed, or the one which you refer to, purports to be signed "American Brick and Tile Company, H. Green, President"?

A. Yes, sir.

Q. That is the way it is signed?

A. Yes, sir.

Q. And that signature was in the handwriting of Judge Green?

A. Yes, sir.

Mr. Martin—I want to say, that Col. Potter, if the other claims should fail, would not ask for for an assessment against the stockholders, for the purpose of paying his claim.

Mr. Shipman—Now, there is this claim of Henry Short, which is not attacked by any of these petitions, thus far; it is in the hands of the Receiver, and Mr. Short is not represented here.

Mr. Lindabury—It is appealed from, the same as the rest of them. You will have to take an adjournment for the purpose of having his claim presented in proper form. Let me see the claim; it may be, upon looking at it, we can get along without another meeting for that purpose.

Claim handed to Mr. Lindabury.

Mr. Lindabury—The only thing Mr. Short got on it from 1892 to date was a payment of interest on February 13th, 1900. I think we shall have to have some proof as to that. I cannot admit that.

Mr. Shipman—Well, then, Mr. Short will have to come here and prove his claim. Now, with reference to the claim of the Wilbur Trust Company. Mr. Davis, the Receiver, has had it handed to him, and I told Mr. Buchanan that he must be prepared to make proof before your Honor, as to that claim.

Mr. Lindabury—That is, the Receiver is going to allow the claim, so that we shall have to make an appeal from the allowance of that claim.

Mr. Shipman—Yes, sir. Now, with regard to the further proof of the Easton National Bank claim. We can bring all the proof down here, but I thought it might be sufficient for the purposes of this case, if a transcript be made of the books, of that account, instead of bringing all the books down here. Or if counsel wished to do so, they can send someone up there to look at the books.

Mr. Lindabury—I think we can agree with you as to that, so as to save you the necessity of bringing all the books down here. If you will confer with Mr. Dickson about that, I think some arrangement can be made.

Mr. Dickson—Mr. E. J. Fox is up there, and can see the books and attend to that matter for us.

Mr. Shipman—Yes; Mr. Fox can see the books and do that for you, and it will save us bringing the books down.

Court—Does that close what you have to-day?

Mr. Shipman—We thought we would go on

with the other matters, relating to the organization, &c., if your Honor will permit us.

Court—You may go on with that branch of the case then.

Mr. Shipman—I offer the original certificate of organization of the American Brick and Tile Company, which I have obtained from the Secretary of State's office. A copy of this certificate of organization is annexed to the petition in this cause, and admitted in the answers. It is admitted that the original is in the handwriting of Judge Green himself.

Frederick Green, being recalled, saith:

Examined, by Mr. Shipman:

Q. You were the treasurer of the American Brick and Tile Company?

A. Yes, sir.

Q. And secretary also?

A. Yes, sir; I was secretary and treasurer.

Q. Have you got the minute book of that company?

A. Yes, sir (produces).

Q. Does that contain all the minutes that were taken of the meetings of that company?

A. Well, this book contains the record of two meetings which have been copied into the minutes.

Q. Are there any other minutes?

A. It appears to contain a record of only one meeting.

Court:

Q. The question is, are there any other minutes?

A. Yes, sir; there are a memorandum of minutes here, that has not been entered in the book.

Q. Where was that found?

A. It was found in the book.

Q. It has never been entered in the book?

A. No, sir.

Q. And you found it in the minute-book?

A. Yes, sir.

Q. And that is all the minutes you found?

A. Yes, sir.

Q. Can you tell who the stockholders of this company were in July last?

Mr. Lindabury—I object to that as immaterial, and as also an improper way of getting at that information; who they are must be evidenced by some record or other; this witness cannot testify to it.

Question withdrawn.

Q. Have you any record there showing who the stockholders were when the American Brick and Tile Company ceased business?

A. We have the certificate book.

Q. Will you produce that book?

A. (Produces.)

Mr. Lindabury—Where is the stock-book?

Mr. Shipman—We have no stock-book; all we have is just the certificate-book.

Mr. Shipman:

Q. Please state from that book who the stockholders were?

Mr. Lindabury—I object to the question; that is not any evidence of who the stockholders were; that is, the stubs of a certificate-book is not evidence of who the stockholders were; you ought to have a stock transfer book.

Question withdrawn.

Mr. Shipman:

Q. What book have you there?

A. It is the certificate-book of the American Brick and Tile Company.

Q. And you find a stub there?

A. Yes, sir.

Q. Of certificates of stock?

A. Yes, sir.

Q. When were the entries made on the stock, and who made them?

A. Well, the entries began on the 27th of September, 1887.

Q. Who made them?

A. They are in the handwriting of Henry Green, the president of the company.

Q. He was the president of the company?

A. Yes, sir.

Q. I ask you what those stubs show?

Mr. Lindabury—I object to the question as incompetent.

Mr. Shipman—I intend to offer the book in evidence.

Mr. Lindabury—You cannot prove who the stockholders are by some entries on the stub of some certificate-book, and I object to it.

Question withdrawn.

Mr. Shipman:

Q. Is there any stock-book or certificate-book owned or kept by the American Brick and Tile Company?

A. No, sir, there is no other book.

Q. Is there any other record of who the stockholders were?

A. Well, there is no other book, there is some other written memoranda; that is the only thing we have.

Q. That is all?

A. Yes, sir.

Q. What memoranda is that you refer to?

A. Well, I haven't got it; Mr. Davis has it; he has a memoranda of the distribution of shares, of stock, to the stockholders.

Court—Did you not take a receipt from those people when you delivered the stock to them?

A. I don't believe they gave any receipt for their stock when it was delivered to them.

Q. You did not make the entries yourself, and you did not deliver the stock to them yourself?

A. No, sir.

Mr. Lindabury—Well, I contend, your Honor, that it has not entitled him to swear to it.

Mr. Shipman:

Q. Where has that certificate-book been kept?

A. Why it was in my office.

Q. Your office as treasurer of this company, do you mean?

A. Yes, sir.

Q. Who has had possession of the book all this time?

A. I have had possession of the book.

Q. As an officer of the company?

A. Yes, sir.

Q. Is there any minute in reference to any payment of these certificates of stock entered or made by the Board of Directors, or any resolution?

A. There is a resolution in reference to an assessment.

Q. Where is that?

A. That is in the minute-book.

Q. When was that made—the minute-book shows that, does it not?

A. Yes, sir. It was made at a meeting of the Board of Directors held on April 25th, 1891.

Q. And who were present at that meeting?

Mr. Lindabury—I object to that.

Question withdrawn.

Q. That is in the minute-book?

A. Yes, sir.

Mr. Shipman—I offer that minute-book in evidence.

Mr. Lindabury—A copy of that resolution is set forth in our answer, and we rely upon that.

Mr. Shipman:

Q. Have you any cash-book?

A. Yes, sir.

Q. Have you any entries of payments on account of any of the stock of this company, and by whom?

A. Yes, sir; I have entries here of payments made by the stockholders at different times.

Q. Produce them?

A. (Produces.)

Q. In the first place, after the company was organized, have you any entries of payments at that time, on account of the stock?

A. Yes, sir.

Q. Refer to those, please?

A. April 6th, 1886.

Q. What are those entries?

A. This is an entry of cash received from E. P. Wilbur.

Q. Amounting to how much?

A. "$2,500 on account of subscription to capital stock."

Q. Proceed, what next?

A. April 6th, 1886, "to cash H. A. Potter, on account subscription to capital stock, $2,500."

Q. What is the next?

A. "May 12th, 1886, to cash received from Edward M. Paxon, on account subscription to capital stock, $2,500."

June 2d, of the same year, "to sight draft of E. P. Wilbur, in full of subscription to capital stock, $2,500."

Q. What is the next?

A. June 4th, of the same year, "cash received from H. A. Potter, in full of subscription to capital stock, $2,500."

Q. Proceed?

A. June 25th, 1886, "to cash received from Edward M. Paxon, on account subscription to capital stock, $1,000."

July 3d, 1886, "to cash received from Edward M. Paxon, in full of subscription to capital stock, $1,500."

"October 1st, 1887, to cash received from E. M. Paxon, on account additional subscription to capital stock, $2,500."

Q. What is the next one?

A. There is one of Wilbur's of $1,250, but there must be one before that, I think.

Q. What is the next one of Edward M. Paxon?

A. "December 2d, 1887, cash received E. M. Paxon, in full subscription to capital stock, $2,500."

"January 17th, 1888, to cash received from H. A. Potter, on account subscription to capital stock, $700."

February 17th, of the same year, "to cash received from H. A. Potter, on account of subscription to capital stock, $1,000."

"February 17th, of the same year, "to cash received from H. A. Potter, on account subscription to capital stock, $1,000."

March 31st of the same year, "to cash received from H. A. Potter, on account subscripition to capital stock, $500."

April 14th of the same year, "to cash received from H. A. Potter, on account subscription to capital stock, $250."

August 10th of the same year, "to cash received from H. A. Potter, balance subscription to capital stock, $1,550."

Q. Now, as to E. P. Wilbur?

A. The next is September 17th, 1887. "Cash received from E. P. Wilbur, on account subscription to capital stock, $2,500."

October 27th of the same year, "to cash received from E. P. Wilbur, on account additional subscription to capital stock, $1,250."

November 9th of the same year, "to cash received from E. P. Wilbur, in full subscription to capital stock, $1,250."

Court:

Q. What was the capital stock that the articles of association provided for?

Mr. Kirkpatrick—$1,000,000 of the par value of $100 per share.

Court—And there was 30,000 shares subscribed for?

Mr. Shipman—No, sir; it was all subscribed.

Mr. Kirkpatrick—The original certificate shows that the whole subscription was subscribed for.

Court—What does the entry mean, "in full for capital stock"?

Mr. Shipman—It means that they did not pay any more than was entered there; that is, they did not pay in full, all in one payment.

Mr. Lindabury—When this $10,000 was all paid by these people, then they got a certificate which differed from any other certificate, in that it had not stamped on it "issued for property purchased." Mr. Wilbur, when he made his complete payments, and Mr. Potter, when he completed his payments, got a certificate for one hundred shares of stock for which they each paid $10,000. Those were of the ordinary kind of stock. Now, all the other certificates were "issued for property purchased."

Mr. Kirkpatrick—Don't you think we had better go on, and put in our proof? All these facts will develop when we put in our proof in the orderly way.

Mr. Shipman:

Q. Do you find any other entries of payments on account of this stock, by the stockholders?

A. Yes, sir; there were payments on account of an assessment of $4.00 a share.

Q. Give a list of those payments?

Mr. Lindabury—Now, they are all set forth in all the answers just as they are stated in the books. The treasurer cannot make evidence of what they are, and they cannot be stated in any

better form than as they are contained in the answer.

Court—The minutes will show, I suppose, what they were for.

Mr. Lindabury—The minutes will show it all.

Mr. Kirkpatrick—I think the entries in this book are evidence against the stockholders, and I would prefer to go on and show the thing as it is.

Mr. Shipman:

Q. What are the entries in that book, of these payments?

A. May 1st, 1891, "to cash received E. M. Paxon, first installment of one dollar per share on stock, $1,500."

Q. What is the next?

A. May 2d, 1891, "to cash received E. P. Wilbur, first installment of one dollar per share on stock, $1,500."

May 4th, 1891, "to cash received from W. A. Wilbur, first installment of one dollar per share on stock, $500."

May 5th of the same year, "cash received J. T. Knight, first installment of one dollar per share on stock, $300."

May 16th of the same year, "cash received R. P. Lindeman, first installment of one dollar per share on stock, $500."

May 25th of the same year, "cash received H. Green, first installment of one dollar per share on stock, $2,124."

Mr. Lindabury:

Q. Is that down as cash received from him?

A. Yes, sir.

Mr. Shipman:

Q. Read it as it is written?

A. May 25th, 1891, "cash received H. Green, first installment of one dollar per share on stock, $2,124."

Q. Proceed; what is the next?

A. July 13th, 1891, "to cash received E. P. Wilbur, second installment on assessment, $1,500."

July 27th, 1891, "to cash received H. Green, second installment of assessment, $2,124."

August 4th, 1891, "to cash received from E. M. Paxon, second installment of assessment, $1,500."

Mr. Lindabury—Now, my record shows that they all ran in that form. It will take an hour or more to put all that evidence in in this way.

Mr. Shipman—We prefer to go on as we are.

September 25th, 1891, "cash received from R. P. Lindeman, second installment on assessment, $500."

October 25th, 1891, "cash received from W. A. Wilbur, second installment on assessment, $500."

November 3d, 1891, "cash received E. P. Wilbur, third installment, $1,500."

November 25th, 1891, "cash received H. A. Potter, account assessment, $1,000."

December 21st, 1891, "to cash received from H. Green, account third installment, $400."

December 24th of the same year, "to cash received from H. Green, balance third installment, $1,724."

January 20th, 1892, "to cash received from E. M. Paxon, third installment, $1,500."

February 7th, 1892, "to cash received from R. P. Lindeman, third installment, $500."

June 4th, 1892, "to cash received from W. A. Wilbur, third assessment, $500."

June 11th, 1892, "to cash received from J. T. Knight, of account assessment, $600."

February 1st, 1893, "to cash received Mr. Sheafer estate, assessment, second and third, $400."

January 15th, 1894, "to cash received from E. P. Wilbur, in full balance, fourth assessment, $1,000."

Court—This is all set up in the petition, and is all admitted in the answers.

Mr. Lindabury—We admit these payments and just in the same way that they have been read from the book.

Court—Then it is no use taking up any more time on those.

Court:

Q. Do you know how much of this stock remained in the treasury after it was subscribed for?

A. There is some stock, it is not allotted, and it was returned in some way; I don't know just exactly what happened; there was a readjustment, of some sort.

Mr. Shipman:

Q. The stock was all subscribed for?

A. The stock was all subscribed for.

Q. And all issued?

A. Well, I don't know as to that.

Court:

Q. Was it all issued or not?

A. I cannot tell you, you will have to get it from the stock book, or the certificate book.

Mr. Shipman:

Q. Have you looked at the certificate book, and can you tell from the certificate book whether it was all issued or not?

A. I can give you the names of the persons holding the stock, and the amounts from the certificate book.

Q. Well, we asked for that.

Mr. Lindabury—I object to that.

Court—If he had made the entries, and there had been no stock book, then he might refresh his recollection by this book, and say, "I know that this stock was issued to so and so, because I made the entries, and that entry refreshes my memory," but that certificate book cannot do that

because the entries were made by some one else; not by this witness.

Mr. Kirkpatrick—The entries are made in this book from time to time and as the certificates were issued. After the issuing of these certificates and after the entries were made, at a meeting of the organization or of the board of directors, an assessment was called for upon the basis of the stock then outstanding. That is followed up by the proof we have just now given, that these persons have paid on the basis of precisely the same amount of stock, that appears to have been issued by the stock book, and therefore whatever might be the situation in the absence of the subsequent action and subsequent payment, connecting the two together, it affords evidence of the fact that these people were then stockholders to that amount, corresponding with those entries on the stubs, and was virtually an admission on their part that they held certificates of stock to that amount, and considered themselves liable to pay assessments on it. Why is not that proper proof? They are members of the company, and they admit themselves to be members of the company by those payments. And they are chargeable there, and they admit there that they sustain the relation of stockholder to this company, and all the books of this company—and this is a usual book of such a corporation, the stock certificate book, and the entries on the stub of that book are all usual ordinary books, in the administration of corporate affairs. Now, these certificates appeared to have been cut from the book, but there are the stub entries made at or about that time. The books have been in the possession of the company all the time. And here are the persons who have admitted themselves to be members of the company, and who have actually made payments upon the

basis of their holding of the shares of stock to the very amounts corresponding with the amounts of stock issued to them, as shown by this book.

What do you contend that these payments prove? Is it not that they are stockholders? Now, if we prove that they are stockholders to the extent of the fifteen hundred shares which appears from the payments which they make, and which amounts they have admitted or considered themselves liable for, why is not that evidence, along with the fact that the certificate book (interrupted)—

Court—Why is it not evidence alone?

Mr. Kirkpatrick—It is not evidence alone. You must take the circumstances as well as the positive evidence. You can prove that these people were stockholders and held certificates of stock, and considered themselves chargeable as stockholders by anything that goes to prove that fact, and that, taken into consideration with the fact that there is a book in the possession of the company, and those facts taken together, furnish the evidence from which you, as a Vice-Chancellor, sitting in this Court, or a jury, could arrive at a conclusion that they were stockholders, and they not having paid all the amounts that is named, as the par value of the stock, or what the par value called for, they are chargeable with the balance until they can produce some evidence to show that they have been discharged. Why is not the fact that there is a certificate book in the possession of the company a fact with which all the members are supposed to be privy, charging them with stock, the book showing the certificates to be detached, and from that we can conclude that they are outstanding somewhere, along with the fact that these very people have themselves paid in assessments, and on account of assess-

ments, on just exactly the precise number of shares that appears on the margin of the stub certificate book? Why is not that evidence? It seems to me, your Honor, it is evidence of the highest character, and that your Honor would be warranted from it in drawing the conclusion that they were stockholders, and that they were chargeable as holders of that stock to the extent of all the unpaid value of these certificates. At all events until the debts of the company are fully paid.

Mr. Lindabury—I am surprised that counsel does not see the fallacy of his argument, and the fallacy of what he undertakes to prove. He says we will prove them to be stockholders by entries in books, by which every member is bound—the question is whether they are stockholders—you have that to settle with first.

Court—Don't you think, when they prove that all these persons have admitted that they are stockholders by paying the assessments according to what the books show to be their holding of stock, that that is *prima facie* evidence of that fact?

Mr. Lindabury—They have not proved anything of the kind. They do not prove that they paid these moneys. We cannot be bound by anything in these books until they have established that they were members of the corporation.

Mr. Kirkpatrick—We don't stand or rest upon any one single fact, and because that fact itself is not sufficient to generate the conviction of the existence of the ultimate fact you seek to prove, you do not throw that fact out. The value of that depends upon its connection with other testimony. It is true that the mere effect of an entry alone might not be sufficient in itself to establish membership—there might be a fallacy there, then to say, that he is chargeable with

notice before the fact is established that they are members. But that is not the point. The point is this—here is a book in the possession of the company and it has been there from the time of the company's inception; there are entries in that book; it is one of the usual books of a corporation.

Subsequently there is a resolution passed by the Board of Directors, of whom, if I mistake not, these very men are members of that board, at least most of them, if not all—but leave that out—there is a resolution passed assessing the capital stock outstanding and sold. Now, what they say in their answer as to why it is passed is their own theory of the matter, and it may be sustained by proof, and may not be. But the fact is a resolution is regulary passed authorizing the payments of assessments on the stock then outstanding. Now, certain men pay the assessments based upon the precise number of shares shown by this book.

Court—But how do you prove it?

Mr. Kirkpatrick—We prove it by the minute-book.

Court—But how do you prove that these men paid that money?

Mr. Kirkpatrick—We prove it by the fact that they have paid it, and the cash-book of this company shows it.

Mr. Lindabury—Every answer admits that the stockholders hold every share of stock that they charge them with.

Mr. Kirkpatrick—Then, if they paid the assessments that is evidence of the fact that they were stockholders to the amount we charge them with.

Court—If it is true that they are stockholders, and it is admitted, then why do you want to take any further evidence in regard to it? Mr.

Lindabury has the right to object to putting in any evidence of a fact which he has already admitted.

Mr. Kirkpatrick—If he admits that they are the holders of the stock that is called for in the petition, then that is all there is to it.

Mr. Shipman—Admitting that they are the stockholders, then the next thing would be to show that they have not paid for the stock.

Mr. Lindabury—Well, the admission is that the fourteen hundred shares was for property, and the other one hundred shares was for cash, and we have the certificates.

Mr. Shipman—They have the certificates; we have not got them.

Court—Now, they say that they have that stock, and they say that they have paid for it, and you say they have not.

Mr. Shipman—That is just it, and we claim that they have not paid for it, and we want to show just exactly what they did not pay.

Mr. Shipman:

Q. Can you state from the books of the company how much has been paid on account of this capital stock?

Mr. Lindabury—I object to the evidence; the books are not evidence of that. The amount that has been paid is charged in the bill and admitted in the answer. It is not necessary to give evidence as to that.

Mr. Shipman—Well, if it is admitted, that is all there is to that. We will rest then.

Cross-examination by Mr. Lindabury:

Q. You signed these certificates, didn't you?

A. I rather suppose I signed all the certificates that were issued, but I would like to see the certificates.

Q. Don't you remember that you did sign all the certificates that were issued?

A. I think I signed them all; I see some there that I signed, and I think I signed them all.

Q. Certificate No. 1, I show you; it was issued to Edward M. Paxson, was it not?

A. Yes, sir.

Q. What is its date?

A. September 27th, 1887.

Q. Who signed it?

A. It was signed by Henry Green, president, and Fred. Green, secretary.

Q. And stamped "issued for property purchased," is it not?

A. It is printed up there "issued for property purchased."

Q. Yes; what was that property?

A. I cannot tell you.

Q. Do you mean to say you issued a certificate of this kind without knowing what it was issued for?

Mr. Shipman—I object to that. Any property purchased by this corporation must have been purchased, and there must have been some action of the Board of Directors in purchasing that property, and that can only be evidenced by the minutes of the corporation, and if there is any evidence of that action of the corporation purchasing that property that is the way to prove it; not by evidence from this witness.

Court—I think he ought to be able to tell what property that certificate was issued to pay for.

Mr. Shipman—As far as his interests are concerned I think he ought to be able to tell what the property was that was purchased; that would be evidence sufficient, but as far as other creditors are concerned they ought to have the proof by the books and other proper evidence.

Court—I will take the evidence.

Mr. Lindabury:

Q. Do you mean to say you issued a certificate of this kind without knowing what it was issued for?

A. I cannot tell you anything about it; I don't know.

Q. Well, did you sign this certificate and issue it without any information on that subject?

A. I considered that I signed the certificate as a witness.

Q. No, no; did you sign and issue that certificate without any information on that subject; that is my question?

A. I signed the certificate and I fixed the seal in all probability, but I cannot say positively that I did, but I did not give it to anyone; that answers your question.

Q. What did you do with it after you signed it?

A. I gave it to my father.

Q. And he issued it, if it was issued?

A. Yes, sir.

Q. Then you were the treasurer of this company, were you not?

A. Yes, sir.

Q. Well, but did you sign certificates as treasurer without getting anything for that certificate of stock?

A. I don't think I signed it as treasurer.

Q. Well, I know that, but you were the treasurer of the company at that time?

A. Yes, sir.

Q. And actually signed as secretary, didn't you?

A. I suppose I did sign as secretary.

Q. You were a lawyer at this time?

A. Yes, sir.

Q. And you knew that neither secretary or treasurer had any right to give out certificates without receiving either property or cash for them, didn't you?

A. I knew they had paid some money towards the subscription of the stock.

Q. And you knew how much, too?

A. I knew how much.

Q. You knew how much cash had been paid in by

Judge Paxon when the certificate was issued to him, didn't you?

A. I must have known at that time; I had received all the others.

Q. You issued a separate certificate for the cash Judge Paxson paid in, didn't you?

A. I know there is a separate certificate.

Q. I show you certificate No. 351, for one hundred shares—that was issued to him, was it not?

A. "Edward M. Paxson, September 27th, 1887."

Q. The same date exactly as these other certificates for $1,400?

A. It is; it seems to have my name on there.

Q. Is it, or is it not—it is your name, is it not?

A. Yes, sir.

Q. It is the same date as the other certificates, is it not?

A. Yes, sir; the same date.

Q. What did you do with them?

A. I handed it to my father.

Q. Mr. Dickson had then paid in the $10,000 spoken of by that certificate, hadn't he?

A. If you will let me refer to these books, I can tell you.

Q. This one is not stamped "issued for property purchased?

A. No, sir.

Q. Well, what was it issued for?

A. I cannot tell you.

Q. Don't you know that it was issued for the $10,000 subscription you spoke of in the entry in the cash payments?

A. All I can say is that it was issued to him after he had made some payments to the company.

Q. I understand he had not made any payments yet?

A. Oh, yes, sir; he had.

Court:

Q. He had made a payment of $10,000, as I understand, at that time, from the book?

Mr. Lindabury:

Q. You enter this as a payment "on account of subscription," and the last one was "in full of subscription," and the last payment made $10,000 in full; did you not understand that that payment was made on account of this certificate for one hundred shares of stock?

A. No, sir.

Mr. Kirkpatrick—We object to that.

Mr. Lindabury:

Q. What did you understand it was, and what did you mean by putting in the entry to the last payment that it was in full of the subscription to the capital stock?

A. My understanding was that these four gentlemen had agreed to pay—interrupted.

Mr. Kirkpatrick—I object to his understanding.

Witness—He asked me what was my understanding.

Mr. Shipman—We object to it.

Mr. Lindabury—I think I have a right to ask why he made the entries in the book the way he did make them; and I asked him what his understanding was which led him to put these entries in in that way. I think I have a right to ask what he meant by these terms he used.

Court—That is a little different shape; you may put the question in that way.

Mr. Lindabury—I will put the question in that way.

Court—Ask him what he meant by that entry in full.

Mr. Lindabury:

Q. You may answer the question as the Court has put it—what did you mean by that entry "in full"?

A. The agreement to pay $10,000 apiece into this company.

Mr. Lindabury:

Q. Did you understand that this certificate was issued on account of that payment of $10,000?

A. No, sir; I did not understand that it was.

Q. Then what did you understand when you issued this certificate, without its being stamped "issued for property purchased;" what was it that it was issued for?

Mr. Kirkpatrick—I object to that question.

Court—I don't think it is proper to allow you to prove his understanding. He might have a different understanding from the facts than what he should have.

Court:

Q. Do you mean to say that when that certificate for one hundred shares of stock was issued that you did not know that it represented the $10,000 that has been paid in?

A. No, sir.

Mr. Lindabury:

Q. Didn't you know what it did represent?

A. No, sir.

Q. Did you issue it without any information as to whether anything had been paid for it at all or not?

A. I knew they had paid in a considerable amount of money.

Q. I know, but did you issue this certificate of stock for one hundred shares without any information as to whether anything had been paid for it at all or not, or was to be paid for it?

A. I will say this, Mr. Lindabury, my father presented me with these certificates in the book, and asked

me to attach my signature to them, and I did it, and I did not cross-examine him as to them—

Q. Well, then, in signing them you simply relied on your father?

A. I simply signed the papers when he asked me, and I did not know until the auditor made his report that they did not have that "issued for property purchased" on them.

Q. You simply relied on your father, in signing them, and putting your seal on them, didn't you?

A. Yes, sir; entirely.

Q. He was then the president, of course, and he signed as such?

A. Yes, sir.

Q. Did your father, or anyone else, give you, at the date of these certificates, an assignment of patents or patented process, or applications for patents?

A. No, sir; he never gave me any patents that I know of.

Q. Didn't you, as secretary, receive from these men, Canfield and Lenox Simpson—didn't you receive assignments to the company, at the same time these certificates bear date, of patents and patent rights—that is, from Simpson & Canfield?

A. I have no recollection of receiving any papers of the kind at any time.

Q. Well, didn't you know at that time, that you issued these certificates for fourteen hundred shares to Judge Paxson and the other certificates to E. P. Wilbur and others, stockholders of the concern, that an assignment of all these patents and patent rights and processes had been made to the company by these two gentlemen, and didn't you know that they had been delivered to your father or to you or to some one for the company—didn't you understand that?

A. I understood that there were patents that the company would acquire, but I did not know—

Mr. Shipman—I object to the evidence; it is not asking for proof, it is a mere understanding

you ask for, and I do not think it proper examination.

The Court—I must say that I do not think this witness is frank—and I am very sorry to say it—it cannot be possible that a man who has been the secretary and the treasurer of this company, and who has issued stock to these men, can come here and say that he does not know what was going on. If he did not know then he was not fit for that position. If he did have certificates and assignments of patents and such like delivered to him, then he must have known the contents, and he must have known whether he received them or not, and I think he ought to state whether he received them or whether he did not receive them.

Mr. Shipman—Where are the assignments of patents and patent rights, and everything of that sort, that you have been speaking of, Mr. Lindabury?

Mr. Lindabury—Why, they are in your possession; you have them.

Mr. Shipman—No, sir; we have not.

Mr. Dickson—Well, the receiver has them.

Mr. Lindabury–We will ask the receiver to hand them over to us—we want the assignment of the patents and patent rights of that date, September 27th, 1887—and I will ask Mr. Martin to give the Receiver a memorandum of them, and see that he gets them.

Mr. Lindabury:

Q. Did you not have delivered to you assignments dated on that same day, September 27th, 1887, for patent No. 313480, dated March 10th, 1885, for the manufacture of brick tile, pipe, drain, &c., issued originally to Henry Dickson?

A. I have no knowledge or recollection of ever getting anything of the kind. You must recollect your question—you ask me if I recollect getting them—

Q. Yes, I ask you if you recollect getting the assignment on the 27th of September, 1887, for patent No. 313,480, dated March 10th, 1885, for the manufacture of brick tile, drain, &c., which patent was originally issued to Henry Dickson?

A. I do not.

Q. You have no recollection now of receiving the assignment of the patents for the manufacture of the brick tile, pipe, drain, &c., which I have described?

A. No, sir; I have no recollection of ever getting anything of the kind.

Q. Do you know your father's hand-writing (handing witness paper)?

A. Yes, sir.

Q. Look at the paper I hand you and tell me whose hand-writing that is in?

A. That is my father's hand-writing.

Q. That paper is dated "Pittsburg, September 27th, 1887"—that is the day of the date of these certificates, is it not?

A. Yes, sir.

Q. By whom is that paper signed?

A. It is signed by Lenox Simpson and Morris E. Canfield, dated September 27th, 1887.

Q. Now, it assigns—"Know all men by these presents, &c., that we, Lenox Simpson, of Pittsburg, Pennsylvania, and Morris P. Canfield, of Phillipsburg, New Jersey, assignees of the whole right, title and interest in and to Letters Patent No. 313,480, for improvements in brick tile and drain-pipe, &c., issued to Henry Dickson, of Pittsburg, Pa., on the tenth day of March, 1885, in consideration of one dollar, the receipt of which is hereby acknowledged, do hereby sell and assign to the American Brick and Tile Company of New Jersey all our right, title and interest in and to the aforesaid letters patent, the same to be held and enjoyed by said assignee, its successors and assigns for its and their sole use and behoof, to the full end of the term thereof"

—do you say that that assignment was not delivered to you at about the date of this issue of this stock?

A. I am pretty positive it was not.

Q. Well, have you any idea where the receiver got it?

A. Yes, sir; I know where he got it.

Q. Where?

A. Well, I had several boxes of papers—

Q. Didn't you give it to the receiver?

A. I handed the boxes over to him—

Q. Didn't you give it to the receiver?

A. It must have been in the boxes, but I did not hand that paper to him.

Q. This seems to have been recorded on July 31st, 1890, in the Patent Office at Washington, D. C.—did you have that done?

A. No, sir; I did not.

Q. Do you know who had it done?

A. No, sir.

Mr. Lindabury—I offer that assignment of patent in evidence.

Marked *Exhibit D 1.*

Q. I show you another of the same date, made by Lenox Simpson alone to the American Brick & Tile Co.; it assigns letters patent number blank and blank, for improvement in clays, same to be held and assigned, &.—have you ever seen that paper before (handing paper to witness)?

A. Do you mean before to-day?

Q. Yes.

A. You don't mean in 1887, do you?

Q. Answer my question, please—did you ever see that paper before?

A. Yes, I have.

Q. When did you see that paper before?

A. Oh, I should say several months ago.

Q. When did you first see it?

A. Several months ago, when Mr. Davis had it in his office.

Q. Did you give them to him when he was appointed receiver?

A. It must have been in the box that had the other papers in.

Q. But you did not see it, you say?

A. I did not know it was there.

Q. And you did not know it was delivered to the company at the time you issued these certificates of stock?

A. No, sir; I never saw it before.

Mr. Lindabury—I offer that assignment of patent in evidence.

Marked *Exhibit D 2.*

Q. I show you an assignment, dated in 1885, which Mr. Dickson informs me is the assignment of one or both of these patents issued to Canfield and one of the muniments of title, and endorsed in the hand-writing of your father (handing witness paper)—have you ever seen that paper before?

A. Before to-day, yes, sir; but I didn't see it in 1887.

Q. You did not see that until recently?

A. No, sir; I did not see it until recently.

Q. And did not know of it until recently?

A. No, sir.

Q. And never heard of it until after your father's death?

A. No, sir.

Q. I show you an original letters patent issued to Mr. Dickson—interrupted—

Witness—I think when I first knew of it was when Mr. Martin and I went over to Mr. Davis' office—interrupted—

Q. Have you ever seen that paper before (handing witness paper)?

A. No, sir.

Q. You manufactured brick and tile under that patent, didn't you?

A. I suppose so.

Q. How many years did you manufacture brick and tile there?

A. We began in the fall of 1886 to make bricks, and ran it off and on until it burned down.

Q. How many years altogether?

A. Probably ten years.

Q. And under that very Dickson patent, didn't you?

A. Yes, sir; I suppose so.

Q. Now, what was this method of manufacturing brick and tile; didn't you manufacture a superior kind of brick and tile, a glazed tile?

A. That patent covered a manufacture of bricks out of the refuse obtained from slate quarries, which was ground up; this refuse was ground up and manufactured into bricks.

Q. It was supposed to be a very valuable process, was it not?

Mr. Shipman—I object to that as immaterial and incompetent.

The Court—I will take it.

A. It may be they supposed it was.

Q. Didn't you suppose it was?

A. I did not know anything about it?

Q. Was it not the understanding of the company, and of its officers, of whom you were one, that it was a very valuable process?

A. They seemed to think it was worth trying; you know it was only experimentally—

Q. The product was sold at high prices, was it not?

A. The ordinary bricks commanded in the market a price of about $12.00.

Q. I am not talking about the ordinary brick; I am talking about the brick manufactured under this very valuable process; they sold at a much higher price than the ordinary price, didn't they?

A. They took the place of ordinary priced brick, but they sold for $25 a thousand.

Q. Was this an invaluable process?

A. It was a process which was never heard of in our neighborhood before.

Q. And it was covered by this Dickson patent, was it not?

A. I suppose that is the patent they were manufactured under.

Q. You manufactured nothing outside of what was understood to be covered by the Dickson patent?

A. Yes, sir.

Q. Was any considerable part of your manufacture outside of the product covered by the Dickson patent, or of these patents, or one of these patents?

A. When I say we manufactured other things I mean that we took these bricks and enameled them; that was not covered by the Dickson patent that I know of.

Q. Which?

A. The enameling.

Q. But the manufacture of the bricks out of the slate refuse, or whatever it was, was covered by the Dickson patent, was it not?

A. Yes, sir; that was the patent.

Q. And didn't you know that you owned that patent when you did that?

A. Well, I must have known something about the patent.

Q. Didn't you know that the company had acquired it, or didn't you know that when you went on and manufactured these bricks, during all these years; I say, didn't you know whether the company owned it or not?

A. You ask me whether I know now; how would I know it?

Q. Well, you are a lawyer—

A. Well, how would I know it?

Q. Did you understand or not that you owned it; that is my question?

A. I understood that there was a patent, and that the company had acquired it.

Q. Now, when did you understand that they had acquired it?

A. At the very beginning.

Q. And for what; what did you understand they gave for it?

Mr. Shipman—I object to the question as incompetent.

Court—I will take it; if he knew that the company had acquired that patent at that time, then he must have known something about it, and what they gave for it.

A. All I know it that they had a patent to make bricks, and that they had acquired it; I never saw the patent papers, and I did not know anything about it, outside of the fact that I knew they had a patent under which they were manufacturing.

Q. Didn't you know what they gave for it?

A. No, sir; I did not know what they gave for it.

Q. Didn't you grant licenses under that patent and collect royalties on it for years?

A. No, sir; not for years.

Q. Well, how long did you?

A. I don't think we ever got a cent of royalties.

Q. But you granted licenses?

A. Well, one man got a license to manufacture these bricks, I think, in Massachusetts and Connecticut, and he did erect a plant, as I was informed.

Q. Didn't you sign a license under these patents yourself?

A. Oh, I may have signed a license, but I have no recollection now about it.

Q. If you did sign it, you did not know what it was you were signing?

A. I knew it was a license to manufacture brick.

Q. Under this patent?

A. Under this patent; yes, sir.

Q. And yet you never saw the patent, you say?

A. I have no recollection of having ever seen it.

Q. What is the number of that one hundred share certificate?

A. No. 351.

Q. Who had the certificate book prepared for this company, do you know?

A. I cannot tell you, no, sir; I don't know who, unless it was Mr. Potter.

Q. Do you know whether Mr. Potter did or not?

A. No, sir; I did not know.

Q. I observe that the first three hundred and forty-nine certificates have printed on them, "Issued for property purchased," and the remainder have not, and Judge Paxon's certificate for one hundred shares, No. 351, seems to have been the first one issued of the series not marked "Issued for property purchased—that is a fact, is it not?

A. Yes, sir.

Q. And then E. P. Wilbur's is the next?

A. The first one, No. 351, for one hundred shares, is to Edward M. Paxon, dated September 27th, 1887.

Q. And the next?

A. No. 352 is for one hundred shares, to E. P. Wilbur, dated September 27th, 1887.

Q. And those were all that were ever issued, so far as the stub shows, of that series?

A. That is all, as far as appears in that book.

Q. All the other certificates that have ever been issued by the company, so far as the stub-book would indicate, were issued out of the forepart of the book and for certificates stamped "issued for property purchased," were they not?

A. Yes, sir.

Mr. Lindabury—I offer in evidence the two assignments of patents last referred to.

Marked *Exhibit D 3* and *D 4*, respectively.

Re-direct by Mr. Kirkpatrick.

Q. Your answer is founded upon the fact that they are taken out of the books where the others appear?

A. That is all.

Further cross-examination by Mr. Martin.

Q. As a matter of form, I show you certificate No. 8, issued to H. A. Potter for 1,500 shares, which is stamped "issued for property purchased," and inform the same as the certificate No. 1, introduced by Judge Edward M. Paxon, and dated what date?

A. November 28th, 1887.

Q. And signed by whom?

A. "H. Green, president," and "Fred. Green, secretary," and the seal of the corporation of the American Brick and Tile Co. is on the certificate.

Q. That bears a different date from the date of Judge Paxon's claim; do you remember whether it was signed the same time or not?

A. No, sir; I don't remember anything about it.

Q. Do you remember signing any more than one batch of certificates?

A. It was in 1887, and I do not see how I could remember anything about it.

Q. Can you tell from recollection whether that is one of the original certificates or not?

A. No, sir; I have no way of telling at the present time whether it was one of the original certificates, except as you can see it from the book that it was.

Q. Do you know if there was any other certificate ever issued to Mr. Potter?

A. No, sir; I don't think so.

Certificate offered in evidence and marked *Exhibit P 1.*

Mr. Walters—I understand that these questions asked Mr. Green, with regard to the amounts that had been paid by the different persons, were asked with the idea of ascertaining who were the stockholders of this company. Now, I represent some persons whose names have not been mentioned, who have paid on account of stock, and the parties that I represent have not been proven to be stockholders so far.

Mr. Kirkpatrick—Oh, we are not through yet.

Mr. Walters—You are going on to prove further in regard to that?

Mr. Kirkpatrick—Yes.

Mr. Stewart:

Q. Mr. Lindabury has asked you certain questions about your manufacture of the material and brick—I will ask you—did you have any personal connection with this company?

A. With the actual manufacture?

Q. Yes?

A. No, sir; nothing at all.

Q. What were you doing at that time?

A. I was practicing law in Easton.

Q. Were you a stockholder in the company?

A. No, sir.

Q. Were you a salaried officer of the company?

A. No, sir.

Q. Merely nominal secretary and treasurer?

A. That is all.

Q. You have been asked in reference to these papers which you said you had not seen before—state where you got these books and papers—where did you get the boxes you speak of?

A. Why, they were in a vault in my father's office, and I had my office there also—

Q. Until when?

A. Until 1900, or a little after that.

Q. Did you move your office then?

A. Yes, sir; I moved my office.

Q. And took these papers along with you?

A. No, sir; I did not; I left them there in the vault.

Q. And did you have access to them or see them at any time until they were all sent over to Mr. Davis, the receiver in this cause?

A. Well, I may have taken them out of that vault a year or so ago, and put them in the office; that is, the

office I am now in, although I am not positive of that. I think I left them down there in the Reeder Building.

Q. And this box and papers of the company were entirely in the possession of your father, who was the president of the company?

A. Yes, sir; they were in his office all the time.

Q. I think you said when you signed the certificates you merely signed them at the request of your father, without any knowledge or information of the actual transaction?

A. I signed them without any knowledge whatever as to the details of the actual transaction.

Mr. Lindabury—I offer in evidence the two certificates which have been shown the witness.

Certificate No. 1 marked *Exhibit D 5.*

Certificate No. 351 marked *Exhibit D 6.*

Mr. Shipman:

Q. In reference to the stock of Mr. Knight, was that transferred, do you know?

A. Yes, sir; John T. Knight had several hundred shares; I don't know just how many, and they were transferred to his heirs after his death.

Q. You know that to be the fact, do you?

A. Yes, sir; I made the transfer.

Q. You remember that the stock was transferred?

A. Yes, sir; I know it was transferred; I made the transfer myself.

Mr. Walters—I object to that proof as incompetent.

Court—What kind of stock was this; was it stock issued for property purchased?

Mr. Walters—Yes, sir; issued for property purchased.

Mr. Shipman:

Q. Look at that letter (handing witness paper).

A. Yes, sir.

Q. Who is it from?

A. It is from F. H. Knight, who was the administrator of John T. Knight's estate.

Q. Addressed to you?

A. Addressed to me, yes, sir.

Mr. Walters—I object to that evidence.

Court—What is the purpose of that?

Mr. Shipman—The purpose of that is to prove that Mr. Knight is dead, and that this stock was transferred to the persons who now hold it. I can prove that this gentleman transferred this stock and sent the certificate to these persons.

Court—Mr. Walters objects to the introduction of the letter, and I shall have to sustain the objection.

Mr. Shipman:

Q. Do you remember issuing this certificate (handing witness paper)?

A. Yes sir.

Q. What did you do with it?

A. I sent it to Mr. Knight, the administrator of John T. Knight's estate.

Q. And the certificates of stock were issued to John T. Knight, were they not?

Mr. Walters—I object to that as incompetent.

Objection sustained.

Cross-examination, by Mr. Walters:

Q. Witness being shown certificate No. 20, is asked, who is that certificate signed by?

A. "Henry Green, president," and it is dated April 30th, 1894, and issued to F. H. Knight.

Q. Who was the secretary that signed it?

A. "F. Green, secretary," that is myself.

Q. What does it purport to be issued for?

A. For thirty-three shares of stock.

Q. For what purpose is it issued?

A. It is printed on the top, "Issued for property purchased."

Q. And in the printed portion of the certificate it says it is "fully paid capital stock," does it not?

A. Yes, sir.

Mr. Walters—I offer that certificate in evidence.

Marked *Exhibit K 1.*

Q. Witness being shown certificate No. 17, is asked for how many shares it is?

A. It is issued to Samuel Knight for thirty-four shares, and dated April 30th, 1894.

Q. Was that issued for property purchased?

A. Yes, sir.

Q. And claims to be fully paid stock?

A. Yes, sir, so it appears from the certificate.

Q. And signed by yourself and your father, as president and secretary, respectively?

A. Yes, sir.

Mr. Walters—I offer that certificate in evidence.

Marked *Exhibit K 2.*

Q. What is that (handing witness paper)?

A. It is certificate No. 19, for 100 shares, dated April 30th, 1894, and issued in the name of Elizabeth Knight, printed on the top, "issued for property purchased," and signed by "Henry Green, President," and "F. Green, Secretary."

Mr. Walters—I offer that certificate in evidence.

Marked *Exhibit K 3.*

Q. Witness being shown certificate No. 13, issued to John T. Knight, is asked to describe that certificate?

A. It is dated July 11th, 1888, for 300 shares, "issued for property purchased," and signed by "H. Green, President," and "F. Green, Secretary," and marked cancelled and the certificate pasted in the certificate book, and it also states in the body of the certificate that it is "fully paid capital stock."

Mr. Walters—I offer that certificate in evidence.

Marked *Exhibit K 4.*

No cross-examination.

Adjourned to Friday, October 28th, at 10 A. M., at Trenton.

Transcript of Stenographer's notes of evidence taken in the above entitled cause, before his Honor James J. Bergen, Vice-Chancellor, at the Chancery Chambers, Trenton, October 28th, 1904, at 10 A. M.

Appearances—Mr. George M. Shipman, for Mr. William M. Davis, receiver; Mr. W. S. Kirkpatrick, of the Northampton county Bar, Pennsylvania, for the Easton National Bank, a creditor; Mr. R. V. Lindabury and Mr. Samuel Dickson, for Edward M. Paxson, Charles A. Meyer and E. P. Wilbur, individually, defendants; Mr. R. C. Stewart, of the Northampton county Bar, of Pennsylvania, for Frederick Green, individually, and as executor of the estate of Henry Green, deceased; Mr. W. H. Walters and Mr. E. J. Fox, of the Pennsylvania Bar for the Easton Trust Company and Mary B. Knight, executrix Fletcher H. Knight, and Elizabeth Knight and Samuel Knight; Mr. J. H. T. Martin, for Henry A. Potter; Mr. James Buchanan, for the E. P. Wilbur Trust Company; Mr. Harry M. Hagerman, of the Northampton county Bar, Pennsylvania, for Henry Short, a creditor.

Henry Short, a witness produced in his own behalf, being duly sworn according to law on his oath, saith:

Examined by Mr. Hagerman:

Q. Where do you live?

A. East Bangor, Pa.

Q. Did you have an application from the American Brick and Tile Company for a loan?

A. Yes.

Q. How much?

A. $2,000.

Q. Did you loan them the money—did you give them the money?

A. Yes, sir.

Q. What date did you give them the money?

A. The 13th of February, I think it was.

Q. What year—you may look at your note?

A. February 13th, 1892.

Q. You received this evidence of indebtedness at the time that you paid over the money?

A. Yes, sir.

Mr. Hagerman—I offer that note in evidence.

Court—That is not sufficiently proved yet.

Mr. Hagerman:

Q. Were you present when this note was signed?

A. Yes, sir.

Q. Who signed the note?

A. Henry Green.

Q. Was he the president of the company at the time?

A. Yes, sir.

Q. And state whether or not at the same time you paid him any money?

A. I paid him the $2,000.

Q. And he gave you this note?

A. Yes, sir.

Q. Did you know what he did with the money—did he give it to anybody?

A. He gave it to Frederick Green, his son, and told him to take it to the bank.

Q. He was the treasurer of the company?

A. Yes, sir; he was the treasurer of the company.

Q. He was the treasurer of the company at the time?

A. Yes, sir.

Mr. Hagerman—Now I offer the note in evidence.

Marked *Exhibit S 1.*

Mr. Hagerman:

Q. When did you receive the last payment of interest on this note?

A. It is marked on the back of the note.

Q. The endorsements of interest are marked on the back of the note?

A. Yes, sir.

Mr. Hagerman—I offer in evidence the paper marked *Exhibit S 1*, with the following endorsement upon the back.

Court—You must prove the endorsement.

Mr. Hagerman:

Q. Were these endorsements made by your authority?

A. Yes, sir.

Q. At the time of the receipt of the money?

A. Yes, sir; at the time I gave him the money.

Q. At the time of the receipt of the interest, I mean, by you?

A. Oh; yes, sir.

Q. The endorsements were made then?

A. Well, he sent me a check, and I don't know exactly—but within a day or two.

Q. Did you make the endorsement of the payment of the interest at the time you received the check, I mean?

A. Oh; yes sir.

Mr. Hagerman—The endorsements are as follows: "April 1st, 1893, received one year's interest on the within note, Henry Short, per T. F. E., Att'y."

The next endorsement is "April 8th, 1894, received one year's interest."

The next endorsement is "March 2d, 1895, received one year's interest."

"Received one year's interest March 5th or 3d, I don't know which it is—due February 13th, 1896."

"Received one year's interest March 12th, 1897, due February 13th, 1897."

"Received one year's interest March 28th, 1898, due February 13th."

"Received March 5th, 1900, $240 in full of two years' interest, Henry Short."

Court—You had better read the note.

Mr. Hagerman—The note is as follows:

$2,000. "Easton, Pa., Feb. 13th, 1892.

One year after date the American Brick and Tile Co. of New Jersey promises to pay to the order of Henry Short two thousand dollars without defalcation, and with six per cent. interest from date.

American Brick & Tile Co.,
Per H. Green, President."

The other endorsement on the back of this note is: "I hereby guarantee the payment of the within note. Henry Green."

Mr. Martin—I object to the endorsement being put in evidence, because he has not testified that these payments were made by or in behalf of the company, or that he made the endorsements himself.

Court—The endorsements themselves do not prove any payments, to take the note out of the statutes of this State. It is some evidence, although I don't think it is sufficient. I cannot refuse to accept the evidence so far as it goes.

Mr. Hagerman:

Q. How was the last payment of March 5th, 1900, made to you?

A. By check sent to me.

Q. What check was it?

A. That I could not tell you now.

Q. Could you tell whether it was the company's check or not?

A. Oh, yes, sir; it was a check from the American Brick and Tile Company, I think, although I am not positive.

Mr. Hagerman—I have the check here.

Court—You may offer it, then—that is better than asking the witness for his recollection as to it.

Mr. Hagerman:

Q. You may look at this check and say whether this is the check you refer to or not?

A. Yes, sir; that is my handwriting on the back of it.

Q. What is that paper (handing witness paper)?

A. I can hardly see, my sight is bad.

Court—You had better prove it by someone who can see it.

Mr. Hagerman—I will do so.

Cross-examination by Mr. Martin:

Q. Did you make these endorsements?

A. My wife made them.

Q. You directed her to make them?

A. Yes, sir.

Q. Were these made at the time you received the money?

A. Why, I received the checks; maybe they were not cashed within a few days; I cannot say exactly.

Q. Do you say you saw Mr. Green sign this note?

A. Yes, sir; he signed that note before I gave them the money; as I was putting the check down on the table, he signed the note.

Frederick Green, recalled in behalf of the claim of Henry Short, saith:

Examined by Mr. Hagerman

Q. You were the treasurer of the American Brick and Tile Company?

A. Yes, sir, I was.

Q. At the time that note *S 1* was given, on February 13th, 1892?

A. Yes, sir.

Q. And from then on continuously?

A. Yes, sir.

Q. You were the only treasurer of the company?

A. I was the only treasurer the company had, yes, sir.

Q. Are you acquainted with the handwriting of your father and his signature?

A. Yes, sir; that note was drawn by him, and signed by him as the president of the American Brick and Tile Company.

Q. You will look at the cash book of the company at that time, and state whether the company received the money or not; look under date February 13th, 1892?

A. I find the following entry in the cash book. "Under date February 17th, 1892, to cash received, loan Henry Short, note for $2,000." I find that on page 124 of the cash book.

Q. Look at this check and say what it is?

A. It is a check of the American Brick and Tile Company, drawn by me March 3d, 1900, on the Easton National Bank, payable to Henry Short, for $240, signed by me as treasurer of the company.

Check offered in evidence and marked

Exhibit S 2

and reads as follows:

"No. 2135. EASTON, PA., March 3d, 1900.

The Easton National Bank, pay to the order of Henry Short, two hundred and forty dollars.

(Signed) FRED. GREEN, *Treasurer.*"

Endorsed on the top "American Brick and Tile Co., Phillipsburg, New Jersey," and endorsed "Henry Short."

Q. When was that payment made?

A. I should say it was made on March 3d, 1900.

Court:

Q. What was it paid for?

A. It was interest on the loan of $2,000—two years' interest.

Q. Represented by that note, *Exhibit S 1?*

A. Yes, sir.

Cross-examination by Mr. Martin:

Q. Was the payment authorized by the Board of Directors?

A. Well, my father told me to draw that check and send it to Mr. Short.

Mr. Buchanan—With the Court's permission, I will now take up the case of the claim of the E. P. Wilbur Trust Company.

Court—You may do so.

Elisha P. Wilbur, a witness produced in behalf of the claim of the E. P. Wilbur Company, being duly sworn according to law, on his oath saith:

Examined by Mr. Buchanan:

Q. You live at Bethlehem, Pa.?

A. Yes, sir; I live at South Bethlehem, Pa.

Q. In the year 1899 did you live there?

A. Yes, sir.

Q. Do you know the E. P. Wilbur Trust Company?

A. Yes, sir.

Q. Did you then sustain any official relation to that company?

A. I still retain it.

Q. You were an officer of that company at that time?

A. Yes, sir.

Q. And you are still an officer of the company?

A. Yes, sir.

Q. Did you know the late Henry Green?

A. Yes, sir; very well.

Q. He was the president of the American Brick and Tile Company, was he not?

A. Yes, sir.

Q. I hand you what purports to be a promissory note, dated April 20th, 1899, purporting to be signed "The American Brick and Tile Company, H. Green, Presi-

dent"; look upon that note and say whether you know the signature?

A. Yes, sir; I do.

Q. Whose signature is it?

A. It is the signature of Henry Green.

Q. As president of the company?

A. Yes, sir; as president of the American Brick and Tile Company.

Q. Look upon the back of the note, and state how it is endorsed?

A. It is endorsed by "H. Green"; that is his signature—the note is for $8,000.

Q. I hand you another note, dated April 27th, 1899, purporting to be a promissory note—look upon this note, it being a note for $4,500, and state whose signature is attached to it?

A. The signature of "H. Green, president of the American Brick and Tile Company."

Q. These notes were delivered to the Wilbur Trust Company at the time they bear date, respectively, were they?

A. Yes, sir.

Q. And they have been held by the trust company ever since?

A. Yes, sir.

Q. And are now held by the Wilbur Trust Company?

A. Yes, sir.

Q. Is the amount of the face of these notes with interest, still due?

A. Yes, sir.

Mr. Buchanan—I offer in evidence the notes, which have been testified to.

Marked *Exhibits W 1* and *W 2,* respectively, and reads as follows:

Exhibit W 1.

"8,000.

SOUTH BETHLEHEM, PA., April 30, 1898.

One month after date we promise to pay to the order of H. Green, eight thousand dollars

at the E. P. Wilbur Trust Company, South Bethlehem, Pa., without defalcation, for value received.

AMERICAN BRICK AND TILE CO.,
Credit drawer per H. GREEN, *Pres.*
H. GREEN."

Endorsed, "Protest waived April 30th, 1899, H. Green."

Exhibit W 2 reads as follows:

"4,500.

SOUTH BETHLEHEM, PA., April 27, 1899.

One month after date we promise to pay to the order of H. Green, forty-five hundred dollars at the E. P. Wilbur Trust Company, without defalcation, for value received.

AMERICAN BRICK AND TILE CO.,
Credit drawer per H. GREEN, *Pres.*
H. GREEN."

Endorsed, "Protest waived April 27th, 1899, H. Green."

Cross-examination, by Mr. Martin:

Q. Do you know what consideration was given for the note?

A. The money was paid for them.

Q. To whom?

A. To Judge Green; to Henry Green.

Q. To him as an individual?

A. I don't know in what capacity it was paid to him—I had no personal knowledge of that.

Q. Were these notes given for a new consideration at the time of their date?

A. At the dates of these notes—I think they were a continuation of the original notes.

Cross-examination, by Mr. Kirkpatrick:

Q. As I understand, these notes were renewals of other notes?

A. I think so, Judge.

Q. And those were renewals of still other notes?

A. Yes, sir.

Q. And they had been running for some time?

A. Oh, yes; I can give you the date if you wish, I think, Judge.

Q. Yes, I would like to know that?

A. I think the first one was in 1886.

Q. And what was that for?

A. $5,000.

Q. And one of these notes is how much—you have two notes there?

A. Yes, sir; there is one of $8,000 and one of $4,500, the $5,000 note having been united with another one of $3,000 at the time of the renewal.

Q. And then these were subsequently renewed either separately or consolidated?

A. After they were renewed, after that they were renewed in the present amounts, $8,000 and $4,500.

Q. Yes, the consolidated amount?

A. Yes, sir; the consolidated amount.

Q. And you say that first note of $5,000 started in 1886—when did the $3,000 note start?

A. March 1st, 1890, is the date I have here. I don't know personally as to that.

Q. They were, of course, the same kind of notes, of the American Brick & Tile Co., signed by Henry Green, as President?

A. Yes, sir.

Q. Of course, you were aware at the time that that first $5,000 was borrowed, that that money was borrowed for the company?

A. Well, I did not know personally, except as I got the information from the officers of the company.

Q. You were one of the directors of the company of the American Brick & Tile Co. yourself, were you not?

A. Yes, sir, I was, and president of the company at the time, but I did not know of this transaction at the time, personally.

Q. And you were also interested as president of the E. P. Wilbur Trust Co. at the time?

A. Yes, sir.

Q. And these notes were in the same form as the last notes issued on?

A. Yes, sir; the same form.

Q. That is, signed by the American Brick & Tile Co., by "Henry Green, Pres."?

A. I so understand; I never saw these notes, Judge.

Q. You say you were a member of this company, of the American Brick & Tile Co., since 1886, about the time of its formation?

A. Yes, sir.

Q. And also a director of the company, until how long?

A. Until when?

Q. How long were you a director of the company?

A. I don't know, sir; I may be a director yet. I don't know as to that.

Q. You were elected one of the directors?

A. Yes, sir.

Q. You occupied that position, as well as the position of stockholder of the company, during all that period?

A. Yes, sir.

Q. And you are not sure whether you are not a director still?

A. No, sir; I think probably I am.

Mr. Kirkpatrick—I will ask whether Mr. Wilbur will be here the rest of the day, as we want to examine him on some other branches of the case, on some other matters.

Mr. Lindabury—Oh, yes; he will be here, and you need not anticipate at all. But if you want to prove something else by him, in support of your general case, why don't you do it now?

Mr. Kirkpatrick—We would prefer to take that proof in its regular order.

Mr. Stewart—I desire to offer in evidence a check dated March 7th, 1900, payable to Fred-

erick Green for $260, signed by Frederick Green, Treasurer. That is the check that Mr. Lindabury called for the other day, we have received from the Receiver.

Mr. Lindabury—Can I see it?

(Check handed to Mr. Lindabury.)

Mr. Stewart—I offer that check in evidence.

Marked *Exhibit G 4,* and reads as follows:

"No. 2137. Easton, Pa., March 7th, 1900.

Easton National Bank pay to the order of Fred Green two hundred and sixty dollars.

(Signed) Fred Green, Treasurer."

Endorsed "Fred Green."

Fred Green, recalled in behalf of the Easton National Bank, saith:

Examined by Mr. Kirkpatrick:

Q. You have already testified that you were the secretary and treasurer of the American Brick and Tile Company?

A. Yes, sir.

Q. Where did the company keep its deposits and do its principal banking business?

A. In the Easton National Bank, at Easton.

Q. And in connection with their account with the bank and their dealings with the bank, did they keep a deposit or pass book?

A. Yes, sir.

Q. Look at the three books which I now hand you, which are marked *Exhibits E 1, E 2 and E 3,* respectively, do you say these are the books?

A. Yes, sir.

Q. Were there any other deposit books except these in the accounts of the American Brick and Tile Company with the Easton National Bank?

A. These appear to be the only deposit books we had.

Q. And these deposit books were settled and adjusted from time to time, as appears from their face?

A. Yes, sir.

Q. In connection with the dealings of the bank, there were not only deposits of cash, but were there also transactions connected with the crediting and debiting of the proceeds of the notes and discounts of the company?

A. The notes were always entered in the book whenever they were renewed or any original loans made.

Q. And during the time from the time of the formation of the company down to the time or nearly to the time of the death of your father, were there a series of note transactions between the company and the bank during that pariod?

A. Yes, sir.

Q. And these transactions are all entered in this book?

A. Yes, sir, they are all entered in the books?

Q. As well as the entries made in your cash book?

A. Yes, sir.

Q. Of the proceeds of the original notes, and discounts?

A. Yes, sir, the proceeds of all the original notes were entered in the cash book.

Q. And do you remember or can you refer to the books—do you remember the first note discounted for the benefit of the company—look for it, dated about December 2d, 1886?

A. Well, I remember the fact that there was a note for $5,000 discounted in the Easton National Bank in December, 1886.

Q. Look at the credit side of the first book under the head of December, 1886?

A. December 7th, 1886, there is an entry, "proceeds on a $5,000 note."

Q. That was the first note that was discounted for the company at the Easton National Bank?

A. Yes, sir.

Q. Do you remember when the next note was discounted—that is the next original note; just refer to your cash book on page 14; what do you find there?

A. That is the note I have just testified to.

Q. Do you charge yourself there with the proceeds of that note?

A. I charge myself in this connection with the $5,000.

Q. The full $5,000?

A. Yes, sir.

Q. What did you do about the discount?

A. Well, I don't see any entry here of any credit for the discount?

Q. Well, there was one shown the other day?

A. Oh, yes, sir, here it is. It is out of its order. December 7th, 1886, "by cash paid discount, Easton National Bank, $78.33."

Q. Now, that note, do you remember about that note being given; how that note was signed?

A. Well, it was signed the way all the notes were signed.

Q. That is by the American Brick and Tile Company, by your father as president?

A. Yes, sir, that is the way they were all signed.

Q. And purporting to be the note of the American Brick and Tile Company?

A. Yes, I should say so.

Q. That is your recollection?

A. Yes, sir.

Q. Witness being shown Exhibit marked *E 4*—that purports to be a note of the American Brick and Tile Company, signed in the same way as the other, does it not?

A. Yes, sir; a note of the American Brick and Tile Company, signed by "H. Green, President."

Q. That is the note?

A. Yes, sir.

Q. Was that note regularly renewed, and how was it renewed at the Easton National Bank from time to time?

A. Whenever it came due, a new note was presented to the bank, and the proceeds of the note were entered in the deposit book.

Q. That is the net proceeds of that renewal were entered in that way?

A. Yes, sir; the net proceeds of that renewal were entered in that way, and then when the book was settled up the old note was charged in full against the account of the company.

Q. So that that left the discount paid by the company?

A. Yes, sir.

Q. And did you, in order to keep your cash balance correct, did you enter credit for yourself on that discount, on the credit side of your cash account?

A. Yes, sir.

Mr. Kirkpatrick—Now, we are prepared to show the history of all these notes right along. It will take a great deal of time.

Mr. Martin—As to that, I would like you to wait a little while—we will arrange as to that. Mr. Lindabury is at present out of the room, and when he returns we will see what will be best to be done.

Mr. Kirkpatrick:

Q. Mr. Green, you have testified that this note was regularly renewed from time to time?

A. Yes, sir.

Q. And then, of course, after that other notes were discounted?

A. Yes, sir; frequently other notes were discounted.

Q. Turn to a $500 note that that company discounted for the benefit of the company, in the same form by the Easton National Bank, and the proceeds charged to yourself, as the treasurer of the company—look at page 32 of the cash book.

A. On the 18th of May, 1888?

Q. Yes.

A. I have an entry in the cash book, "To cash received; discount note for $500," and the entry is "497.17," being the proceeds of that note.

Q. That is, you charged yourself there with the net proceeds of that note?

A. Yes, sir; I charged myself with the net proceeds of that note.

Q. You do not charge yourself with the full amount of the note, and take credit for the discount on the other side?

A. No, sir; I charge myself with the net proceeds of that note.

Q. Is that note entered in your bank book, and does it enter into the settlement of your bank book, on or about that date "May 18th"?

A. Now, in the bank book I find under date "May 18th, discount on a $5,000 note," with the statement, "that it was endorsed by Green"; that is what it looks like.

Q. You find a corresponding item indicating the discount of the $5,000 note?

A. Yes, sir.

Q. State whether that note was renewed from time to time?

A. Yes, sir; that note was renewed as it came due.

Q. And entered into the settlement of the book from time to time, and so found in these books until it disappears, either in a consolidated note or extinguished by ultimate payment?

A. Yes, sir.

Q. And these renewals, were they regularly made from time to time, as the note came due by the bank?

A. Yes, sir.

Q. Upon the application of the company?

A. Yes, sir; we presented the notes, and they were discounted.

Q. And they were in the usual form, signed by the company, by your father, the president of the American Brick and Tile Company?

A. Yes, sir; that is the way they were all signed.

Q. In the meantime the $5,000 note was carried along by these renewals?

A. Yes, sir; that note was carried along by its renewals.

Q. In the same way as you have described?

A. Yes, sir.

Q. Do you find entries of the discounts in your cash book?

A. Yes, sir; I entered up the discounts on the cash book.

Q. You did not, of course, upon these renewals, as I understand you—you did not charge yourself with the full amount of the note, and take credit for the discount as you had already received the cash on the first note?

A. Yes, sir; that is the way I did it.

Q. When does the $1,000 note first appear as an original note in your cash book—turn to page 50 of the cash book?

A. April 17th, 1889.

Q. What do you find there?

A. I find this entry: "To cash received, note for one thousand dollars, discounted, Easton National Bank." I there entered the proceeds, $989.33.

Q. That is, you charge up the net proceeds of the note?

A. Yes, sir.

Q. So that you get credit for the discount in that way?

A. Yes, sir.

Q. Now, was that note renewed from time to time thereafter?

A. Yes, sir; that note was renewed from time to time.

Q. And so you were carrying along, as I understand at that time, the $5,000 note, the $500 and the $1,000 note?

A. Yes, sir.

Q. Which were at the periods of maturity renewed in this way?

A. Yes, sir; they were renewed as I have explained.

Q. Upon application to the bank in behalf of the company?

A. Yes, sir.

Q. Was there another $1,000 note subsequently discounted—look at page 78 of the cash book, and see if you find an entry as to that?

A. It is $500. On the 9th of May, 1890, there was no discount for $500—that was discounted at the Easton National Bank.

Q. Oh, yes—do you find anything as to the $1,000 note on page 78 of your cash book?

A. No, sir.

Q. Then that must have been intended for the $500 note?

A. Yes, sir; I think so.

Q. Do you also find in the bank book—see if you find an entry of a $1,000 note discounted?

Mr. Lindabury—Perhaps we can shorten this a little. If you can tell us the date when the account was overdrawn and remained so to the end—I understand the account was overdrawn at the end, or the date when it was last made good. Mr. Green states that it was in a chronic state of overdraft.

Mr. Kirkpatrick—The last installment account starts March 3d, 1900, and the overdraft was ascertained on the 6th of August, 1900.

Mr. Lindabury—What are you proving by this evidence now?

Mr. Kirkpatrick—The origin of the notes and the subsequent renewals of the various notes. The last bank book was delivered up March 3d, 1900, and after that it was never written up—Judge Green died early that summer.

Court—If you have the notes here executed by the company, why would they not stand for what they purport to be?

Mr. Lindabury—I think it does, and we will help that out by admitting that these notes were

signed by Henry Green for the company, and that they were discounted by the Easton National Bank.

Mr. Kirkpatrick—We want more than that. We want that they were signed by Judge Green, and that he had authority to sign the notes, and that they were discounted by the Easton National Bank.

Mr. Lindabury—It is admitted that these notes were executed by the president of the company, and that they were discounted at this bank, and that the proceeds of the notes went to the credit of the company.

Mr. Kirkpatrick—That is, the notes that make up the claim of the Easton National Bank?

Mr. Lindabury—Yes, sir; we will admit that.

Mr. Kirkpatrick—Will you admit that there was an overdraft of $198 after the 3d of March, 1900?

Mr. Lindabury—What is the date of that overdraft?

Mr. Kirkpatrick—August 6th, 1900.

Mr. Lindabury—You mean now that between certain dates, the last of which was August 6th, there was an overdraft—between what dates, did you say?

Mr. Kirkpatrick—Between March 3d, 1900, and August 6th of the same year.

Mr. Lindabury—If you say so, I will admit it.

Mr. Kirkpatrick—The final overdraft of $198.91 occurred between the period March 3d, 1900, and August 6th, 1900.

Mr. Lindabury—We will admit it.

Mr. Kirkpatrick:

Q. You say—you have already testified about your connection with the company—were there other notes drawn, various notes, in connection with the transaction

of the company, in which the notes were drawn in this way, by your father, and paid by the company?

Mr. Lindabury—You can only prove that by producing the notes—I object to it.

Mr. Kirkpatrick—We will produce the notes.

Q. Here are a number of notes, taken indiscriminately --just look at these notes—what kind of notes were they?

Mr. Lindabury—I object to that—that appears from an inspection of the notes. The only proper question to ask is whether these notes bear the signature of his father.

Court—You may change the question.

Mr. Kirkpatrick:

Q. How do these notes purport to be signed?

Mr. Lindabury—I object to that—that appears on the face of the notes.

Court—I think the paper shows that—what do you want to prove?

Mr. Kirkpatrick—I want to prove that a number of papers executed by the American Brick and Tile Company, by H. Green as president, in the ordinary transactions of the business of that company, by giving notes of the company for various matters that went into the company's business, and for the benefit of the company—I want to prove the course of dealings recognized by this company from the foundation of the company up.

Court—First prove the signatures—take up the first note, and call the witness' attention to it.

Witness—Here is a note dated August 15th, 1886, signed "The American Brick and Tile Company, per H. Green, President," drawn to the order of E. M. Teel, for $414.03.

Mr. Kirkpatrick:

Q. That was finally paid by the company?

A. Yes, sir; that note was paid by the company.

Q. Do you know what it was for?

A. He was in the lumber business, and that was for lumber, I think.

Mr. Lindabury—I object to that—to what he thinks about it—his opinion is not evidence. He testified the other day that he personally had nothing to do with the business.

Court—Do you know what that note was given for?

A. From the note itself, I cannot tell, but, as I say, he was in the lumber business, and I presume that that note was given for lumber.

Mr. Kirkpatrick:

Q. Do you recollect, or can you from your cash book, or anything you have in the shape of memoranda that will help you, say what it was given for—for a nill of any kind?

A. The note was renewed on the 30th of November—

Court:

Q. That is not the question—can you tell what it was given for?

A. I explained that on that day it was renewed, and I don't know how many months or days, I will have to trace it along in the book to find out, when it was first given and what it was for, in that way.

Mr. Kirkpatrick:

Q. Do so?

A. I cannot find any entry here, of that note; you will have to find the bill.

Q. What do you recollect about it; have you any recollection about it, at all?

A. I have no definite recollection of that note.

Q. Of that particular note?

A. No, sir; I have no definite recollection about it.

Q. Do you know whether you had any dealings with Mr. Teel at that time?

A. Yes, sir; I know we bought things of him, and gave notes for them.

Q. How were those notes all signed?

A. They were all signed in the same way, "The American Brick and Tile Company, by Henry Green, President."

Q. Were the notes subsequently paid?

Mr. Lindabury—I object to that; you cannot prove the notes in that way.

Court—Suppose you take up the next note?

Mr. Kirkpatrick:

Q. Take up the next note—what note is it?

A. A note dated Easton, Pa., December 15th, 1890, for $250, payable to the order of W. L. Gregg.

Q. Have you any recollection of what that note was given for?

A. I only know that that man furnished some machinery for the company.

Q. That was the dealings the company had with him?

A. Yes, sir.

Q. And do you remember giving a note to him for his account or not?

A. No, sir; I did not give him any note; I do not remember the giving of the note.

Court—He says he does not recollect what the notes were given for. He does say, however, that the notes were given for bills, and that they bought some machinery from this party, and that is his best recollection.

Mr. Kirkpatrick:

Q. Have you any other note?

A. Here is a note dated Easton, Pa., July 2d, 1891, to the order of F. F. Drinkhouse, for $102.06.

Q. And that note is signed in the same way?

A. That note is signed in the same way.

Q. What was that given for; have you any recollection on the subject at all?

A. Well, I recollect that Mr. Drinkhouse did our repairing, or a great deal of our repairing.

Q. And do you recollect giving him notes from time to time?

A. Yes, sir; frequently he got notes.

Q. What other note have you?

A. Here is a note dated "Easton, Pa., September 17th, 1892, for $181.80, to the order of Joe Crossley."

Q. On what account was that note given?

A. That note was signed "The American Brick and Tile Company, per H. Green, President."

Q. What was it given for?

A. I cannot recall, excepting that he probably built the kilns.

Q. Do you remember about it?

A. No, sir; I cannot remember exactly as to it.

Q. That note appears to have been paid?

A. All these notes were paid.

It is admitted that notes to the number of ten or more were from time to time executed and delivered to Judge Green in payment, for the various purchases or work done or materials furnished for or to company.

Mr. Kirkpatrick—I offer these notes in evidence.

Marked *Exhibits E 5, E 6, E 7* and *E 8*, respectively.

Q. Look at the note I now produce to you (handing witness note). Was that note among the papers of the company that were delivered to the Receiver?

A. Yes, sir.

Mr. Lindabury—It will be admitted that that is Judge Paxson's handwriting.

Mr. Kirkpatrick:

Q. Was this note discounted and then paid?

Mr. Lindabury—I object—it is a note to Judge Paxson signed by the American Brick and Tile Company, by H. Green, President—I object to its relevancy.

It is admitted as evidence, for the purpose stated by counsel, to wit, to show that Judge Green had a right to make the note for the American Brick and Tile Company.

Marked *Exhibit E 9.*

Q. Is there any record or minute, that you know of, in which any formal authority was given to execute that note?

A. No, sir; I know of none.

Q. By any meetings of the board of directors or any other—

Mr. Lindabury—He says there is not any.

Mr. Kirkpatrick—Yes; that is so.

Mr. Kirkpatrick—What do you admit, Mr. Lindabury, as to the notes, so that we may know how far we ought to go in the proof as to those notes?

Mr. Lindabury—I mean to admit that the first of the series of notes, the last of which they attempt to prove here, was signed by Judge Green and discounted, and that these notes were renewed from time to time, and the proceeds carried to the account of the company, and the discount charged up to them, down to the failure of the company, and the making of the last of the series which are proven here, as the foundation of the present bank's claim.

Of course, if you do not admit it, I will have to prove what appears by the books here; that there was no money ever paid in the way of discount of these notes, and that they were simply a series of renewals from the date at which the statute of limitations begin to run. There was

never a dollar of cash put in the bank, and the balance of $2,000 mentioned in these books was merely the result of the discounts of some of these notes.

Mr. Kirkpatrick—We cannot admit that.

Mr. Lindabury—Then I will have to prove that. I only want to know what the facts are in regard to that.

Cross-examination, by Mr. Lindabury:

Q. You do not want to be understood as claiming that all these acts of your father, in executing these different notes, was without any authority from the board of directors, do you?

A. I don't know anything about any authorities from the board of directors.

Q. Take this note executed to Judge Paxson for $2,000; it is marked *Exhibit E 9,* and which is made December 28th, 1889—you don't mean to be understood in saying that your father executed and delivered that note without authority from the board of directors, do you?

A. I don't know anything about it.

Q. There were meetings of the board of directors, of which you have got no minutes, were there not, or don't you know?

A. I don't know what you mean by meetings of the board of directors where there were no minutes taken, Mr. Lindabury. There were occasions when Judge Paxson and Mr. E. P. Wilbur came to our house; coming there in a sort of social way—

Q. Do you know whether or not there was meetings of the board of directors at which you were either not present, or being present, you failed to make a minute or record a minute in your book?

Mr. Kirkpatrick—I object to that as assuming the things that have not been proven yet.

Question withdrawn.

Mr. Lindabury:

Q. Do you want to be understood as saying that you were actually present, and took minutes and recorded them, of every meeting of the board of directors?

A. I have no recollection of attending any meeting of the board of directors.

Q. At any time?

A. At any time.

Q. How did you get the minutes that you did record in the book?

A. I think the minutes themselves will show I was not present.

Q. Will you answer the question, please—how did you get the minutes that you did record in the book?

A. They were handed to me to record in the book.

Q. By whom?

A. On one occasion my father got the minutes of the meeting—that was the first meeting.

Q. What about other occasions?

A. On the next occasion it appears in the minute book, Mr. W. E. Wilbur mailed me the notes of the meeting.

Q. What about any other occasions?

A. There was another meeting of the board of directors.

Q. Of which you got a minute?

A. I have a minute in the book.

Q. And that you haven't had time to record yet?

A. I may have had time, but I did not record it.

Q. When did you get that?

A. That was the last meeting that was held, that was held in probably February, 1890, I mean 1900.

Q. Four years ago or more?

A. Yes, sir.

Q. Why didn't you record that in the book?

A. Well, I probably laid it away in the book, expecting some day to take it up and record it, but which I forgot to do.

Q. And how many other meetings have you got minutes of, and which you neglected to record in your minute book? How many other minutes did you get?

A. None.

Q. You think you got none?

A. Absolutely not one.

Q. You never attended a single meeting of the board of directors?

A. No, sir, I never attended a single meeting of the board of directors.

Q. Not one.

A. No, sir.

Re-direct by Mr. Kirkpatrick.

Q. You spoke of a minute that was mailed to you by Mr. Wilbur, which was the one—did you record that minute?

A. Yes, sir, that is recorded.

Q. I hand you this one (handing witness paper)?

A. This is the one that was recorded.

Q. Now, you said there was one that was unrecorded—is this the one (handing witness paper)?

A. This is a minute of the meeting of the stockholders held in Philadelphia—that was not mailed to me.

Q. Where did you get that?

A. I found that in the papers of the company, among the papers of the company.

Q. That was never entered in the minute book?

A. No, sir.

Q. In whose handwriting was that, do you know?

A. No, sir, I cannot say, in whose handwriting it is.

Q. You found that among the papers of the company?

A. Yes, sir.

Further cross-examination by Mr. Lindabury.

Q. When did you find this?

A. I found that paper a few days ago, in looking over the papers I had.

Q. Since the last meeting here?

A. Yes, sir.

Q. You had one that day that was not recorded?

A. That was in the minute book

Q. It was not recorded?

A. No, sir, it was not recorded in the minute book.

Q. So that the one you were speaking of a few months ago that you laid by to record at a more convenient season?

A. Yes, sir.

Q. Was a different one to the one you produced now?

A. Yes, sir.

Q. Since then you found among the papers a minute of a supposed meeting not recorded either—is that right?

A. Yes, sir; that is the paper (indicating).

Q. And in the handwriting of W. A. Wilbur, secretary *pro tem?*

A. That I cannot say, I am not familiar with his handwriting.

Q. It appears to be?

A. Yes, sir, it seems to be.

Q. How did it come that you have not found this paper before?

A. Well, it was in a box of papers that had been put all together when I moved my office, and these papers had been taken out of the drawers of the desk that my father had used for many years, and where the papers of the company were kept, or some of the papers of the company were kept.

Q. That same box you told us about the other day?

A. No, sir, I don't think so.

Q. Another box?

A. Yes, sir.

Q. How many more minutes are there that did not get into the books?

A. I don't think there are any more.

Q. You think there are no more?

A. I would not know where to look for any.

Q. You did not look for this?

A. No, sir.

Q. You found it by accident?

A. Yes, sir.

Q. Looking for something else?

A. Well, I was going over the papers to see if there were anything of the Brick Company's papers.

Q. When you turned over the American Brick and Tile Company's papers to the receiver, you turned over all you could find?

A. Yes, sir, I turned over everything I could find.

Q. You intended to turn over everything?

A. Yes, sir.

Frederick Green, recalled in behalf of the claim of the Executors of Judge Green, deceased, saith:

Examined by Mr. Stewart.

Q. Look at *Exhibits W 1* and *W 2,* produced by Mr. Wilbur here to-day—are those the notes you referred to in the second paragraph of your claim, as executor, in which H. Green is liable as endorser?

A. Yes, sir.

Q. Did you see the note produced here by Henry Short?

A. Yes, sir.

Q. Is that the note referred to as one of the notes upon which Henry Green is endorser?

A. Yes, sir, that is the note.

No cross-examination.

Henry G. Siegfried, recalled in behalf of the claim of the Easton National Bank, saith:

Examined by Mr. Kirkpatrick.

Q. You testified the other day that you were the cashier of the Easton National Bank?

A. Yes.

Q. In addition to that, you served in several capaci-

ties, but did not state distinctly what capacities you served in the bank, previous to that?

A. Yes, sir.

Mr. Lindabury—I object to that.

Court—What is the purpose of it?

Mr. Kirkpatrick—To show his knowledge of the books of the bank. There are some books here which we will undertake to show the accounts—interrupted—

Mr. Lindabury—I have admitted all that the books can show—I have admitted that they were discounted, and that the proceeds were carried to the credit of the company. He cannot show anything more than that.

Mr. Kirkpatrick—I think that is all by this witness, I think the admission covers it.

Cross-examination by Mr. Dickson.

Q. These cash deposits were almost exclusively the proceeds of discounts—that is these apparent cash balances?

A. They were all the proceeds of discounts with a very few exceptions of discounts as shown in this, back of 1900.

Q. And back to 1898, say to the first of January?

A. They were most of the proceeds of renewals except here and there a cash deposit.

Q. And never more than two or three hundred dollars at a time?

A. Yes, sir.

Mr. Kirkpatrick.

Q. Do the books show that?

A. They were marked "cash" when it was cash, and when it was the proceeds of notes, they were shown in that way.

Mr. Lindabury.

Q. Give the cash items from the first of January, 1898?

A. January 4th, cash, $200; January 10th, cash, $200; January 18th, cash, $60.56; January 31st, cash, $485; March 28th, cash, $300; March 30th, cash, $295.45; May 13th, cash, $250; May 12th, cash, $225; July 5th, cash, $300. Now, this is all of 1898. July 11th, cash, $300; August 8th, cash, $200; September 23d, cash, $200; October 21st, cash, $200; December 1st, cash, $300; December 29th, cash, $300. Now, it is 1899. March 2d, cash, $300. Now, it is 1900. March 3d, cash, $2,500—that is the cash for the sale of that lot. June 4th, 1900, cash, $200. That is the last item.

Q. Can you give the amount of the drafts made by checks drawn during the same period?

A. That I could not tell, for the simple reason they are not identified by the marks, there is nothing but the amounts.

Q. Cannot you tell—in your case when you discounted the notes, you did not require a check to pay the notes, did you?

A. No, sir, it is taken just the same as a figure.

Q. Well, in the city banks we do it in that way, by giving a check for the payment of the note?

A. Well, we do not do it that way in our bank, for notes paid by customers. You understand that that book is merely a copy of the account, it has never been balanced.

Re-direct, by Mr. Kirkpatrick:

Q. Witness being shown a book containing a copy of the account from March 3d, 1900, to August, 1900, and marked *Exhibit E 10,* is asked—that is a copy of the account on your books, with the American Brick and Tile Company, after the last settlement in the last deposit book of the American Brick and Tile Company?

A. Yes, sir.

Q. That was taken from the books of the bank?

A. Yes, sir; that was taken from the books of the bank.

It is admitted that that is a correct copy, and will be accepted to the same effect as if the original were produced.

Court:

Q. What does the letter "N" indicate in this book?

A. A note.

Q. That means a discounted note?

A. Yes, sir; that means a discounted note.

Q. And the lines marked "cash," represent money?

A. Yes, sir; deposits.

Q. And the word "balance" at the top shows the amount standing to the credit of the company, when this account was opened March 3d, 1900?

A. Yes, sir; that was the balance at that date.

Mr. Kirkpatrick:

Q. Is that the only entry that appears there, marked "N"?

A. Oh, there are entries all through the account; I have them marked.

Q. But on the other side of the account, the debit side of the account, there is nothing to indicate where their checks are notes?

A. No, sir; there is nothing to indicate where their checks are notes; the checks and the notes were all entered up altogether, without anything to indicate which is which.

Cross-examination, by Mr. Martin:

Q. The proof of claim of your company is founded on the three notes in question—these notes are renewals of earlier notes, but that at some period the earlier notes were consolidated into these three notes?

A. Yes, sir.

Q. Can you give the date of that consolidation?

A. I haven't got it here, the books will show it all; it would take some time to figure it out, though.

Q. What I want is the amount of the notes that join into the sum consolidated, and the amount of the new notes, given for it?

A. Yes, sir; I will do it. A few of the small notes were paid off as they went along, but I can get at that.

Q. Will you get it up for me?

A. Yes, sir; I will.

Frederick Green, being recalled, saith:

Examined, By Mr. Dickson:

Q. Is this the last stub check book (handing witness book)?

A. Yes, sir.

Q. And contains the last check that was drawn?

A. Yes, sir.

Q. And this final check, what year was that?

A. March 13th, 1901.

I offer that stub check book in evidence.

Marked *D 7* for identification.

William M. Davis, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined, by Mr. Kirkpatrick:

Q. You are the receiver of the American Brick and Tile Company?

A. Yes, sir.

Q. Among the papers that came into your possession as receiver, did you have that (handing witness paper)?

A. This was handed to me; yes, sir.

Paper marked *E 11* for identification.

No cross-examination.

Mr. Kirkpatrick—Mr. Lindabury, will you admit that that is the handwriting and signature of Warren A. Wilbur (handing paper to counsel)?

Mr. Lindabury—I cannot do that, as I do not know his handwriting. On conferring with my colleagues, we have concluded to admit that—that is, Mr. Wilbur's handwriting.

Marked *E 12.*

Mr. Kirkpatrick—We offer in evidence this minute.

Mr. Lindabury—I object to that; there is nothing to authenticate it. In fact, they produce a paper here in the handwriting of Mr. Wilbur, which purports to be a minute of the meeting of the stockholders of the American Brick and Tile Co., signed by Warren A. Wilbur, secretary *pro tem.* I do not think you can prove the action of a set of stockholders in that way. I will talk with Mr. Wilbur about it.

Mr. Lindabury—After consulting with Mr. Wilbur as to this paper we have concluded to admit that there was such a meeting, and that at that meeting Mr. Wilbur was the secretary *pro tem.,* and that he kept the minutes. But we reserve the right to object to its relevancy.

Paper offered in evidence and marked *Exhibit E 12.*

Mr. Kirkpatrick—We also offer in evidence a report heretofore marked *E 11* for identification.

Mr. Lindabury—I object to it, as not being relevant.

Court—It has not been proven.

Mr. Kirkpatrick—No; I thought they would accept it and admit it as a paper that came into the hands of the receiver.

Mr. Lindabury—I think I would just as soon let it be admitted in evidence, coupled with the statement that it seems to me not to be relevant, and that the denial that it binds these defendants, although there may be nothing in it that would bind anyone. Now, what do you want me to admit in the way of a fact, Judge?

Mr. Kirkpatrick—That it was a report of the action taken at this meeting.

Mr. Lindabury—I will admit that this is a report made by the New York Audit Company, or the Audit Company of New York, signed Thomas L. Green, Manager, furnished at or about the time that it bears date, which company was employed to audit the accounts of the American Brick and Tile Co., pursuant to the resolution of the stockholders' meeting, evidenced by the minute in Mr. Wilbur's handwriting.

Mr. Kirkpatrick—And the production of the original report is waived.

Mr. Lindabury—Where is the report?

Mr. Kirkpatrick—We do not know.

Mr. Lindabury—I admit this paper on the statement of counsel that they have made careful search among the papers of the company, in the hands of the receiver, and that they can not find the original.

Paper offered in evidence and marked *Exhibit E 11.*

Mr. Shipman—I offer the stock book and the cash book, and the stock certificate book in evidence.

Mr. Lindabury—They will all be considered in evidence.

Mr. Kirkpatrick—Then we rest.

Edward M. Paxson, being duly sworn according to law, on his oath saith:

Examined by Mr. Lindabury:

Q. Where do you live?

A. Philadelphia.

Q. What is your age?

A. I am in my eighty-first year.

Q. You are a lawyer by profession?

A. I was.

Q. When were you admitted to the bar?

A. About 1850, I think, I do not remember the exact date now.

Q. You were admitted to the bar of the Supreme Court of Pennsylvania?

A. No, that was my first admission at Pillston, where we first studied law, and then I afterwards came to Philadelphia.

Q. You afterwards became a Judge of the Supreme Court, of the State of Pennsylvania?

A. Yes, sir.

Q. When did you become a Judge of the Supreme Court?

A. After the adoption of the new Constitution—I don't remember the exact year.

Q. And you then became Chief Justice?

A. Yes, sir.

Q. When was it you resigned as Chief Justice of Pennsylvania?

A. I resigned the Chief Justiceship in 1892, and I think I was Chief Justice about five years, although I would not be positive about that.

Q. When you resigned the Chief Justiceship, did you resign entirely from the bench?

A. Yes, sir, entirely.

Q. You then became one of the receivers of the Reading Railroad?

A. Yes, sir.

Q. And continued in that position until the receivership was discharged?

A. Yes, sir.

Q. And since then you have not been engaged in any business or profession?

A. No, sir, since that time I have not been engaged in any business or profession.

Q. Except taking care of your own private affairs?

A. Yes, sir, I have taken care of my own private affairs, and I have had charge of a number of large trusts.

Q. You knew Judge Henry Green, did you not?

A. Very well, I was his colleague for several years.

Q. On the bench?

A. Yes, sir.

Q. Was he a Judge while you were a Chief Justice?

A. Yes, sir, I thinks he was.

Q. Was he himself once Chief Justice of Pennsylvania?

A. Yes, sir.

Q. When was that?

A. He was Chief Justice when he died.

Q. And when did he die?

A. A year or a year and a half ago, and maybe a couple of years ago, I think it is now two years ago.

Q. When did he become Chief Justice?

A. A year or two before that, I haven't the date in my mind.

Q. The petition declares it, and the answers all admit it, that it was in August, 1900—where did Judge Henry Green live?

A. In Easton, Pa.

Q. Had he lived there very long?

A. I don't know how long it was he had lived there, but he lived there when I first knew him, and before he went into the Supreme Court.

Q. When did you first become interested in the business that was undertaken by Judge Henry Green, and later became the American Brick and Tile Company?

A. Well, that has been a good many years ago, I don't exactly remember the year, but somewheres after the eighties, I think.

Q. By whom was that presented to you, in the first place?

A. By Judge Green.

Mr. Kirkpatrick—Do you propose to put in evidence any transaction or agreement between Judge Green and this witness—If you do I shall have to object to it.

Mr. Lindabury—You will have to state your objections to the line of examination when I ask the questions.

Mr. Lindabury.

Q. Judge Paxson, had you had any business associations with Judge Green before that?

A. No, sir.

Q. Simply professional or judicial associations?

A. That is all.

Q. Were you on the bench at this time?

A. Yes, sir.

Q. And he also?

A. Yes, sir.

Q. Do you remember signing the certificate of incorporation of the American Brick and Tile Company?

A. I believe I signed it, I have no immediate recollection of it though.

Q. Did you have anything to do with the preparation of the certificate of incorporation of that company?

A. I had nothing to do with it at all.

Q. Did you have nothing to do with it?

A. In what way?

Q. With the preparation of the certificate of incorporation?

A. Nothing at all.

Q. Did you look into the matter before that time at all?

A. Yes, sir.

Q. How long before that time had you decided to interest yourself financially in the scheme which that organization was to promote?

A. I cannot remember now just how long it was, but I should judge some months. My first knowledge of the concern was got at Pittsburg, when I was in court there at that time. Judge Green came to my room one night, and I think he brought one of those patentees with him. Well, now, I wont be sure whether he brought one of the patentees with him or not, but it runs in my mind

that there was some one with him, and I think it was one of the patentees that have been spoken of here—but anyhow he came to my room one night, and I merely meant to say by that that that was the first knowledge I had of it, that is all—

Q. You became a member of the first Board of Directors of the company, did you not?

A. I believe I did.

Q. Yes—now, do you remember of a meeting of the Board of Directors, after its election, at which action was taken authorizing the issue of this capital stock?

A. I think there was such a meeting, my recollection was not very clear, though.

Q. As to what its date was?

A. Yes.

Q. And do you remember upon what terms it was resolved to issue stock?

Mr. Kirkpatrick—I object to that as incompetent and irrelevant, and if it purports to be the action of the Board of Directors or organization, then the minutes and the records thereof should be offered in evidence to show what that action was. I object to this as not being the best evidence obtainable.

Mr. Lindabury—The minutes are evidence, but still they are not the only evidence, and I propose to show that at a meeting of the Board of Directors certain action was taken, of which no minutes appear at all on the minute book, whereby it was resolved by the Board of Directors that an investigation and determination as to the value of the patents taken over under the September, 1887, assignment, which is already in evidence, to issue the stock therefor, the Board of Directors adjudging and concluding that the patents taken over for which the stock was to be issued were of the value and the par value of the stock issued therefor.

Court—The present effort is to prove the action of the Board of Directors, in the absence of the minutes, as I understand.

Mr. Lindabury—After it appears that there are no minutes of it.

Court—Of course, then, it must first appear that there was a meeting, and then you can follow that up by showing that there were no minutes of the meeting.

Mr. Kirkpatrick—The proper proof, it seems to me, your Honor, of such an action is the records of the corporation.

Court—I presume you are right—but suppose there are no minutes. Then it would be entirely competent to prove that there was such a meeting, and that such action had been taken. I think it is competent, and I will take it.

Mr. Kirkpatrick—We make the further objection, your Honor, as that it is an attempt to contradict the purport and the evidence of the articles of organization under which they received their corporate existence.

Court—I will take the evidence.

Mr. Lindabury:

Q. Who was present at the meeting?

A. I cannot answer that distinctly. I think Judge Green was there, and I think Mr. Wilbur was there, and myself, and whether there were any others I cannot say now.

Q. Do you remember Mr. Potter being there?

A. I think he was there, but I am not certain about it.

Q. And of these patentees named, do you remember whether one or both of them were there present at that meeting?

A. I don't remember now.

Q. Do you remember whether the secretary was there, or not?

A. That I do not remember.

Q. Now, what was the action taken?

A. Well, according to my recollection the parties there agreed to form an organization or corporation, and I think they issued stock, but I would not be sure about that now. The question, I remember, was discussed in regard to the value of the patent or patents, and I had taken a good deal of pains and had spent some money to inform myself on that subject. That information was before these persons present and our conclusion was—

Mr. Kirkpatrick—I object to the conclusion; the witness may state what was done.

Court:

Q. What was done?

Mr. Lindabury—He referred to conclusions in the sense of a resolution.

Court—He did not say so.

Mr. Lindabury:

Q. What did you decide to do?

A. We decided to do this—we decided to go on with it and issue the stock, and we decided to take the stock.

Q. For what?

A. For the patent.

Q. And do you remember the name, or do you remember the fact that the patents were thereafter assigned to the company?

Mr. Kirkpatrick—I object to that; that is not the best way to prove that.

Court—The record shows it.

Mr. Lindabury:

Q. Was the assignment now in evidence, of the patents to the company, taken in pursuance of that action taken at that meeting?

Mr. Kirkpatrick—I object to that.

Court—I will take it.

Mr. Lindabury:

Q. Was that so?

A. Yes, sir.

Q. It appears that one hundred shares of stock were issued to you by certificate not marked "issued for property purchased"—this stock states that it is "fully paid"—do you remember what you gave for that certificate of stock?

A. I gave par for that stock, 100 a share, in my recollection now.

Q. In various payments already shown by the papers?

A. Yes, sir.

Q. And was that part of the understanding at the time, and at the meeting you refer to?

Mr. Kirkpatrick—I object to the understanding; let the witness state what was said and done.

Court—You ought, I think, to ask the witness what did actually take place and what the board of directors decided to do; the examination is too leading.

Mr. Lindabury:

Q. Judge Paxson, what was the resolution of the board with respect to the issuing of the stock?

A. Well, my recollection now is, that the stock was to be issued for the patents.

Q. How much of it?

A. Well, I don't remember the exact figures now; I think it is properly stated, though, in the papers.

Q. Did the resolution provide that the whole of it should be issued?

Mr. Kirkpatrick—I object to the question as leading.

Objection sustained.

Mr. Lindabury:

Q. You are asked to state what the whole resolution was?

A. Well, according to my recollection, a certain amount of this stock was to be issued to the patentees, and the balance of the stock was to be issued to those gentlemen who agreed to put in some money for the purpose of operating under the patents. Judge Green had not the necessary capital to undertake it himself, and he invited a few of his friends to go in, and I, after a very patient, and what I considered, thorough investigation, I concluded to be one of the party.

Q. Now, you were speaking of the resolution, and stated that the stock was to be issued for patents, except that some of the stock was to be issued for cash, to certain persons who agreed to go in; did it mention the amount to be issued for cash?

A. I think it did.

Q. How much was that?

A. I think $40,000.

Q. Do you remember whether the persons were named or not?

A. I think so.

Q. Who were they?

A. Well, now, I think there was Mr. Wilbur and Judge Green, and I think Mr. Potter and myself.

Q. Mr. Wilbur was then president of the Lehigh Railroad?

A. Yes, sir.

Q. And Mr. Potter was a relative of Judge Green's?

A. Yes, sir; I think so.

Q. Married his daughter, didn't he?

A. Yes; I think he was a son-in-law.

Q. Now then, what pains did the directors take, or any of them take, to your knowledge, to ascertain the value of these patents before this resolution was passed?

A. I cannot answer that question, excepting as to myself.

Q. Then answer it as to yourself?

Mr. Steward—I object to the evidence called for as incompetent and immaterial; that is, as to what any one individual did.

Court—Here is one of the gentlemen—one of the directors—who acted for the company, and who is charged with improper conduct, the misappropriation of the capital stock of the company, and he comes forward and says that he honestly had to issue this stock to pay for the patent right under which the goods were manufactured. You may say that that patent is good for nothing, and his answer would be: "I took the pains to examine and satisfied myself that it was worth the amount we agreed to pay for it." It then becomes a question whether he exercised fair judgment or not. Now, he has to get down to the foundation of his judgment to tell what he did himself; he cannot tell what some other man may have done—they may have made some other examination; I think it is entirely competent examination for this witness to tell what he did in this regard.

Mr. Steward—Can he go any further than the resolution?

Court—I think the evidence is competent and I will take it.

Mr. Lindabury:

Q. The question is what investigation did you make and when did you make it?

A. Well, the investigation commenced at Pittsburg, as I have told you—

Q. The Court was not in session when you told me that?

A. This occurred one evening in my room—

Q. Tell us about it?

A. This patentee was brought to me by Judge Green; I am not sure whether the other patentee was with him or not—

Q. You may state any representations made to you by Judge Green, or the patentee or patentees, as to the

value of the patent, along with your story of your investigation as to the value of the patent?

Mr. Kirkpatrick—I object to the evidence as incompetent and immaterial.

Court—If these directors made an honest investment of the stock in a patent or in property, and it was not a fraud, palpable on its face, they are to be the fair judges as to the value of the property they invested. Now, any statement made to this witness by Judge Green, who was trying to induce him to go into this venture, would affect his judgment naturally as to the value of this patent that he was voting away this stock for, it certainly is competent on that ground.

Mr. Kirkpatrick—It is incompetent I take it, your Honor, on the ground that if it has any value at all, it has a contractual value, and it relates to a transaction occurring between one of the parties and the witness, and one of the parties being dead, I think under the statute of New Jersey—

Court—That would be one of the parties "suing or being sued in a representative capacity." I do not think that condition exists here. I will receive the evidence on the theory that we are entitled to know what it was that influenced Judge Paxson to value this patent at the price he did. It may be that the reason is not a good one and would not influence me, but I am entitled to know what it was that influenced this director to value the patent as he did.

A. As I observed before, Judge Green came to my room and brought this patent with him, and he thought it was a very valuable thing. I looked at it. I do not remember now whether both patentees were with him or not, but I think one of them was with him. I looked at it, and of course I could not tell anything about it

from the patent, what it was worth. It was a patent for making brick out of slate. At that time, I knew a little law and not much else, and it was proposed, and I think I proposed it myself to Judge Green, that I could not tell anything about the value of this patent without further investigation, and without further information, and that if a brick could be made out of slate, at the cost suggested, then I said I thought it was a valuable patent, but I had no information that brick could be made out of slate, as they put it "into a handsome brick," and I suggested that we should test the matter in Pittsburg, and I think we built, at Pittsburg, a small kiln to burn a few hundred bricks as a test. I know I paid out several hundred dollars for that purpose, and a test was made and it turned out a very very fine brick; it was a brick which had double the resisting power of an ordinary brick; it was a brick which absorbed no moisture at all, and one which would last very much longer than the ordinary brick for that reason alone, and a wall laid with this brick would be very much dryer than a wall laid up with the ordinary brick, and I understood, and in fact know, that there were several walls built, and altogether, the brick made under this patent process was a very handsome and durable brick.

In addition to this Judge Green represented to me that there were a large number of royalty contracts in different parts of the United States, given to different parties, I don't remember the names now of any of the parties mentioned by him, except, I think, one, a Mr. Fuller, up somewheres about Penngrove, or somewhere out there in the interior of the State of Pennsylvania. This Mr. Fuller owned a large estate there, as I understood, thousands of acres, and with iron works on the property and altogether he was a very prominent man, and a very good business man. And I understood from the representations made by Judge Green that he was negotiating for the royalties to make this brick, and I took the trouble to go up there and see this Mr. Fuller,

and I went and saw him; he was very enthusiastic about it; he owned a mountain of slate, a vast amount of slate, and he had built a railroad three miles long up this mountain to get out the slate for the purpose of making these bricks, and through the royalties that were granted or that were in course of negotiation, I made up my mind that these royalties alone would pay the interest on the whole of the $1,000,000 to be invested. I want to say here that I went to see the plant again, after he was in operation, and he was burning thousands of millions of bricks; I don't know whether anything was received from it or anything like that, that I could not say anything about as I never got any information, but I am satisfied that the brick that was being burned under these experiments, and the way in which offers were coming in for the right to make the brick on royalty, all this combined, made me think that this patent was worth thousands and thousands of dollars, and I expected to become a very rich man.

Q. Did you give any of the information you obtained to the others?

A. I gave them all the information I had.

Q. Did Judge Green give you any information at this meeting?

A. He gave us whatever information he had in regard to the royalties that he had contracted for, and all that sort of thing.

Q. Do you remember what Mr. Wilbur had to say about it?

A. I do not remember the conversation, of course, it is a good while ago, and my memory is not as good as it was once. I remember the most important points, but I do not remember the details or the dates at all.

Q. Had you any doubt that the patent—or did you have any belief, at the time you voted for the issue of that stock for that patent, that the patent was not worth the $1,000,000?

Mr. Kirkpatrick—I object to that.

Court—I will allow the question.

Q. Now, did you in good faith believe, at the time you voted for the issuing of this stock for this patent, that this patent was worth the $1,000,000?

A. I did.

Q. Was this information which you possessed, and that which Judge Green possessed and gave to you, all laid before this meeting of the board of directors before any action was taken by them?

A. Yes, sir.

Q. And discussed there, was it?

A. Yes, sir; it was commented on, I do not remember what was said just now, of course, it was received—

Q. And that was before the vote was taken was it?

A. Yes, sir; oh, yes, before the vote was taken, and it was received as the basis of their action, their opinion and knowledge of the value of the patent—

Q. Was there a vote taken to issue the stock or the patent?

A. Oh, yes, sir, I think so.

Q. How long was this meeting held after the election of the first board?

A. Gentlemen—I cannot tell you now exactly.

Q. The first board was elected according to the minutes—

A. It was held before any stock was issued.

Q. Well, there was an interval of about a year and a half between the issue of the stock and the election of the first Board of Directors?

A. I do not remember the dates.

Q. But you are not able to locate it?

A. No, sir.

Q. It was somewhere between those dates, you think?

A. My memory is defective as to dates.

Q. Was this brick made by this company, or by this process, I ought to say, used in any important building that you know of?

A. There was a number of buildings put up; I do not now know what they were; I do not remember; I think a building was put up for Mr. Wilbur, of Bethlehem,

Pennsylvania, made of this brick, and there was also a large number of buildings put up elsewhere, I believe.

Q. What was the most important, the one at Bethlehem, Pennsylvania, put up by Mr. Wilbur?

A. I do not know whether it was the most important building that was put up of this brick, but I will say that there was a bank there, built there, that Mr. Wilbur was interested in; it was right there along by the railroad—

Q. Did you see it afterwards?

A. Yes, sir.

Q. What was the result of the use of that brick, as disclosed by the completed building?

A. It was a very fine brick and could be manufactured at a very moderate cost. I think we turned out a very superior brick, costing about seven dollars a thousand, that we used to get $17 for.

Q. For the same—do you mean to say you got $17 a thousand for the ordinary process brick, an ordinary pressed brick?

A. The pressed brick we turned out—

Mr. Shipman—I object to the evidence; what does he know about the prices of the brick?

Court—He can testify that he manufactured and sold this brick and the prices they obtained for it.

A. We sold them at $17 a thousand, and they cost $7 a thousand; that is, it was so represented to me; I don't know about it myself; all I know, they were selling them at that price, and, of course, a great deal of that information was derived from Judge Green.

Mr. Kirkpatrick—Unless the witness knows of his own knowledge, he cannot testify on that subject; he cannot testify as to what somebody else told him.

Witness—I know they were sold at $17 a thousand; I was there when they were sold.

Mr. Kirkpatrick—I am talking about the cost.

Witness—Well, that I got from Judge Green, of course.

Mr. Lindabury—That is competent then, if he got the information from Judge Green himself.

Court—Not if it was after the stock was issued.

Mr. Lindabury:

Q. When did you get this information as to the cost of manufacture by this process, before or after the time the stock was issued, or the patent was bought?

A. The first information I got was from Pittsburg, when we built this small kiln for experimental purposes. Of course, we could only approximate it, as the money that I expended on that included the cost of the kiln itself, but I inquired particularly as to the cost of manufacturing the brick, and that was the figure that was given to me, that it did not exceed $7 a thousand for the pressed brick.

Q. Were there any important buildings in Philadelphia constructed by this brick?

A. I don't know whether there was or not, but I do know that there were in different parts of the country important buildings erected by the use of this brick.

Court—If this is all after the stock was issued what is the importance of it?

Mr. Lindabury—I want to show that they acted in good faith, on the idea that they had a good thing, and to show that they did have a good thing.

Court—You may go on.

Mr. Lindabury:

Q. Did you manufacture anything else but pressed brick?

A. Yes. About the time that we were getting ready to manufacture the pressed brick and bringing its manufacture to perfection, Judge Green put up a number of furnaces to make enameled brick, which cost a great deal of money, and when it was done they never

amounted to anything. Of course, now, Judge Green did not know anything at all about the manufacture of brick, any more than the man in the moon—

Mr. Shipman—I object to this evidence.

Objection sustained.

Mr. Lindabury:

Q. Were not some of these railroad terminals in Philadelphia built out of a brick manufactured by this company, by this process?

Mr. Kirkpatrick—I object to that as immaterial

Court—You may go on, I will take it.

A. I think some of it was used in the Reading Railroad terminal (interrupted)—

Mr. Kirkpatrick—I object to this; he does not say that he knows it to be so.

Mr. Lindabury:

Q. That was before you were made receiver of that railroad?

A. Yes.

Q. You did not put it in while you were receiver?

A. No.

Mr. Kirkpatrick—I object to that.

Mr. Lindabury:

Q. Don't you know, of your own knowledge, whether it was used there or not?

A. Oh, yes, sir; there was some of it used there, but I do not know how much.

Q. Judge, did you observe the product of the company after it began operations?

A. Yes, sir.

Q. Did you go to the kilns for that purpose?

A. Yes, sir; I was there several times.

Q. And studied the items of cost?

A. Well, I paid some attention to it, but I cannot say that my views upon that subject would be very definite or very correct, but as far as I could do so, I did it.

Q. Did you follow it up close enough to form a fair conclusion as to the cost of producing the brick?

A. Oh, yes, I think so.

Q. What did you find it could be produced at?

Mr. Shipman—I object to the question as leading, suggestive and incompetent.

Court—I will take it.

A. About $7 a thousand; that is, the pressed brick.

Q. What did the pressed brick sell for?

A. I think $17 a thousand.

Q. Was there, or was there not, a good market for pressed brick at that price?

A. There seemed to be; of course, I was not very familiar with the details.

Q. Was there any limit to the raw material, to be gotten for the making of the pressed brick, under the process of manufacture, under the patents?

A. No, sir; oh, no, no; you could make pressed brick from slate for one thousand years, with the material in sight—

Q. Who was the president of this company?

A. Judge Green.

Q. And who was the active manager of it?

A. Judge Green.

Q. And why—

A. In fact, he mas made, or rather he assumed, the whole management of it.

Q. While he was managing that, what else was he doing?

A. He was still a Judge of the Supreme Court, and attending to the duties of his office.

Q. Do you remember that the property was burned down?

A. Yes, sir; I remember that the property was burned down, but I did not hear of it until months afterwards;

he never informed me that it had been burned down; I got my information from the papers.

Q. The whole plant was burned down?

A. Yes, sir; the whole plant was burned down.

Q. Was there any insurance?

A. Not a dollar.

Q. Judge Paxson, some payments of cash were made from time to time by yourself and other stockholders, same as yourself, in the company, and some years after the company was organized; do you remember that?

A. Oh, yes, sir.

Q. The resolution has been put in evidence here, which is spoken of as making an assessment upon the stock; now, will you explain how that assessment came to be made?

A. There never was any assessment—

Mr. Shipman—I object; there is a minute to that effect, and it speaks for itself; now this witness cannot explain that.

Court—What do the minutes show?

Mr. Shipman—The minutes show—I will read that portion of it to your honor—"The executive committee, consisting of Mr. Wilbur," etc., "Resolved, that an assessment of four dollars per share upon the outstanding stock of the company be called, payable one dollar per share, May 1st, and their balance as directed by the executive committee"—and then on further, "if any stockholder failed to respond to the call the stock in the treasury shall be pledged as collateral for any sum advanced under said call"—now, at this meeting, which was held on the 21st of April, Judge Paxson was present, the books speak as to that, that he was present at the meeting.

Court—What stock was contemplated in this call?

Mr. Shipman—The outstanding stock of the company.

Mr. Lindabury—Did you pay on that stock?

Witness—I paid on it.

Q. Four dollars a share?

A. I don't remember the amount.

Q. On account of this assessment?

A. Yes.

Q. You paid on the 100 shares you had already paid for in full?

A. Yes, sir.

Court.

Q. Did you pay on all that you had, whether it was issued for property purchased or otherwise?

A. Yes, I paid on all the stock I had.

Mr. Lindabury—This was a mere voluntary assessment made by the gentlemen themselves—

Court—What difference does that make, whether voluntary or involuntary?

Mr. Lindabury—Except that the paying of it or levying of it amounts to an admission that their stock was not fully paid.

Court—How can you set that up, when the evidence is before me that the stock was fully paid?

Mr. Lindabury—Well, the question is whether the language of the resolution is ambiguous or not. If the language of the resolution itself is ambiguous, then I contend, your honor, that we are entitled to explain it.

Court—What advantage would it be to you to show that it was not an assessment?

Mr. Lindabury—Because, if it was not an assessment, it furnishes no evidence at all against us in support of the claim that the stock was not fully paid. If it was an assessment, as upon stock not fully paid, voted upon by Judge Paxson, and complied with by them, then it would amount to an admission that his stock was not fully paid, and that it was assessable.

Court—I will take this evidence on the ground that it seems to be doubtful as to what was contained in this resolution. I will take it now, but if it should appear afterwards, or you can satisfy me on the argument that I ought not to receive it, I will then exclude it.

Mr. Lindabury.

Q. Explain the circumstance under which the resolution of April 25th, 1891, providing for an assessment upon the stock, was passed?

Mr. Shipman—I object to the question for the reasons already given.

Court—I will take it.

A. It was taken this way: It was found that the company needed some more money, and those who had agreed to contribute to the stock voluntarily agreed to put in a certain amount of money to meet the deficiency, just as they had agreed to put in the original capital, and the four dollars a share was designated as the amount, and was to be paid in accordance with the amount of stock each of us held, as I say, four dollars per share was the amount that was decided on that we should each contribute, and it was entirely a voluntary contribution—

Q. Was it voted upon by you, that this amount represented the amount that you were legally liable for, as a subscription to your stock, towards making it full paid stock?

A. Oh, no, sir, there was nothing of that kind about it at all, there never was anything of that kind connected with it, it was just exactly as I have told you, that each of the gentlemen who contributed originally to the capital stock, paid voluntarily this contribution, you may call it what you like, assessment if you like, of four dollars per share in accordance with the amount of stock each of us held, but it was as I have said before, entirely a voluntary contribution, there never was any legal

liability on any of us to subscribe one single dollar, if we had not chosen to do so.

Q. Was it stated by anyone in the Board, when this resolution was proposed and being voted upon, that the stock was legally assessable?

A. No, oh, no, sir.

Q. Was that interpretation put upon it by anyone moving at or speaking to it when it was passed?

A. I do not remember any such.

Q. Was the interpretation of it, as a legal assessment, put upon it at all?

A. I do not remember exactly what occurred, so far as the language was concerned, but I can say that it was regarded all around by every one of us as a voluntary payment.

Mr. Shipman—If your Honor please, I presume, on final argument, the evidence on this point, its relevancy and its competency, may be discussed.

Court—Certainly.

Mr. Lindabury:

Q. You stated a while ago that you had nothing to do with the actual drafting or preparation of the certificate of incorporation which you signed?

A. Nothing at all; I entrusted it all to Judge Green.

Q. With whom was the legal part of this work or the organization of the corporation left?

A. It was all left entirely to Judge Green.

Q. You appear by this paper as a taker of one thousand shares of stock?

A. Yes, sir.

Q. Did you ever agree to take that from the corporation?

Mr. Shipman—I object to that as incompetent.

Court—I will take the testimony on the same understanding as heretofore, reserving the right to reject it at the argument.

A. No, sir; I think not.

Q. How much did you agree to take from the corporation directly?

A. I think one hundred shares, $10,000, or whatever it was.

Q. From whom did you get the other?

A. I got it from Judge Green; I knew nothing about it at the time; I entrusted the whole thing to him.

Q. What was the arrangement as to the stock that you were to get, that is as to the one from whom you were to get it, at the time the certificate was signed?

Mr. Shipman—I object to that as immaterial.

Court—I will take it.

A. I do not remember now.

Mr. Lindabury:

Q. Judge Paxson, was there an understanding when the certificate was signed as to your getting stock beyond the one hundred shares?

Mr. Shipman—I object to the understanding.

Question withdrawn.

Mr. Lindabury:

Q. Was there an arrangement when the certificate was signed under which you were to get stock beyond the one hundred shares from some other person or persons than the corporation?

Mr. Shipman—I object to the question as leading.

Court—I will take the evidence and reserve ruling upon it until the argument.

A. Oh, yes, sir.

Q. From whom?

A. From Judge Green.

Recess.

Mr. Lindabury:

Q. Was there any action taken by the Board of Directors, at any meeting at which you were ever present,

authorizing the president to borrow money and issue the notes of the company in payment therefor?

A. I have no recollection of anything of the kind, and I do not think there was.

Cross-examination by Mr. Kirkpatrick:

Q. You testified, Judge Paxson, that this matter of the patents was brought to your attention some time before the organization of the company?

A. Yes.

Q. About how long before?

A. Oh, well, I do not remember now; my memory is not very good for dates, but I should say some months before.

Q. Some months before?

A. Yes, sir; I should say so.

Q. Where was it?

A. First at Pittsburg.

Q. While Supreme Court was sitting?

A. Yes.

Q. And that was some time in the fall of 1885 or 1886, was it?

A. I suppose it was, but, as I said before, my recollection is very poor as to dates. I am in my eighty-first year and you must, therefore, not expect great accuracy in respect to dates from me; I do not profess to do so.

Q. And, of course, you will find it difficult to repeat conversations or verbal statements also accurately?

A. Oh, I cannot repeat now conversations as they occurred at the time; I can only give you the substance of them; that is all I can do now.

Q. You would not undertake to give the language that was used about any action taken at any of these meetings which you speak of?

A. Oh, no, sir; not at all.

Q. So that, as I understand, at the time the certificate of organization was signed, of which you were one of the signers, this was some time after the fact of the

patent or patents had been brought to your attention; perhaps two or three months or more?

A. Yes.

Q. Now, you stated that you made some inquiries with reference to the patent or process under the patent —was that after or before the organization of the company and the signing of the certificate?

A. Oh, the inquiry commenced before,

Q. Before?

A. Oh, yes, I was very careful about that because I had a fear of going into questionable transactions; in other words, I wanted to know something about it.

Q. You said you had expended some money in the erection of a small kiln for the purpose of conducting some operations or experiments?

A. Yes.

Q. Now, was that before the corporation was formed or after?

A. Oh, long before; months before.

Q. Not before the stock was issued; I am not talking about that, but before putting your signature to the certificate of incorporation?

A. Oh, long before that; months before; I cannot say how long it was, but it was months before that.

Q. Did you see the patent?

A. I saw the patent, but, of course, I could form no opinion of its value without some test.

Q. And what you saw was simply the paper which contained the grant of a patent; that is all?

A. That is all.

Q. And that, as I understand, was a patent upon the manufacture of brick from pulverized slate refuse?

A. Yes, sir.

Q. The patent was upon the use of the material, or some process, was it?

Mr. Lindabury—I object to that.

Court—The certificate will show that.

A. I cannot tell now exactly the terms of the patent; it included the right to make bricks from ground slate; beyond that I cannot go.

Q. But so far as the patent that was granted was concerned it was but that single patent that existed at that time, was it not?

A. I did not hear you.

Q. There was but one patent that then existed, or had existed, for some time before it was first brought to the attention of the company?

A. Yes, sir.

Q. And there was some talk, was there not, with reference to the procuring of a further patent, or some perfected or improved kiln?

A. I do not remember about that?

Q. You would not say that there was not any talk about it, or that it was not spoken of?

A. I would not say so, because I do not remember.

Q. Then, when the certificate was signed by the parties to it, there was a meeting held after the certificate was put in and the grant of the charter obtained, was there not—very shortly after that?

A. I do not remember about that particularly.

Q. You do not remember about that?

A. No, sir.

Q. You were present at such a meeting at which there was an organization and an election of directors, were you not?

A. Yes.

Q. And do you not remember what took place at that meeting?

A. I do not remember now, particularly.

Q. And you do not remember, of course, distinctly, who were elected directors, at that time?

A. I do not remember now, exactly; I know several that were elected, Mr. Wilbur, Judge Green and myself—

Q. Was Mr. Canfield elected?

A. That I do not remember.

Q. And yourself?

A. Yes.

Q. And Mr. Potter, did you mention his name?

A. I did not mention his name, but I think it likely.

Q. He was?

A. Yes.

Q. Then at this particular meeting, at which this election took place, and the company was organized, there was no resolution of that kind on the subject of the patent, passed at that meeting, was there?

A. I do not remember now.

Q. You would not say there was or there was not?

A. I would not.

Q. Then you say there was a meeting of the directors held some time after that—after the organization of the company or after the granting of the certificate of incorporation—at which some verbal resolution was passed, or action was taken?

Mr. Lindabury—He did not use the word "verbal."

Mr. Kirkpatrick—I am using it as it was coupled with your question, that there was some resolution that there was no record of.

Q. Then you say there was a meeting of the directors held some time after that, after the organization of the company, or after the granting of the certificate of incorporation, at which some verbal resolution was passed, or action was taken?

Mr. Lindabury—I object to the question because counsel includes the word "verbal"; the witness has not said so.

Court—I think the question a proper one.

Question withdrawn.

Mr. Kirkpatrick:

Q. As I understand, there was a meeting held shortly after the granting of the certificate of incorporation, on which the company organized, the proceedings of

New Jersey State Library

which meeting you say you do not recollect, and that you have no recollection of any action being taken by the board of directors at that meeting relative to the patent or patents; then the meeting to which you refer must have been, or, rather, was it, after that first meeting of organization, or was it before?

A. I do not remember that.

Q. Was it a meeting held by the persons whom you have named, that you recollect being there; was it not Judge Paxson; a meeting held prior to the organization of the company, and before the granting of the letters patent?

A. I do not remember that at all.

Q. You cannot say as to that?

A. No, sir.

Q. It might have been, then, a meeting held before that?

A. I cannot say.

Q. You cannot say whether it was before or after?

A. No, sir.

Q. Before or after the granting of the certificate of incorporation?

A. No, sir.

Q. Then at this meeting you speak of, all you recollect is that you were present, that Judge Green was present, and that E. P. Wilbur was present; do you recollect anybody else being present?

A. Not now.

Q. You cannot recollect that, now?

A. No, sir.

Q. And not knowing whether before or after the charter of incorporation was granted, and remembering no one present but Mr. Wilbur, yourself and Judge Green, that would be, or that would form them, all that you can state as a matter of recollection upon either the time, or the constiuent membership of that meeting?

A. Yes, sir.

Q. Why was that meeting held?

A. I do not remember, now.

Q. Do you remember whether it was held in Philadelphia, Easton or Pittsburg?

A. No, sir—well, it was not held at Pittsburg; it must have been held—

Q. I do not ask for your conclusions; what is your recollection on the subject?

A. I have no recollection about it; it could not have been held at Pittsburg; it might have been held at Easton or Philadelphia.

Q. But you have no recollection now as to whether it was held at Easton or Philadelphia?

A. No.

Q. Do you remember whether Mr. Canfield was present or not?

A. I do not remember that.

Q. Was there any person elected as president to preside over the meeting that you recollect?

A. I have no distinct recollection of it now, but I take it for granted that Judge Green was.

Q. The question is whether you recollect whether any person was elected as president to preside over the meeting or not?

A. I do not recollect anything about it.

Q. You have no recollection about it?

A. No, sir.

Q. Do you know whether any person was elected or selected as secretary of that meeting?

A. No, sir; I have no recollection now.

Q. Or whether anyone did act as the secretary of that meeting?

A. I have no recollection now about it.

Q. When you say this subject of the patent or patents was talked over, was it at that meeting that you stated what had been the result of your inquiries as to the practicability of a manufacture?

A. Well, the practicability of the manufacture was considered, and we discussed it at some meeting before the issuing of the stock; I do not remember just now when it was—

Q. You cannot say whether it was at that particular meeting, as to which you were questioned by Mr. Lindabury, you mean to say that you do not recollect whether it took place at Easton or at Philadelphia?

A. I do not remember where it was held, and I do not remember who was present, except as to Mr. Wilbur, Judge Green and myself.

Q. But you have no recollection as to Mr. Potter?

A. No, sir.

Q. Was it at that particular meeting, or at such a meeting, that you mentioned or stated, as you said on your direct examination, the result of your investigation through the experiments made at Pittsburg, as to this patent, or the manufacture, or do you not recollect whether it was at that or some other meeting?

A. Well, it was at some meeting; I cannot say when or where it was now.

Q. That is to say, you and Judge Green and Mr. Wilbur frequently got together—sometimes at the dinner table and sometimes at other places—and talked about this matter in some informal way, is that right?

A. That is right.

Q. And that is what you mean when you say you talked over and made this arrangement as to the stock and the patents?

A. I communicated to these gentlemen all that I knew, and all the knowlledge I had about it—

Q. But it was at that kind of meeting we are speaking of when you happened to get together?

A. Yes; I do not remember when it was or where—

Q. And this arrangement you speak of, which Mr. Lindabury characterized as a resolution or arrangement, took place just at such a meeting?

A. What resolution or arrangement?

Q. The resolution that the stock should be issued for the patent?

A. Oh, that took place at some meeting; I do not remember when it was, but it was some meeting before the issuing of the stock.

Q. But at a meeting of the kind, such as you have described?

A. Yes, sir.

Q. An informal meeting such as you have described?

A. Yes, sir; I suppose so.

Q. That meeting you speak of was not called upon a written notice, was it, do you think?

A. No; I presume not.

Q. And the patents, or the stock, you say—and that is born out by the book—was issued in September, 1887?

A. I do not remember dates at all, Judge.

Q. But it was somewhere between those dates, between the time of the issue of the stock and the time of the organization meeting?

A. Likely.

Q. That you got together in this informal way you have spoken of, and it was talked about that the stock should be issued for the patents?

A. I suppose so.

Q. When did you first report the result of your inquiries and investigations at Pittsburg, about the practicability of this process?

A. I cannot tell you now; it is too long ago; it was before the regular organization of the company and before the issuing of the stock; that is all I can tell you.

Q. That is all you can say, that it was before the regular organization of the company, or the issuing of the stock?

A. Yes, sir.

Q. And that was reported by you to the different persons, I suppose, whom you thought to be interested in the company, when you happened to meet them; I suppose that is so, is it not?

A. Yes, certainly.

Court—Is it your idea that this stock was issued without the authority of the Board of Directors?

Mr. Kirkpatrick—Oh, no, sir.

Court—Then what difference does it make if the Board of Directors ordered its issue, and you do not have anything on your minutes to show any such order; it must have been at some meeting of the Board of Directors, or of the company, independent of any record.

Mr. Kirkpatrick—The purpose of the cross-examination is quite apparent, I think, your Honor, to show that there was no corporate action upon the subject matter of the issuing of the stock for the patents. The issuing of the stock is admitted. Now, what they got it for, and how they got it, and what consideration they gave for it, is, I think, your Honor, a subject of legitimate inquiry.

Court—You may proceed.

Mr. Kirkpatrick:

Q. Your inquiry as to this patent method of making brick from pulverized slate refuse was that before the organization of the company, and limited simply to tests you were making by the kilns at Pittsburg?

A. How is that?

Q. Was that all the investigation you made, at Pittsburg?

A. Oh, no, sir; I stated that I investigated the practicability of making brick from ground slate, and in addition to that I investigated with regard to the subject of the royalties, and the two together satisfied me that the patent was worth the money.

Q. As I understand, this patent had very recently been granted—it was a new process, was it not?

A. Certainly.

Q. And very recently granted, before you saw it—before it was brought to your attention?

A. Yes, and I was not willing to enter upon the thing until I had tested it in some way. I did not know whether bricks could be made from ground slate refuse,

and therefore I suggested the building of this kiln at Pittsburg and the making of these experiments—

Mr. Kirkpatrick—I move, your Honor, to strike out the part of that answer not responsive to my question.

Mr. Lindabury—I object to anything being stricken out; the witness had the right to make the answer—the answer is responsive to the question.

Court—We will strike out all that is not responsive.

Mr. Kirkpatrick:

Q. Then there had been no manufacture by any establishment or corporation of bricks under this process, under this patent, except by the experiments you had conducted by one of these small kilns?

A. That is all—let me qualify that answer, please.

Q. Go on?

A. There had been something done at Pittsburg by these patentees which indicated that they could make the brick from pulverized slate, but I had no information beyond that, you know.

Q. Exactly; that is to say, they were merely experimental?

A. Yes, sir; that is all; they were mere experiments.

Q. What I want to get at is that there had been no manufacture of bricks under this patent?

A. None whatever.

Q. No business done?

A. No, sir; none whatever.

Q. And the only establishment that you know of, after the granting of letters patent to carry on this business, was your own, up to the time of the issuing of your stock?

A. Yes, with the exception possibly of the one I mentioned—Mr. Fuller; I don't know whether he had got his operations into a business or not.

Q. Is it not a fact that that visit of yours that you spoke of to the Mr. Fuller's place—where was that, did you say?

A. It was beyond Harrisburg, Pennsylvania, somewhere; it was a place called Penngrove, I think.

Q. Is it not a fact that that visit to the Fuller place was paid long after the company was organized, and long after you had received your stock?

A. Oh, I think not; but I would not be sure about that.

Q. You would not be sure about that?

A. No, sir; I know I went there to see what the prospect was.

Q. How could you manufacture under this patent, or under a similar process at that time—did he receive a license of anyone of any kind?

A. Yes, sir, I do not remember the date of it exactly, but there was a contract made by Judge Green with Mr. Fuller, which I went up there to inquire into, and I found, as I have told you, that he had an enormous deposit of slate, that he had a whole mountain of slate, that he had built a railroad three miles of the mountain, and that he was determined to go into the manufacture of bricks, and I was up there once or twice after that, when he was making tens of thousands of bricks—

Q. When you went there the first time, was it not after the issue of your stock?

A. I would not be positive, but I think not. I went there to investigate and to ascertain what the prospect was.

Q. But you have no recollection now as to whether it was before or after the issuing of your stock to you?

A. I think it was before, for I went, as I think I have already told you, I went there for the purpose of investigating and forming an opinion as to the value of the patent, if I could.

Q. But you cannot say exactly as to that?

A. I do not think I was, because that was my object, but I cannot say positively you know.

Q. I am asking for your recollection?

A. My recollection is that it was before, although I am not going to be positive as to dates, as to dates my recollection is not good.

Q. Do you know of any other?

A. Oh, there were a number of others, which were reported by Judge Green, I do not remember who they were now, but there were quite a large number of licenses granted to responsible parties in different States.

Q. That was after you were granted your stock? 10

A. Before or after, they were either granted before I got my stock, or were under negotiations—

Q. And you were certainly—you certainly could not have gone to the Fuller place before the organization of the company—did you, do you think?

A. I cannot fix dates you know.

Q. Because you had a kiln conducted on your own behalf for the purpose of finding out whether it was practicable or not?

A. Yes, we had such a kiln built, but the question 20 was, whether the royalty were likely to amount to anything or not, and I therefore wanted to see Mr. Fuller, and I went to his place, and went up his mountain—

Q. Did you ever know, as a director, of any of these contracts being brought before the board?

A. I do not remember of any being brought before the board—formally, do you mean?

Q. That is what I mean.

A. Yes, I think they were, I think they were brought to the attention of all concerned in it. 30

Q. That is the persons who happened to be interested, talked about?

A. Well, Judge Green talked about it, he reported these contracts for royalties, or reported the negotiations made for royalties, which induced me to think that the patents were valuable ones.

Q. Was there not one license granted to a manufacturer, or a manufacturing establishment, in Massa-

chusetts, and was not that the only one that there is any record of in the corporation?

A. I think there was one manufacturing establishment, somewhere in Massachusetts, I believe it was Massachusetts, who had a license for the manufacture of brick under this process or patent, but I do not remember when it was or to what extent—

Q. But that was some years after the patents were assigned and your stock was issued, was it not?

A. I do not remember when it was, there were several licenses either granted or in process—

Q. You say these bricks were manufactured at a certain cost—how many times did you visit the establishment itself, before you got your stock?

A. Oh, a number of times, I cannot tell you how many now, of course.

Q. Was there any manufacture of bricks by that process before you for your 1,400 shares of stock?

A. No, sir, there was no manufacture of bricks before until this company started, and then the manufacture commenced.

Q. Will you simply confine yourself to answering my question—then as I understand it was after you got your stock—you visited the place the time the manufacture of brick was going on about how many times, did you say?

A. Oh, I cannot tell you now the number of times, I got my idea of the cost of manufacture to a great extent from the experiments conducted at Pittsburg, it was not a correct estimate, but it was sufficiently so as I thought to form an intelligent opinion.

Q. But as to the actual cost of the manufacture under this process at Phillipsburg, you had no direct knowledge of that yourself?

A. No, sir; actual positive knowledge.

Q. And was not the fact that a good many of the bricks manufactured under this process, had to be discarded, so that while some were very good brick, if

selected, some of them were not useful for the purposes of building, and had to be discarded?

A. Well, to be perfectly frank with you, that occurred at the commencement of the manufacture; naturally they got to understanding their business in a little while, and a few of the very first kiln-burned bricks were not first class, but that difficulty was soon remedied—

Q. But up until the time you got your stock, and even after that, quite a good, a considerable portion of the bricks manufactured were inadequate for the purpose, and were not marketable as first class brick, were they?

A. Not many; probable one or two of the first burning; some of them were not first class.

Q. Was there not some trouble about the color of the brick?

A. No, sir; I think not; they were generally burned of a good red color. You are asking me now about details of which I am not entirely familiar, and I can only give you my best judgment about it.

Q. Of course, you have nothing to do with the paying of the bills, and you never sat down and ciphered out what the bricks did actually cost you?

A. No, I had nothing to do with it, no more than you had.

Q. Do you remember a committee being appointed for the purpose of auditing the affairs of the American Brick and Tile Company?

A. I do not.

Q. You knew there was such a committee, did you not?

A. I do not remember it.

Q. Were you present at such a meeting?

A. I do not remember.

Q. Well, you remember, don't you, getting a report of that kind, a copy of a report, by the Audit Company of New York, "Thomas L. Green, Manager"?

Mr. Lindabury—I object to the question as irrelevant.

Mr. Kirkpatrick—I have not finished my question, yet.

Q. You remember, do you not, getting a report of a copy of a report by the Audit Company of New York, "Thomas L. Green, Manager," of the affairs of the company in 1898—a report made by the Audit Company of New York?

A. I have no recollection of it at all.

Q. You have no recollection of it?

A. None whatever.

Q. Do you not recollect receiving a letter from Judge Green—

A. I do not say it was not received, but I do not recollect it.

Q. Do you not recollect writing a letter inquiring for such a report?

A. I do not remember.

Q. And do you not remember receiving a letter from Judge Green enclosing such a report to you?

A. I do not remember it; I remember writing a letter to Judge Green asking for some report, and not getting it.

Q. Have you looked among your papers and documents to see if you have such a letter?

A. I have not.

Q. Will you do so between now and the next meeting?

A. I will.

Q. Do you remember receiving a letter, under date of August 23d, 1899, enclosing a report?

A. I do not remember it, now. I do not say I did not receive it, but I say I do not recollect it at all, now.

Q. Will you look for it?

A. I will look.

Q. A letter purporting to enclose a letter of the Audit Company of New York, of 1898?

A. I will look, and if I find it, I will produce it.

Q. I would like to have you produce it at the next meeting.

A. I will do so, if I can find it.

Q. You remember, Judge Paxson, writing that note, I suppose (handing paper to witness)?

A. My name is to it, but I do not remember until I look at it.

Letter handed to witness.

A. That is my letter.

Mr. Kirkpatrick—I offer that letter in evidence. It is marked *Exhibit E 13,* and reads as follows:

"PHILADELPHIA, April 30th, 1891.

"*Frederick Green,*

"*Treasurer,*

"*Easton, Pa.:*

"I enclose check for $1,500; installment due to-morrow.

"Yours, EDWARD M. PAXSON."

Elisha P. Wilbur, recalled in his own behalf, saith:

Examined by Mr. Lindabury.

Q. Where do you live?

A. South Bethlehem, Pa.

Q. What is your age?

A. Seventy-one, in January last.

Q. And you have lived in Bethlehem all your life?

A. No, sir, not all, but the largest portion of it.

Q. How long have you lived there?

A. Oh, about fifty years.

Q. You are interested in various business matters, and have been interested in various enterprises of a business character there?

A. Yes, sir.

Q. Give some of them, won't you—the answer sets up that these gentlemen were taken into this enterprise because of their business experience and connections?

A. I have been, and I am still interested in coal property, and in the mining of both anthracite and bituminous coal, and I am also in the banking business and more or less in railroads.

Q. I think for a number of years you were the president of the Lehigh Valley Railroad, were you not?

A. Yes, sir.

Q. How many years?

A. Probably ten years—from 1884.

Q. And from 1885, was Judge Paxson interested in outside busines matters, outside of his professional duties?

A. I think so.

Q. Was Judge Paxson a man of business affairs as well as judicial work?

A. I think he was.

Q. It has been suggested to me that you were a relative of Asa Packer?

A. A nephew.

Q. And one of the trustees under his will?

A. Yes.

Q. And that is a still active trust?

A. Yes, sir.

Q. And part of the duties of that trust is the running of the Lehigh University, the management of it in some way?

A. Well, only indirectly.

Q. Perhaps I ought not to put it quite that way—you have, as the representative of his estate, some interest in the matter?

A. Oh, yes, sir, we have.

Q. I do not mean the entire control?

A. Yes, sir.

Q. There is a board of trustees that is, of whom you were one?

A. I am one of the board of trustees of the University.

Q. Now, you are the holder of the 1,500 shares of the capital stock of the American Brick & Tile Co.?

A. Yes, sir.

Q. How much of that did you get directly from the company?

A. 100 shares.

Q. Have you the certificate here with you—I think we did not have it here the other day?

A. I haven't it here, I think Mr. Dickson has that, I think I sent it to you, Mr. Dickson.

Q. Was it stock issued for property purchased?

A. No, sir.

Q. Do you remember whether it was similar to the stock issued to Judge Paxson, 100 shares of stock of the same form as that issued to Judge Paxson—I now show you Judge Paxson's certificate of stock?

A. I am quite sure it was, although I do not know that I have ever seen it since—

It is admitted that it was in form like Judge Paxson's certificate, for the same amount, and the certificate was numbered 352, and it bore the same date also as Judge Paxson's certificate.

Mr. Lindabury—The book shows that certificate No. 353 for 100 shares was issued to E. P. Wilbur, November 27th, 1887. That is admitted, as I understand it, for the purposes of this cause?

Mr. Shipman—Yes, we admit that.

Mr. Lindabury.

Q. How did you become interested in this company, how was the matter first presented to you?

A. It was presented first by Judge Green, and subsequently by him and Judge Paxson—we discused it.

Q. You were one of the incorporators of the company, were you not?

A. Yes, sir.

Q. Who drew the certificate of incorporation, if you know?

A. I do not know.

Q. By whom was it presented to you for signature?

A. It was presented, I think, at a meeting in Easton.

Q. Did you say Judge Green brought the matter to your attention?

A. Yes.

Q. And how long before this certificate was signed?

A. Oh, well, I really cannot say how long it was before, but some months, I should say.

Q. You were elected a director, were you not?

A. Yes, sir.

Q. Do you remember any action being taken in director's meeting looking to the issue of the stock?

A. Yes.

Q. About how soon was that after you were elected a director?

A. I think it was very shortly after, but I cannot recall, of course, how long.

Q. Do you recollect where the meeting was held?

A. I think it was at Easton; I am quite confident it was held at Easton, although I would not want to be sure.

Q. Who was present, as nearly as you can recollect?

A. Judge Green, Judge Paxson, Mr. Potter, I think, and, I think, Mr. Canfield, the man who owned the original patents.

Q. What action was taken at that meeting looking to the issue of the stock and the consideration for it?

A. My recollection is that a statement was made by Judge Green as to the issue of stock to the gentlemen who had subscribed, and also the issuing of stock to Mr. Canfield, and the other gentlemen whom I do not know,

Q. Mr. Canfield and Mr. Simpson?

A. Yes, sir; that is the names, for the purchase of the patents payable in stock.

Q. Now, that was preliminary to any action taken?

A. Oh, yes, sir.

Q. What was the action taken—what was resolved upon, if anything?

A. Well, the statement was confirmed and action directed in accordance therewith.

Q. What do you mean by "statement"?

A. The statement presented by Judge Green, showing how this stock was to be distributed, and the purposes for which it was to be distributed.

Q. How was it to be distributed, according to the way you resolved—what was said, if you can recollect, and, if you cannot recollect, give the substance of what was said?

A. I can only remember that a certain amount of stock was to be given to these gentlemen for their patents; a certain amount was left, which was to be kept in the treasury, and other amounts to be paid for or delivered to Judge Paxson and myself, and those who had paid for their stock.

Q. How much to you—I mean for the cash?

A. How much cash?

Q. Yes, to you?

A. To me?

Q. Yes?

A. 100 shares.

Q. How much did Judge Paxson?

A. 100 shares.

Q. Did you get that 100 shares?

A. I got it eventually; I did not get it at that time.

Q. By the certificate which has been put in evidence?

A. Yes.

Q. And what did you pay for that?

A. I paid $10,000 for it.

Q. In different sums?

A. In installments.

Q. Do you know whether Judge Paxson paid for his or not?

A. I do not, except as I heard it in the company; in that way I knew he paid for it.

Q. How much stock, if you recollect, was to be issued for patents and this cash?

A. No, sir; I cannot recollect the amount.

Q. Was any conclusion arrived at by the directors at that meeting, preliminary to their resolution to issue the stock, as to the value of the patents, for which the stock was voted to be issued?

Mr. Kirkpatrick—I object to the question as incompetent and irrelevant; he can state what was said and done.

Question withdrawn.

Q. What was said at that meeting by the different directors present before the vote was taken to issue the stock, with reference to the value of the patents?

A. With reference to the value of the patents?

Q. Yes?

A. Well, Judge Green made a statement, and I think Judge Paxson made a statement with regard to the experiments that have been made, for more especially Judge Green called our attention to the royalties which had been arranged for, and I do not know by how many gentlemen, or whether they had been finally arranged, giving us what the income would be from the royalties —interrupted—

Q. What do you remember about that, as to figures or results?

A. No, sir; I do not remember the figures, but I know the royalties, if they had all been carried out, would amount to a very large sum; largely in excess of the interest on the proposed capitalization.

Q. Which was that; interest on what?

A. The capitalization was $1,000,000, was it not?

Q. I wanted the figure, that is all, that was stated at that meeting?

A. That was stated at that meeting.

Q. Do you remember what Judge Paxson stated, with regard to his experiment?

A. No, sir; excepting that he had seen the experiment in Pittsburg; had had a kiln built there, and was very much pleased with the result of the experiment. Of course, he had something to say also about the prospective royalties, which they counted on a great deal.

Q. I suppose as cash in sight?

A. I don't think we ever got much of it, though.

Q. Did you come to a conclusion at or before that meeting, with regard to the value of these patents, or that patent?

Mr. Kirkpatrick—I object to that as incompetent and irrelevant.

Court—That is competent; I will take it.

A. I did, of course, I thought they were valuable.

Mr. Lindabury:

Q. What was your conclusion arrived at—at or before the issuing of the stock—as to the value of the patents for which this stock was to be issued?

Mr. Kirkpatrick—I make the same objection there.

Same ruling.

A. I thought they were worth fully the amount of the capitalization.

Q. Upon what did you rely in forming that conclusion?

A. Principally upon the statement regarding the royalties that we were to get; I knew nothing about brick making, you know.

Q. And what else, to a less extent, was it you relied upon, outside of the statement as to royalties; anything else?

A. Yes, sir.

Q. What else did you rely on which was not a principal source; what else was there you relied on?

A. Well, the manufacture of brick, you know, was considered a very important element, manufactured under the process covered by these patents, was considered a very important thing, by those who were interested in the matter with me, but I did not know much about that myself, or how much money there was in it.

Q. I asked you what you relied on?

A. Well, I relied more especially upon the income we should derive from the royalites.

Q. You had not made any experiments yourself?

A. No, sir.

Q. Had you other information regarding the value of the patents, than that furnished by Judge Green and Judge Paxson?

A. Oh, I had had samples of the brick manufactured sent to me, and statements regarding the prospects in that respect, you know.

Q. How long did you have this matter under consideration before this vote was taken?

A. Oh, it must have been some months; I don't know how long it was.

Q. Who sent you those bricks?

A. They came, I think, from Harrisburg. Who sent them I do not know; Judge Paxson, perhaps, or Judge Green; the two of them together directed them sent to me.

Q. For the purpose of your investigation of this question, was it?

A. Yes, sir.

Q. Before you decided to go into it or afterwards?

A. Before.

Q. Did you examine them with such care as you were able?

A. Yes, sir; I examined them and had them tested.

Q. Where?

A. Upon the Lehigh Valley Railroad.

Q. Did you know Judge Green very well?

A. Yes, sir; very well, indeed.

Q. Did you rely upon the truthfulness of Judge Green, so far as regarded the veracity of his statements?

A. Yes, sir.

Q. And I think he had been counsel for the railroad for some time, hadn't he?

A. Personal counsel for the estate, as well as for Asa Parker himself.

Q. Was Judge Green, Asa Parker's counsel?

A. Yes, sir; and we were very intimate for a number of years.

Q. Had you any reason to suspect that the representations made by Judge Green were not exactly true, so far as he himself was concerned?

Mr. Kirkpatrick—I object to the question as immaterial and irrelevant.

Question withdrawn.

Mr. Lindabury:

Q. Now, you signed this certificate of incorporation, did you, at that time, expect to take 1,000 shares of stock that are put down there as stock to be taken by you —I mean did you expect to take them from the company?

A. Oh, no, sir.

Mr. Kirkpatrick—I make the same objection to that.

Court—I will take the evidence and reserve ruling upon it until the argument.

Mr. Lindabury:

Q. Did you get any of your 1,500 shares of stock direct from the company, except the 100 shares?

A. No, sir.

Q. From whom did you get the 1,400 shares?

A. From Judge Green, I think.

Q. Now, later on, I think in 1890 or 1891, some money was paid by you, which is said in the papers, in the petition, to have been on account of an assessment on the stock, and with respect to which a resolution was passed—were you present at the meeting that passed that resolution, if you remember?

A. I think I was.

Q. You think you were?

A. Yes, sir.

Q. Was that levied as a legal assessment upon unpaid stock?

Mr. Shipman—I object to that.

Court—I will take the evidence as to what his understanding was.

Mr. Lindabury:

Q. Perhaps I do not frame my question properly; was that understood by you to be an assessment as upon unpaid stock?

Same objection.

Question withdrawn.

Mr. Lindabury:

Q. As a compulsory assessment upon unpaid stock?

A. Oh, no, sir.

Q. What was said about it by the directors in the meeting when it was passed?

A. Judge Green presented a statement showing a number of debts, and said that it would require an assessment, as it was called, of four dollars a share on the part of the stockholders to pay those debts; we thought they ought to be paid and agreed to it, without regard to any question as to what kind of stock it was paid upon.

Q. And was it put indiscriminately upon all stock outstanding?

A. Upon all stock outstanding.

Q. Did you pay on your one hundred shares that you had already bought and paid for in full, as well as the 1,400 shares you got from Judge Green?

A. Yes, sir.

Court—Where did Judge Green get the stock that he gave to Judge Paxson and to Mr. Wilbur, as they have testified?

Mr. Lindabury—Judge Green got the stock from the patentees, Canfield and Simpson.

Mr. Steward—Oh, no; there is no such record as that; the record shows that the stock was issued to the patentees; the record shows that the stock was issued to those gentlemen in their own names.

Court—He testifies that he got his 1,400 shares from Judge Green. Now, if there is any explanation as to that, you had better make that explanation now.

Mr. Lindabury—We will get at that now. We find among the papers which have been produced an agreement of the 12th of March, 1886—that is about twenty days before the company was incorporated, between Judge Green and Simpson and Canfield, for the organization of the company to take over the patent. They were afterwards taken over by this company, the patents being owned by Simpson and Canfield, and the issue of the stock therefor and the division of the stock between Canfield and Judge Green. We offer that agreement in evidence.

Mr. Kirkpatrick—I object to it as incompetent and immaterial, and as contradicting the act of incorporation, and as not being a corporation paper, and would not bind the corporation. It is merely a personal matter.

Court—Is the execution of the paper admitted?

Mr. Shipman—We admit the signature of Henry Green, but we do not know the signatures of Mr. Simpson or Mr. Canfield.

Mr. Lindabury—I will ask permission of the Court to suspend the further examination of Mr. Wilbur for the purpose of calling Mr. Frederick Green again to the stand to prove this paper.

Court—You may do so.

Frederick Green, recalled, saith:

(Examined by Mr. Lindabury.)

Q. Look at a paper, which I now show you, dated the 12th of March, 1886, and tell me in whose handwriting it is, if you know (handing paper to witness)?

A. No, sir; I do not know.

Q. Don't you know that handwriting?

A. No, sir.

Q. Is it not your father's handwriting?

A. I should say not.

Q. Look at the signatures and tell me in whose handwriting they are?

A. I only recognize my father's and Mr. Simpson's.

Q. You don't know Mr. Simpson's or Mr. Canfield's signatures?

A. Well, I cannot say that I recognize Mr. Canfield's signature, although I gave him a good many checks.

Q. Well, what do you say—you saw his signature a good many times on the back of his checks, didn't you?

A. No, sir; I would not say that.

Q. In your opinion, is that his signature or not?

A. It looks like his signature?

Q. How about Mr. Simpson's?

A. I am not familiar with his signature at all.

Cross-examination by Mr. Kirkpatrick:

Q. Did you ever see Mr. Canfield's signature on his checks?

A. I do not now recollect ever seeing his name on the checks, but there are checks—

Mr. Dickson:

Q. Where are the checks?

A. The receiver has the papers.

Cross-examination by Mr. Martin:

Q. I show you a paper dated March 6th, 1887, and ask you in whose handwriting that is?

A. I should say that is in my father's handwriting.

Q. What about the signatures?

A. That is my father's signature (indicating).

Q. What about the others?

A. I cannot say anything about Mr. Simpson's.

Q. What about Mr. Canfield's?

A. Well, I cannot say I am familiar enough to say absolutely that it is his signature; it looks like the other signature.

It is admitted that the signatures purporting to be the signatures of Mr. Simpson and Mr.

Canfield, on both papers, are the proper signatures of those gentlemen.

Mr. Lindabury—I offer in evidence this agreement, made between Lenox Simpson and M. P. Canfield of the one part, and Henry Green, of Easton, Pa., of the other part, dated the 6th day of March, A. D. 1886.

Mr. Shipman—I object to the offer as irrelevant, and on the further ground because the articles of incorporation superceded it, and on the further ground that it is between individuals and does not bind the creditors of this corporation.

Court—I will admit it in evidence.

Marked *Exhibit D 8,* and reads as follows:

"Articles of Agreement, made and concluded the sixth day of March A. D. 1886, between Lenox Simpson and E. P. Canfield, of Pittsburg, Pennsylvania, of the first part, and Henry Green, of Easton, Pennsylvania, of the second part, witness:

WHEREAS, The said Simpson and Canfield have acquired the ownership of a certain patent, issued by the United States to Henry Dickson, for making brick tile and other fabrics out of slate and for a process for converting slate into brick, tiling and other fabrics, by pulverizing, tempering and moulding and burning said slate in accordance with the claim described in said patent and the application therefor—And Whereas, the said Simpson has applied for two patents for *improvements in Kilns,* particularly described in said applications, the object of which is to obtain a uniform heat in the burning of brick, tile and other analogous articles, and it is expected that patents for the same will shortly be issued—

AND WHEREAS, it is proposed to form a corporation for the purpose of putting said patents into practical use and producing the fabrics and results aforesaid, and the said Green is willing to undertake to place the stock of said corporation upon such terms as may be agreed upon

between him and the purchasers thereof. Now, Therefore, it is hereby agreed by and between the said parties, as follows, to wit:

First. That a corporation shall be formed and established upon the basis of the said patents and to carry the same into practical effect under the laws of New York, Pennsylvania, New Jersey, or such other State as may be thought best with a capital stock of not less than one million dollars, divided into shares of One Hundred Dollars each.

Second. The said Green, upon paying into the treasury of the said corporation the sum of twenty thousand dollars and to the said Simpson and Canfield the sum of five thousand dollars, shall be entitled to have and take six-tenths of the said capital stock, and the said Simpson and Canfield shall, upon assigning and transferring to said corporation all of the said patents, be entitled to have and take the remaining four-tenths of the said capital stock; out of the said six-tenths of the said capital stock to be taken by said Green he shall deliver to said Simpson and Canfield twenty thousand dollars worth of the same at the par value thereof upon the assignment and transfer to the said corporation of the said patents by said Simpson and Canfield, and the said Green shall also deliver into the treasury of the said corporation fifty-five thousand dollars worth of the said capital stock at the par value thereof to be used and sold from time to time, as may be required for the purpose of raising working capital for conducting the operations of said corporation.

Third. The said Simpson and Canfield agree to assign and transfer to said corporation the said two patents and all right, title and interest of themselves therein, and all improvements and inventions which they, or either of them, may make therein, or thereon, either in mixing said slate with foreign substances, or in chemical or mechanical improvements relating thereto, or in any other manner whatever. Said transfer to

be made as soon as said company shall be incorporated. And also to deliver into the treasury of the said company twenty-five thousand dollars worth, at par, out of their four-tenths of said stock to be used and sold as working capital.

Fourth. As some delay will necessarily transpire before the said patent claimed by said Simpson will be issued, and before the said corporation shall be established, and as it is very desirable that the plant for manufacturing brick under the said patents shall be erected as speedily as possible, it is further agreed that any moneys which shall actually be expended by said Green and others, co-operating with him, in the purchase of ground, and in the purchase and erection of the necessary machinery and buildings for carrying on the operations of said corporation, shall be deemed and taken as part of the aforesaid sum of twenty thousand dollars to be paid in to the treasury of said corporation, and the said plant shall be conveyed to said corporation, when established at and for the actual cost thereof, as part payment of the said sum of twenty thousand dollars.

Witness, our hands the sixth day of March, A.D. 1886,

LENOX SIMPSON,
M. P. CANFIELD,
H. GREEN."

Mr. Lindabury—I next offer in evidence a paper, without date, admitted to be in the handwriting of Judge Green and found at his desk, among the papers and effects of the American Brick and Tile Co., which were afterwards delivered by his son to the receiver, who produces it on the call of the defendant. It is headed "Original scheme.'

Mr. Shipman—That is objected to on the same ground that it does not bind the creditors.

Court—I will take it.

Paper marked *Exhibit D 9* and reads as follows:

Original Scheme

Simpson & Canfield,				
4,000	200	4,200—250,		3,950
Wilbur,				1,000
Potter,				1,000
Paxson,				1,000
Green,	1,000	250,		1,250
Treasury,	800	1,000,		1,800
				10,000
Transferred Simpson,			1,669	
Canfield,			557	
Potter,			500	
Wilbur,			500	
Paxson,			500	
Green,			500	
			4,226	
In Treasury,			1,800	
			6,026	
Less Green's 250, included in Simpson & Canfield's tranf.,			250	
Drawn out,			5,776	
Tran mt.,			4,000	
			1,776	

New Holding

Simpson,	1,481
Canfield,	493
Wilbur,	1,500
Paxson,	1,500

Potter,	1,500
Green,	1,750
	8,224
Shd. be in Treas.,	1,776
	10,000

Mr. Lindabury—Next I offer in evidence a release, signed by Lenox Simpson and Morris P. Canfield, to Henry Green, dated September 29th, 1887, the due execution of which is admitted.

Mr. Shipman—We make the same objection to that paper.

Same ruling.

Paper marked *Exhibit D 10* and reads as follows:

"KNOW ALL MEN BY THESE PRESENTS, that we, Lenox Simpson and Morris P. Canfield, do hereby acknowledge, that we have had and received from Henry Green, of Easton, Pennsylvania, four thousand two hundred shares of the capital stock of the American Brick & Tile Company, of New Jersey, and in consideration thereof and of the payment by said Green, into the treasury of said company, of the sum of five thousand dollars, by our request and consent, and of the further sum of one dollar to us paid by him, we do hereby acquit, surrender, release and discharge unto the said Henry Green, his heirs, executors and administrators, all claims, demands, accounts, actions and proceedings whatsoever, at law or in equity, which we may now or hereafter have for, under or by reason of a certain contract in writing between us, and said Green, dated the 12th day of March, A. D. 1886, in relation to the transfer of certain patents, and the organization of said corporation, and providing for the transfer of certain shares therein, and the payment of five thousand dollars to us, and we do hereby acknowledge and agree, that said contract has been fully

complied with by said Green. Witness our hands and seals the twenty-ninth day of September, A. D. 1887.

LENOX SIMPSON [SEAL.]

Attest: MORRIS P. CANFIELD [SEAL.]

JNO. A. KURTZ."

Mr. Lindabury—I offer in evidence next a receipt from M. P. Canfield to Henry Green for check of $3,750, in payment for shares of stock. This paper was found among the papers of the American Brick and Tile Company, and produced by the receiver, in the same way as the others.

Same objection.

Same ruling.

Paper marked *Exhibit D 11,* and reads as follows:

"Received Easton, Oct. 1, 1887, of H. Green, three thousand seven hundred and fifty dollars, in one check for one thousand dollars, one note at 60 days, for fifteen hundred dollars, and one note at four months, for twelve hundred and fifty dollars, in full payment for four hundred and ninety-three shares of stock in the American Brick and Tile Co.

M. P. CANFIELD."

Elisha P. Wilbur, recalled, his direct examination resumed:

Examined by Mr. Lindabury.

Q. Now, Mr. Wilbur, you got a certificate of stock for fourteen hundred shares stamped "issued for property purchased"?

A. Yes, sir.

Q. Bearing date the same day that the assignment of the patents to the company bears date?

A. Yes, sir.

Q. For what consideration was that issued by the company, and from whom did the consideration move?

Mr. Shipman—I object to the question—let him tell what took place.

Question allowed.

A. Which stock do you refer to now?

Q. The 1,400 shares—I want you to state for what consideration that stock was issued by the company and from whom did the consideration move?

A. I do not remember, except that Judge Green told me that he had made an arrangement whereby he had gotten rid of the original holders of that stock, or the owners of that stock.

Q. Yes, but what did the corporation get for that stock?

A. That I do not know.

Q. Was it or not a part of the stock that you testified to, as issued for the patents?

A. Yes, sir, I so understood.

Q. And through what arrangement or arrangements —through whom did you get it?

A. I got it from Judge Green, as a part of the distribution, I suppose, of that stock, after his purchase of it, I do not think he ever said what it was for, when he sent it to me.

Q. You got it through an arrangement with Judge Green?

A. Yes, sir.

Adjourned to November 10th, 1904, 11 A. M., at Trenton.

IN CHANCERY OF NEW JERSEY.

Between
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendant.

Transcript of stenographer's notes of evidence taken in the above-entitled cause before his Honor, James J. Bergen, Vice-Chancellor, at the Chancery Chambers, State House, Trenton, New Jersey, November 10th, 1904, at 10 A. M.

Appearances: Mr. George M. Shipman, for William M. Davis, Esq., receiver; Mr. W. S. Kirkpatrick, of the Northampton county, Pa., Bar, for the Easton National Bank; Mr. R. V. Lindabury and Mr. Samuel Dickson, for Judge Edward M. Paxson, Charles A. Mayer and E. P. Wilbur, individually, defendants; Mr. S. C. Stewart, of the Northampton county, Pa., Bar, for Mr. Fred. Green, individually, and as executor of the estate of Henry Green, deceased; Mr. W. H. Walters and Mr. E. J. Fox, of the Northampton county, Pa., Bar, for the Easton Trust Company, and Mary B. Knight, executrix of Fletcher H. Knight, deceased, and for Elizabeth Knight and Samuel Knight; Mr. J. H. T. Martin, for Henry A. Potter; Mr. James Buchanan, for the E. P. Wilbur Trust Co.; Mr. H. M. Hagerman, of the Northampton county, Pa., Bar, for Henry Short, a creditor.

Frederick Green, recalled in behalf of the Easton Trust Co., and Mary B. Knight, executrix of Fletcher H. Knight and Elizabeth Knight and Samuel Knight, saith:

Examined by Mr. Walters:

Q. Witness being shown check dated "Easton, Pa., July 11th, 1888, First National Bank, pay to the order of Henry Green, $5,000, J. T. Knight"—will you please look at the endorsement on that check? Is that your father's endorsement?

A. Yes, sir.

Check offered in evidence and marked *Exhibit K 5.*

Q. Witness being shown check dated "Easton, Pa., July 11th, 1888, First National Bank, pay to the order of Henry Green, $5,000, signed J. T. Knight"—will you please tell us whose endorsement is on that check?

A. That is my father's endorsement.

Check offered in evidence and marked *Exhibit K 6.*

Q. Have you the original certificate of stock, made out to John T. Knight, here?

A. It must be in the certificate book.

Court—The purpose of this examination is to show that Mr. Knight was not an original subscriber to the stock, and that it bought it from Judge Green, I suppose?

Mr. Shipman—Yes, sir.

Mr. Walters:

Q. What is the date of the certificate of stock given to John T. Knight?

A. July 11th, 1888.

Q. The same date as the checks which have been shown you?

A. Yes, sir.

Court:

Q. Do you know what these checks were given to your father for?

A. Yes, sir.

Q. What?

A. For the purchase of that stock.

Mr. Shipman:

Q. Was John T. Knight an original subscriber?

A. No, sir.

Q. Who was the original subscriber to this stock?

A. I cannot tell you; you will have to trace it back.

Q. Do you know whether John T. Knight was an original subscriber or not?

A. I know that he was not.

Q. And these checks were given for the stock issued to him?

A. Yes, sir.

Q. For 300 shares?

A. Yes, sir; for 300 shares.

Q. You don't know what became of the money, I suppose?

A. It went to my father.

Q. Well, do you know what became of the money?

A. It was his; I don't know what became of it.

Q. It went to your father you say?

A. Yes, sir.

Q. Do you know anything more than that about the transaction?

A. Nothing at all, more than that.

Mr. Walters:

Q. Do you know that John T. Knight is dead?

A. Yes, sir.

Q. And Fletcher H. Knight also?

A. Yes, sir; Fletcher Knight is dead also.

Court:

Q. Can you tell whether that certificate issued to John T. Knight was the whole or a part of the certificate of stock originally issued to your father?

A. Well, I don't know how I can tell that; I am pretty sure that it was a portion of the stock that had been

issued to Simpson or to Canfield, but I cannot say which one.

Q. You cannot tell from the books?

A. No, sir.

Cross-examination by Mr. Kirkpatrick:

Q. The only thing that appears is that the certificate was issued directly from the company to Mr. Knight—that is, from the books?

A. Yes, sir.

Q. And there is no other record of it?

A. No, sir.

Mr. Shipman:

Q. Do you know whether there was any stock cancelled on account of this stock—any certificate cancelled?

A. I can look at the book and see if there is anything to show that.

Court:

Q. Does the stub of the certificate book show you anything?

A. I will look through and see if there is anything.

Mr. Shipman:

Q. Do you know what came of any of the old certificates, where they were put or stored?

A. I know nothing about any certificates except those that appear in the book here and fastened to the stubs.

Mr. Walters::

Q. You say you think that this stock that was issued to John T. Knight was a part of the stock that your father got from Simpson & Canfield, or one of them?

A. I say that is a matter of inference.

Q. Canfield and Simpson were the owners of this patent originally, were they not?

A. I think it appears by the record or papers in the case that they were.

Q. And they got this stock for their patent?

Mr. Kirkpatrick—I object to the question. How does he know?

Mr. Fox—He was the secretary of the company.

Court:

Q. What do you know about it?

A. I know positively nothing about it.

Mr. Fox—John T. Knight died in Easton, Pa., in July, 1903, and the final account in his estate was filed in the Orphans' Court of Northampton county, Pa., in May, 1904, showing a balance of $178,000 for distribution, and distribution was made at that time. Will it be necessary for us to prove that?

Mr. Kirkpatrick—We will admit that.

Cross-examination by Mr. Dickson:

Q. I show you a check purporting to be signed by Robert P. Linderman—you know that he is deceased, do you not?

A. Yes, sir.

Q. Do you know his handwriting?

A. No, sir.

Q. I show you this check, purporting to be signed by him, and dated November 30th, 1887, for $1,075, drawn to the order of Henry Green, and endorsed "H. Green"—is that endorsement in your father's handwriting?

A. Yes, sir; that is his handwriting.

Q. And from the stamp on the back of it it appears to have been given to and gone to his individual credit in the bank?

A. It is stamped by the Easton National Bank, and that is where he kept his deposits.

Q. Did that go to the credit of the company, ever?

A. I do not think it did; no, sir.

Q. Then I show you a check dated May 11th, 1891, for $500, drawn to the order of "Fred Green, Treas."; September 23d, 1891, for the same amount, to the order of "Fred Green, Treas."; February 2d, 1892, for the same amount, to the order of "Fred Green, Treas.," and one dated February 14th, 1894, for the same amount, drawn to the same order, and I ask you, are these endorsements made by you (handing witness four checks)?

A. Yes, sir; they are all endorsed by me.

Q. This paper has already been offered in evidence, "Capital stock account, American Brick and Tile Company"; this paper is in the handwriting of Judge Green, or purports to be; is that paper in your father's handwriting (handing paper to witness)?

A. Yes, sir; that is my father's handwriting.

Mr. Dickson—I offer this paper in evidence.

Mr. Kirkpatrick—We object to the paper. It is a matter we know nothing about at all, and we object to it for that reason. And another objection is, this is a scheme of Judge Green's, so far as appears, and the figures and the handwriting of Judge Green, of which there is no record or notice to the bank, or to any of the creditors at all; it is a matter not covered by any public record at all, not by the certificate of organization, or by any report of the corporation by any of its officers or directors; nothing of that kind was ever filed, and for that reason, if your Honor, please, we contend that it is not binding or relevant, and that it is entirely incompetent.

Mr. Dickson—The paper is offered to show that Judge Green, by this statement made by himself, showed that he had transferred from the stock standing in his name, and which had been issued to him, the shares of stock to the parties named in this paper. And I suppose, in order to make the paper intelligible, it is necessary to read these entries.

Mr. Shipman—I object on the further ground, because it appears to be nothing but a private paper made by Judge Green, showing his transactions with certain stockholders, and I object to it as against creditors.

Mr. Dickson—It is for that reason we offer it; it is a private paper showing how Judge Green dealt with his own stock.

Court—I will receive the paper.

Marked *Exhibit L 1.*

Copy of *Exhibit L 1:*

"Capital Stock Account.

"American Brick and Tile Co.

"1887. Sept. 27.	Edward M. Paxson		Dr.
	"To Cert. No. 1 for shares,		1,400
	" " " " 351 for shares, (cash stock),		100
"1887. Sept. 27.	E. P. Wilbur,		Dr.
	"To Cert. No. 2 for shares,		1,400
	" " " " 352 for shares, cash stock),		100
"1887.	Lenox Simpson,		Dr.
	"To Cert. No. 3 for shares,		1,481
"1887. Oct.	By shares transferred		Cr.
	"To H. Green,		1,481
"1887. Sept. 27.	M. P. Canfield,		
	"To Cert. No. 6 for shares,		493
"1887. Oct.	By shares transferred		Cr.
	"To H. Green,		493
"1887. Oct. 1.	Henry Green		Dr.
	"To Cert. No. 3 for shares transferred by Lenox Simpson,		1481
"1887. Oct. 1.	To Cert. No. 6 for shares transferred by M. P. Canfield,		493

"1888. July 11.	To Cert. No. 14 for original shares, ...	1750
"1888. July 11.	To Cert. No. 15 for bal. of shares after transfers, ...	374
		"4098
"1887. Nov. 28.	By shares transferred to R. P. Linderman, Cert. No. 9,	500
"1887. Nov. 28.	By shares transferred to W. A. Wilbur, Cert. No. 10,..	500
"1888. Jan. 20.	By shares transferred to C. A. Mayer, Cert. No. 11,..	100
"1888. June 11.	By shares transferred to P. W. Sheafer, Cert. No. 12,.	200
"1888. July 11.	By shares transferred to Jno. T. Knight, Cert. No. 13,..	300
"1888. July 11.	By Cert. No. 15 for shares,..	374
		1974
"1887. Nov. 28.	H. A. Potter	Dr.
	To Cert. No. 8 for shares,...	1500
"1887. Nov. 28.	R. P. Linderman	Dr.
	To Cert. No. 9 for shares (H. Green), ...	500
"1887. Nov. 28.	W. A. Wilbur	
	To Cert. No. 10 for shares (H. Green), ...	500
"1888. Jan. 20.	C. A. Mayer	Dr.
	To Cert. No. 11 for shares,.	100
"1888. June 11.	P. W. Sheafer,	
	To Cert. No. 12 for shares,..	200
"1888. July 11.	Jno. T. Knight	
	To Cert. No. 13 for shares,..	300

It is admitted that the facts stated in the answer of Charles A. Mayer shall be taken as proved. The portion of the answer to which this admission refers, reads as follows: "He avers that he never subscribed for any stock in said corporation. Respondent avers that he became the holder of one hundred shares of the capital

stock of said company, by a *bona fide* purchase from Henry Green, who, at the time of the purchase, was president of the company; that he paid for said certificate of stock twenty-five hundred dollars in cash, which was received by Henry Green at the time said certificate of stock was issued to respondent; that at the time the sale of said stock was made to respondent Henry Green represented that it was a good paying stock, would be a profitable investment and that respondent would incur no liability by reason of the purchase of said stock, as it was non-assessable, and no personal liability would be incurred.

Court—The record will show that what Judge Dickson has just read is admitted as if proved.

Mr. Kirkpatrick and Mr. Shipman—Yes; that is admitted.

Mr. Dickson—The four checks drawn to the order of Fred. Green, treasurer—will it be admitted that the proceeds of those checks went to the credit of the company?

Mr. Kirkpatrick and Mr. Shipman—Yes; that is admitted.

Mr. Dickson—I offer those four checks in evidence. They read as follows:

"No. 2329 South Bethlehem Pa. May 11, 1891.
The Lehigh Valley National Bank of Bethlehem, pay to the order of Fred Green, Treasurer, Five Hundred Dollars.
$500. Robert P. Linderman."
Marked *Exhibit L 2.*

"No. 2489 South Bethlehem, Pa. Sept. 23, 1891.
The Lehigh Valley National Bank of Bethlehem, pay to the order of Fred Green, Treasurer, Five Hundred Dollars.
$500. Robert P. Linderman."
Marked *Exhibit L 3.*

"No. 2671

South Bethlehem, Pa., February 12, 1892.

The Lehigh Valley National Bank of Bethlehem, pay to the order of Fred Green Treasurer, Five Hundred Dollars.

$500. Robert P. Linderman."

Marked *Exhibit L 4.*

"No. 3546

South Bethlehem Pa. Feb. 14, 1894.

The Lehigh Valley National Bank of Bethlehem, pay to the order of Fred Green, Treasurer, Five Hundred Dollars.

$500. Robert P. Linderman."

Marked *Exhibit L 5.*

Mr. Dickson—I also offer in evidence the check drawn to the order of Henry Green for $1,075— (interrupted).

Mr. Shipman—As to that check given to Henry Green, we object to that on the ground that it is irrelevant and not binding upon the creditors, and on the ground that it seems to have been a private arrangement of Judge Green's.

Court—I will admit it.

Mr. Dickson—That check reads as follows:

"No. 928

South Bethlehem Pa. Nov. 30, 1887.

The Lehigh Valley National Bank of Bethlehem, pay to the order of Henry Green, one thousand and seventy-five dollars.

$1075. Robert P. Linderman."

Marked *Exhibit L 6.*

The further hearing in the cause suspended until after recess (2 P. M.).

Recess.

Elisha P. Wilbur, recalled for further cross-examination.

Cross-examined by Mr. Kirkpatrick:

Q. This matter you spoke of, with reference to the organization of this company, was presented to you, you say, before the organization of the company, some months, was it not?

A. I don't know how long it was, but I think it was before that—of course it was before that.

Q. My question was rather to direct your attention to the subject-matter; I want to ask you—you think it was two or three months before—where was it that the matter of this corporation was first presented to you?

A. I suppose it was—I cannot tell—I cannot remember exactly.

Q. Where do you think it was?

A. I think probably it was at South Bethlehem, and yet it may have been at Philadelphia.

Q. You have no distinct recollection on that subject, as to where and when this matter was first presented to your attention?

A. No, sir; I have no distinct recollection.

Q. You were present, of course, at the meeting or organization, at which the first organization of the corporation was had under this charter, were you not?

A. I think so.

Q. Was the matter of the patents of Canfield and Simpson spoken of or referred to at that meeting, or any action taken upon it?

A. I do not remember.

Q. You cannot remember?

A. I think not; but I do not remember.

Q. You say in your direct examination there was a meeting at which the subject of the purchase of the patents of Simpson and Canfield was discussed and some action taken—that was not at the meeting held for the purpose of organization, was it?

A. No, sir.

Q. Do you know whether it was before or after that meeting that this subject was discussed about the purchase of the patents?

A. After, I am pretty sure; I think it was afterwards.

Q. You think it was afterwards?

A. Yes, sir.

Q. Where was that meeting held, or where did you meet?

A. I think in Easton.

Q. Have you any particular recollection as to what place it was in Easton at which the meeting was held?

A. No, sir I have not.

Q. You frequently met Judge Paxson and Judge Green in a social way, did you not?

A. Oh, yes, sir.

Q. At Easton?

A. Yes, sir.

Q. And it might have been at some such meeting as that that the matter was discussed?

A. No, sir; I think not—well, it may have been discussed at some such meeting, but this action you speak of—

Mr. Lindabury—I object; let him finish his answer; you interrupt the witness before he is through.

Mr. Kirkpatrick:

Q. Were you going to say anything else?

A. I say it might have been spoken of at some such social meeting as you mention, but the action you speak of was at a meeting—at the meeting I spoke of.

Q. Now, that meeting; you say you do not recollect where that meeting took place?

A. I think it was in Easton, but I cannot recall whether it was or not, with any certainty.

Q. Whether it was at Judge Green's house, or at his office, or at some other place, you do not have any recollection now?

A. Well, I do not think it was at his house.

Q. You do not think it was at his house?

A. No, sir.

Q. The fact is, you have no distinct recollection as to where the meeting was held?

A. No, sir; not as to the place.

Q. Well, now, not being able to recollect the place, can you recollect who was present at the meeting that you spoke of?

A. I think Judge Green was present, Judge Paxson was present, and I think Mr. Potter.

Q. Are you sure as to that, or is that simply an impression you have?

A. I am sure of it, as far as Judge Paxson is concerned, and I think I am as to Mr. Potter, but I am not certain as to Mr. Potter.

Q. You have no recollection of any such meeting having been called by any call of any kind?

A. No, sir.

Q. You do not recollect whether you simply happened to get together, or whether there was some regular call issued for the meeting?

A. There was a regular call of some kind issued, but I do not know whether it was a written call or not.

Q. You don't know whether there was any written call?

A. No, sir.

Q. The fact is, you have no recollection now of any call; that is, as a matter of recollection, being issued for that particular meeting, have you?

A. A written call?

Q. Yes.

A. No, sir; I do not have any recollection.

Q. Do you remember who acted as president of the meeting, or chairman of the meeting?

A. Judge Green was there, and was president.

Q. Do you remember who acted as president on that occasion?

A. No, sir.

Q. Do you remember whether anybody acted as president of that meeting or not?

A. No, sir; I do not.

Q. Nor do you recollect, as a matter of fact, that any particular resolution was voted upon or offered, do you?

A. Yes, sir; I recollect that a resolution was offered; a statement was made and voted upon.

Q. Now, Mr. Wilbur, do you remember any person formally putting that to a vote, or was it simply talked over and agreed on among you, in the ordinary way of conversation or discussion?

A. I think Judge Green presented it and stated what was necessary to be done, and then somebody offered a resolution, and it was carried.

Q. Have you any distinct recollection on that subject, or is that simply now an impression in your mind that it must have been done, and that it must have been done in that way?

A. I think I have a distinct recollection that it was done in that way.

Q. You think you have a distinct recollection that it was done in that way?

A. Yes, sir.

Q. Was that resolution in writing; do you know that?

A. That I do not know; the statement was in writing.

Q. The statement was in writing, you think?

A. Yes, sir.

Q. What was the statement?

A. The statement was as to the purport of the meeting, what was to be done with regard to the issue of this stock.

Q. That was in writing, you say?

A. Yes, sir; that was in writing.

Q. That is to say, there was some written statement made about the stock; about the value of the stock?

A. No, sir; I think not.

Q. Then you say there was some action taken, but you have no distinct recollection now, as I understand you, as to the form of that action?

A. No.

Q. And you don't know whether it was formally put to a vote, and voted on or not, do you?

A. I think it was, I say.

Q. As a matter of recollection, now?

A. I think it was.

Q. You think so?

A. Yes, sir.

Q. But you would not be positive as to that, would you?

A. No.

Q. Was there anyone there acting as secretary of any such meeting as you describe?

A. I do not remember whether Fred Green was there or not, acting as secretary.

Q. Did you ever see or pass upon any of the minutes of any such meeting, at any subsequent meeting?

A. No.

Q. Or at any time?

A. Or at any time.

Q. Then the subject of the purchase of the patents was talked of for the first time at that meeting?

A. Formally, I think it was—that is the first time.

Q. The first time?

A. Yes, sir, the first time at a meeting.

Q. How much were the patents to cost, how much did Simpson and Canfield get for the patents?

A. I do not remember now. The amount of stock was stated at that meeting.

Q. Do you remember what portion of the stock they were to get for the patents?

A. No, sir, I do not.

Q. It was 4,000 shares or thereabouts, was it not?

A. I cannot recall, I do not know.

Q. Don't you remember that it was 4,000 shares and $5,000 in cash that they were to get for the patents?

A. I do not remember the amount of the stock.

Q. Was it not in that neighborhood, or thereabouts?

A. I should think it possibly was, I do not know, though.

Q. That is your best recollection, that it was in that neighborhood somewhere—somewhere in the neighborhood of 4,000 shares of stock and $5,000 in cash?

A. I really haven't any recollection on the subject.

Q. You haven't any recollections on the subject at all?

A. No, sir.

Q. You do not remember how many shares of stock they were to get for the patents?

A. No, sir, I do not know.

Q. Can you give it to us approximately?

A. No, sir, I cannot.

Q. Was it in the neighborhood of 3,000 or 4,000 shares?

A. I cannot remember the amount at all.

Q. It was a certain number of shares—you can state that much?

A. Yes, sir, it was a fixed number of shares.

Q. It was a fixed number of shares?

A. Yes, sir.

Q. Do you know how much money they were to get besides a certain number of the shares of the stock of the company?

A. No, sir, I do not.

Q. Was it not $5,000?

A. I have no personal knowledge on the subject.

Q. How does it come that you can recollect that a statement was made, and that a vote was taken, and yet you cannot give us any of the details of that action that was taken upon that vote?

A. It is a good while ago.

Q. Can you tell us whether it was 2,000, or 3,000, or 4,000 shares of the stock of that company, they were to get for the patents?

A. No, sir, I cannot now, I have no recollection.

Q. Well, can you tell us whether it was 1,000 shares?

A. I cannot tell anything about it.

Q. Do you know whether it was 6,000 shares?

A. No, sir, I do not.

Q. You have no idea as to what portion of the stock of that company they were to get for their patents?

A. No, sir.

Q. They were to get a considerable portion of the stock, were they not?

A. Oh, yes, sir.

Q. Now, who was to get the remaining portion of the stock of that company, if anyone?

A. I think portions of it was to go to Judge Paxson, a portion to Mr. Potter, and myself, and a portion to Judge Green, for the money we put in the company.

Q. Now, referring then to the amount of the stock you were to get, and the amount of stock Judge Paxson was to get, and the amount of stock that Col. Potter was to get, with reference to how much that stock was, would that help you to remember that an amount less than half of the stock was to go to Canfield and to Simpson, for their patents?

A. I don't quite catch that.

Q. I say, would that help you to remember that less than half of the stock was to go to Canfield and to Simpson, for their patents?

A. No, sir; I don't think it would.

Q. You would not be able to say now whether they were to get less than half of the stock?

A. How is that?

Q. I will ask the stenographer to read the two last questions and your answers.

Questions and answers read as follows:

"*Q.* Now, referring then to the amount of the stock you were to get, and the amount of stock Judge Paxson was to get, and the amount of stock that Col. Potter was to get, with reference to how much that stock was—would that help you to remember that an amount less than half of

the stock was to go to Canfield and to Simpson for their patents?

"*A.* I don't quite catch that.

"*Q.* I say, would that help you to remember that less than half of the stock was to go to Canfield and to Simpson for their patents?

"*A.* No, sir; I don't think it would."

Q. Then the other remaining portion of the stock was to go to Canfield and to Simpson for their patent?

A. So I understood.

Q. So you understood?

A. Yes, sir.

Q. And that was the result of the action you think was taken at that time?

A. I cannot say how much, of course, Judge, because I haven't any figures.

Q. I expect that your memory fails to give me the amount; but, outside of the stock that was to go to you, to Judge Paxson and to Mr. Potter, that stock, or the remaining portion of the stock, was to go to Canfield and to Simpson for their patents?

A. Oh, some went into the treasury, I think.

Q. A certain proportion went into the treasury, and then the remaining portion was to go to Canfield and to Simpson for their patents, was not that so?

A. I think substantially that is so, yes, sir.

Q. That is substantially the way it was understood at that time?

A. I think so.

Q. Now, Mr. Wilbur, you said that this meeting took place some time after the organization, but you are unable to say how long after the organization; now, was it prior to the time you actually got this stock on the 27th of September, 1887?

A. Prior to that.

Q. Was it in the year 1886?

A. That I cannot recollect.

Q. You cannot recall that?

A. No, sir.

Q. It might have been a year after the organization meeting at which this action took place, do you think?

A. No, sir; I think not.

Q. Do you think within a year and a half, then, or six months, or three months of the time of the organization taking place that this action took place?

A. It is impossible for me to recollect.

Q. I understand you cannot fix the dates, but I want to get an approximate idea of how close to the organization of the company was it that this meeting took place?

A. I should think within a month or two.

Q. A month or two after?

A. Yes, sir; I think so.

Q. When was it you took into account the question of licenses and royalties—you said your estimate or idea that the patents were worth as much money as you said they were worth, in your direct examination, was based principally upon the royalties and the licenses which were involved in the distribution of these patents?

A. As to the time?

Q. Yes; when was that, that that phase of the case was presented to you, with reference to the formation of this company?

A. Well, I should think it was about the time of this meeting I speak of.

Q. You think it was about the time of this meeting you speak of, and which you think was within a month or two of this organization meeting?

A. I cannot fix the time. Judge Green spoke of these licenses, and, in fact, before the company was organized at all he spoke of them—

Q. That is not an answer to my question; my question was as to when the subjects of the royalties or the licenses were discussed between you or submitted to you after the organization of the company; was it after or at the time of this meeting you speak of?

A. I think it was before and after; they were talked about very frequently.

Q. Don't you know as a matter of fact, Mr. Wilbur, there were no licenses granted at that time, and none in contemplation at that time, within a month or two of the organization of the company?

A. No, sir, I do not.

Q. Don't you know, as a matter of fact, that the only license that was ever granted was the license granted to Charles H. Salmon, which was granted in the year 1888 —don't you know that—you may look at this paper (handing paper to witness), you may identify it in that way?

Mr. Lindabury—I object to this examination as not cross-examination, the witness did not testify to licenses already granted, but testified to what Judge Green represented as licenses in contemplation.

Mr. Kirkpatrick—I will read you the evidence which the witness gave as to that.

"Well, Judge Green made a statement, and I think Judge Paxson made a statement, with regard to the experiments that had been made, but more especially Judge Green called our attention to the royalties, which had been arranged for, and I do not know by how many, gentlemen, or whether they had been finally arranged, giving us what the income would be from the royalties—"

Then he was asked, "What do you remember about that, as to figures or results?" To which he answered, "No, sir, I do not remember the figures, but I know the royalties, if they had all been carried out, would amount to a very large sum, largely in excess of the interest on the proposed capitalization."

Court—I will take the question.

Mr. Kirkpatrick.

Q. Now, is it not a fact that the only license or contract for a license, on royalty, was that made by this company, with one Charles H. Salmon, and that that was not made until the year 1888?

A. I do not think so.

Q. You do not think so?

A. No, sir.

Q. You have before you there the paper purporting to be an agreement of that kind, have you not?

A. Yes, sir.

Mr. Lindabury—And that paper is dated when?

Mr. Kirkpatrick—It is dated May 9th, 1888, and is an agreement between the American Brick and Tile Company and Charles H. Salmon.

I offer that agreement in evidence. Marked *Exhibit W 3.*

Q. Is it not a fact, that there were no other licenses ever granted by the American Brick and Tile Company, by any agreement, except this license to Charles H. Salmon, in the year 1888?

A. I was told there were others.

Q. You have no knowledge of your own on the subject?

A. No.

Q. Is it not a fact that there were no licenses, in a written form, ever submitted to you, or to the company, for the use of this patent to your own knowledge?

A. I think I saw a copy of a similar contract in Philadelphia.

Q. Don't you know, as a matter of fact, that no royalties were ever paid by anyone, excepting one payment of $52 made by Charles H. Salmon?

A. I do not.

Q. At any time?

A. I do not.

Q. During the time the business of the company was being carried on?

A. I did not.

Q. You have said that you got the 100 shares of stock you did get from Judge Green?

Mr. Lindabury—No, he didn't. He said that he bought those and paid for them in full.

Question withdrawn.

Mr. Kirkpatrick.

Q. From whom did you get the 100 shares of stock, who handed them to you—who handed the certificate for the 100 shares of stock, that is, from whom did you get them?

A. I cannot recall whether it was handed to me or came by mail.

Q. If it came by mail, can you recall from whom they came?

A. No, sir, I think it came from Judge Green.

Q. You have no recollection as to who handed you the certificate, or whether it came by mail or otherwise, for the 100 shares of stock you got?

A. No, sir.

Q. The $10,000 that you paid in cash was not paid all at once, was it?

A. No, sir.

Q. The last payment was paid a year or two after the first payment, was it not?

A. I don't remember.

Q. Did you get the certificate of shares before you paid all the installments, or before you made all these payments—did you pay the entire $10,000 before you got the certificate of stock?

A. I cannot say.

Q. You cannot recollect that?

A. I cannot say.

Q. And you don't recollect who handed them to you?

A. No, sir.

Q. And you don't recollect when you received the certificate of stock?

A. No, sir.

Q. Now, from whom did you get the 1,400 shares—from whom did you get that certificate?

A. I got it from or through Judge Green.

Q. Have you any distinct recollection on that subject at this time?

A. Yes; quite distinct to that extent.

Q. But whether it came to you by mail, or was handed to you personally, you cannot state?

A. No.

Q. What did you pay for these 1,400 shares of stock—how much did you pay for those shares?

A. I don't remember.

Q. Did you pay anything for them?

A. I cannot recall now, Judge, what was paid for those, if anything; I cannot recall what I paid for them.

Q. You cannot recollect what you paid for them?

A. No, sir.

Q. You have no recollection of paying anything for them, have you?

A. No, sir.

Q. And, so far as your recollection goes, you did not pay anything for them?

A. Well, I cannot recollect that I did.

Q. Now, you have testified, with reference to the resolution passed, calling for an assessment—that resolution was passed in 1891, it appears, and you were present at that time, were you not?

A. Yes.

Q. Who offered that resolution?

A. I don't remember.

Q. Was it not Judge Paxson that offered the resolution?

A. I don't remember.

Q. You don't remember that?

A. No, sir.

Q. That resolution was offered and voted upon formally, was it not?

A. Yes; I think it was.

Q. You may look at this letter, which I now show you; it is dated May 1st, 1891—that is your signature, I suppose (handing letter to the witness)?

A. It is the signature of my secretary.

Q. You recognize it as a letter you authorized to be sent?

A. Certainly.

Mr. Kirkpatrick—I ask that this letter be marked for identification.

Marked *W 4* for identification.

Q. I hand you another letter, which is dated November 2d, 1891—that is also your letter, or a letter you authorized to be sent?

A. Yes, sir.

Mr. Kirkpatrick—I ask that that letter be marked for identification.

Marked *W 5* for identification.

Mr. Lindabury—We have no objection to those letters.

Mr. Kirkpatrick:

Q. I hand you a letter dated June 15th, 1895, that is your letter, or a letter you authorized to be sent, and also that of Mr. R. P. Linderman; that is his signature?

A. Yes, sir.

Q. Both of the signatures—that of yours and that of R. P. Linderman?

A. Yes, sir.

Q. That letter was forwarded or sent to Judge Green, as president of the company, I suppose?

A. I suppose so.

Q. Or was it sent to Fred. Green?

A. No; it was sent to the "Hon. Henry Green."

Mr. Kirkpatrick—I ask that this letter be marked for identification.

Marked *W 6* for identification.

Q. Do you also recollect a letter dated October 29th, 1891 (handing witness paper)?

A. Yes; I wrote that letter.

Mr. Kirkpatrick—I ask that that letter be marked for identification.

Marked *W 7* for identification.

Q. I show you another letter, purporting to be a copy, and which is dated October 27th, 1901; do you remember sending this letter marked *W 7* for identification, October 29th, 1891, to Judge Green, at the Monongahela House, Pittsburg, Pa. (handing witness paper)?

A. I wrote that letter.

I ask that the letter which appears to be enclosed with *W 7* for identification be marked for identification.

Marked *W 8* for identification.

Q. And was not this a copy of a letter you had already sent to Fred Green, which you enclosed in the letter marked *W 7* for identification, the copy being marked *W 8* for identification?

A. I take it for granted that is a correct copy.

Q. Can you recognize that as a copy made by somebody in your office?

A. No, sir; I cannot.

Q. Was that the letter referred to or the subject referred to in the letter just exhibited to you, in which you speak of writing to Fred Green, and complaining about the superintendent?

A. I have no doubt but that it is.

Q. You have no doubt but that that letter was also enclosed in that letter *W 7?*

A. I have no doubt that that is a copy of a letter from my office.

Q. And that it was sent along with the other letter to Judge Green?

A. I do not say so there in that letter there, do I?

Q. No; I do not think you say so—I think you had better read this letter (letter marked *W 7* for identification handed to witness) and see whether it does not refer to the subject-matter spoken of in the letter to Judge Green?

A. I think I can answer.

Q. Do so?

A. Do you want me to say—

Q. What is your recollection about sending that copy of a letter purporting to have been directed to Fred Green along with this letter to Judge Green, at the Monongahela House, Pittsburg, Pa.?

A. Well, I cannot recall it; there is nothing to ear-mark it.

Q. Have you any impression or recollection, as a matter of memory, upon that subject?

A. I remember the subject very well, and I remember writing to Judge Green, and probably sending this letter also, but I cannot say definitely—this does not give me any information.

Q. Will you also look at this letter (handing witness another paper) dated May 24th, 1900, and state whether or not that is your letter, and whether it was sent to Judge Green or not?

A. It is addressed to Judge Green.

Q. Was it sent to him, do you suppose?

A. I have no doubt. This was a letter written and sent by me and addressed to Judge Green.

Mr. Kirkpatrick—I ask that that letter be marked for identification.

Marked *W 9* for identification.

Mr. Kirkpatrick—I will now offer the letters which have been referred to and marked for identification in evidence, so as to have them in full on the record.

Mr. Lindabury—I object to the offer as irrelevant.

Court—You will have to offer them in their order, then, so that the objection can be made to each one.

Mr. Kirkpatrick—I will read them as I offer them. First I offer in evidence letter heretofore

marked *W 4* for identification, which reads as follows:

Same objection.

Same ruling.

"May 1st, 1891.

"F. Green, Esq.,
Treas. American Brick & Tile Co.,
Easton, Pa.

Dear Sir—Herewith find check for $1,500 in payment of first instalment of $1.00 per share upon an assessment upon the stock of your company in my name.

Please acknowledge receipt, and oblige,

Yours truly,
E. P. WILBUR.
Gummere"

Court—How is that relevant?

Mr. Kirkpatrick—If a man acknowledges that he is liable to pay an assessment, as we say he does in this letter, then I think it is relevant—this letter demands a liability and so do the other letters, which I shall offer.

Court—If you can show that the one hundred shares of stock have not been paid for, then I will admit this letter on that theory.

Mr. Kirkpatrick—We can show that, your Honor, and we intend to show it.

Court—Then I will receive the letter.

Marked *Exhibit W 4.*

Mr. Kirkpatrick—Now, I offer in evidence a letter heretofore marked *W 5* for identification, which reads as follows:

Same objection.

Same ruling.

"Nov. 2d. 1891.

Fred Green, Esq.,
Treas. American Brick & Tile Co.

Dear Sir:—Herewith find check for $1,500. in payment of third installment of one dollar per

share upon my subscription to the stock of your company. Please send usual receipt and oblige,

Yours truly,

E. P. WILBUR."

Marked *Exhibit W 5.*

Next I offer in evidence the letter heretofore marked *W 6* for identification, which reads as follows:

Same objection.

Same ruling.

"June 15th 1895.

"Hon. Henry Green,
Easton, Pa.

My Dear Judge:—Both Mr. Linderman and myself very much regretted yesterday that our interview was so broken and hurried; at the same time we do not know that we could have accomplished anything more than we did in the absence of further and definite information as to the affairs of the Brick Company.

As we said to you yesterday, there seems but one thing to do, and that is to have a meeting of the stockholders at the earliest possible day. Judge Paxson's movements we do not know, but Mr. W. A. Wilbur will be here the second week in July and thereafter. If you will arrange for a meeting at that time, or as soon thereafter as possible, we will arrange to attend, either here or in Philadelphia or at Easton. Immediate provision must be made for the extinguishment of the company's debt, as we doubt whether the banks will continue renewals of the paper much longer.

Please advise us as soon as a meeting has been arranged, and meanwhile we think all expenses should be cut off and every man discharged; we are unwilling to assent to any further increase of the indebtedness until some provision has

been made for the future management of the company.

Yours truly,
E. P. WILBUR,
ROBT. J. LINDERMAN."

Marked *Exhibit W 6.*

Next I offer in evidence the letter heretofore marked *W 7* for identification, which reads as follows:

Same objection.
Same ruling.

"October 29th, 1891.

"Hon. Henry Green,
Monongahela House, Pittsburgh, Pa.,

My Dear Judge:—In replying to Fred's notice calling the third installment I sent to him a test of bricks made by Mr. Stedman, which I think show very unfavorable comparisons, and are exceedingly unfortunate at this time. The impression Mr. Wilson must have received should be counteracted, if possible, by a test of some of the harder brick which I understood you were making.

I wish to explain to you that my remarks with regard to the Superintendent are perhaps predjudiced, but I believe my views are those of every one connected with the Company except, perhaps, yourself. I cannot express to you too strongly my belief that a change in the management there is imperatively needed, and that if the right man had been in charge the mischief done, as indicated by the tests above referred to, would not have occurred.

Yours truly,
E. P. WILBUR."

Marked *Exhibit W 7.*

Next I offer in evidence the letter heretofore marked *W 8* for identification, which was en-

closed to Judge Green in the letter last offered and marked.

Same objection.

Same ruling.

(Copy.)

"South Bethlehem, Pa., October 27th, 1891.

"Fred Green, Esq.,

Tres. American Brick & Tile Co.,

Easton, Pa.,

Dear Sir:—

I have yours of 26th inst., notifying me that the third installment of one dollar per share upon my stock of your Company has been called, and will be payable November 1st. proximo. This will be attended to upon the return of Mr. Gummere, who is now absent.

In connection with this call I beg to enclose herewith a letter from Mr. Stedman, Chief Engineer L. V. R. R. Co., to Robert H. Sayre, 2d Vice President of that Company, together with a blue-print showing certain brick tests made by him for the purpose of selecting a brick suitable for the proposed new station at Buffalo. You will notice that so far from standing first in the list as regards strength, as we supposed they did, the tests show our bricks unusually low. You will also notice what he says about the test of the glazed brick.

Wilson & Bro. are the Architects for the Buffalo station, as they are I understand for the Reading Terminal, and of course are familiar with these tests, and the whole thing looks to me very discouraging. One reason for this, in my opinion, is the lack of proper supervision in the manufacture of the brick. I have repeatedly expressed my opinion with regard to the superintendent, as has I believe everybody connected with the establishment. Certainly the way things are going no expenditure, in my opinion,

should be incurred beyond that for which the money is at the time actually provided, so that in the event of a necessity for closing the concern, we shall not find it burdened with a large floating debt, all of which according to the accounts submitted to us, were to be provided for, in addition to the needs for building purposes, by the assessments which are now being called.

There should be a monthly statement of accounts and balance sheet for the inspection of the board or the Executive Committee. I believe we have had but one statement, the one above referred to, since the organization of the Company.

Yours truly,

(Signed) E. P. WILBUR."

Marked *Exhibit W 8.*

Next I offer in evidence the letter heretofore marked *W 9* for identification, which reads as follows:

Same objection.

Same ruling.

"May 24, 1900.

"Dear Judge:—

It was impossible for me to arrange a meeting as you suggest for this week, as I have been absent every day, so far, and must go to New York this afternoon.

I shall be in Philada. on Tuesday and can meet you there, but don't think it worth while to try to have Judge Paxson join us. He has said he was ready to pay up as I have and it only remains to arrange the method of carrying out the matter.

I am very anxious to have this matter closed up, and will meet you at the Continental at 1 P. M. on Tuesday, if agreeable to you.

Yours truly,

E. P. WILBUR."

Marked *Exhibit W 9.*

Next I offer in evidence the letter dated December 3d, 1887, which reads as follows:

Same objection.

Same ruling.

"Dec. 3, 1887.

My Dear Judge:—I am just in rect. of yours of Nov. 29th, having been from home until last night.

I am delighted with the arrangement made with Mr. Salmon, as it will be a grand thing if it goes through, and I scarcely see how it can fail now. Accept my congratulations! !

I am also just in rect. of your kind invitation to dine with you at Augustine's on Thursday, 15th inst., and it is perhaps needless to say, accept with pleasure.

Yours truly,

E. P. WILBUR.

P. S. As you say nothing about the *new process,* I suppose it came to nothing. I really don't see much in it, and am rather relieved not to spend any money on it."

Marked *Exhibit W 10.*

Q. The date of the issue of the stock is September 27th, 1888, as I understand; this letter last offered in evidence was written December 3d, 1887, and refers to the arrangement made with Charles H. Salmon, as being a good thing, if it goes through; was not that the first information you had, at that time, that there was any arrangement made verbally, or otherwise, with Mr. Salmon?

A. I suppose it was.

Mr. Lindabury—I object to the question as not being cross-examination; he has not said that he had any prior arrangement with Mr. Salmon.

Court—He has answered it; I will admit the evidence.

Mr. Kirkpatrick:

Q. You are not able to name any other person except Charles H. Salmon with whom any arrangement was made, written or otherwise, for a license to manufacture brick under this patent?

A. I think I remember that Judge Green told me of several others.

Q. Have you any recollection of any name of any person?

A. Mr. Fuller, I think—I don't recall the names.

Q. You think Mr. Fuller might have been one?

A. I think he was one.

Q. Was not that in 1891?

A. That I cannot answer, as to the dates.

Q. Some four years after you got your stock?

A. That I do not know, sir.

Q. Don't you remember, as a matter of fact, that the operations of J. C. Fuller, the completing of his road, and the organization of his company for the purpose of making brick from slate, took place in the fall of 1891, four years after you got your stock?

A. I don't remember the dates at all.

Q. Well, was it not some considerable time after?

A. I cannot say.

Q. You cannot say as to that?

A. No, sir.

Q. Now, at the time or in the years 1887 or 1888, do you recollect writing this letter with these enclosures, which is dated January 18th, 1888 (handing witness paper)?

A. I wrote this letter to Judge Green.

Mr. Kirkpatrick—I ask that this letter be marked for identification.

Marked *W 11* for identification.

Q. Do you remember these enclosures being in it, with reference to an English patent or process of making brick from slate?

A. Of course I cannot identify those, Judge.

Q. But you remember they did enclose, and refer to a claim of patent by an English party on this process?

Court—Who was it sent to?

Mr. Kirkpatrick—To Judge Green.

Witness—I remember very well sending to Fred Green the tests that were made of brick, made for this purpose—

Q. I ask you the question, do you remember whether there was a question as to whether the patent had not been covered by a prior English patent; do you remember that question being raised about that time?

A. I am not sure that I do.

Q. There was something of that kind discussed, was there not?

A. I think probably there was, but I cannot recall it, Judge, now.

Mr. Kirkpatrick (reading)—"I enclose herewith the circulars and papers relative to the London Company's slate bricks, together with a copy of the tests made by our engineer, Mr. Stedman."

Q. Is not that what was referred to in that letter there?

A. I have no doubt but that is what it was that was referred to; but the tests—

Q. There were some papers showing a claim of patent by a London company for this very process enclosed with that letter, was there not?

A. I think there was.

Mr. Kirkpatrick—I offer this letter and the enclosures, and which were heretofore marked *W 11* for identification, in evidence.

Same objection.

Same ruling.

Marked Exhibit *W 11*, and reads as follows:

Copy of Exhibit *W 11*.

This exhibit consists of a letter and five printed documents as follows:

(Envelope.)

"E. P. Wilbur,
South Bethlehem,
Pennsylvania.

Hon. Henry Green,
Continental Hotel,
Philada., Pa.

"E. P. Wilbur, January 18, 1888.
South Bethlehem, Pa.,
Hon. Henry Green,
Continental Hotel, Philada.

Dear Judge—I have yours of 15th., to which I replied in Philadelphia, and received your note with Reading pass which I will attend to.

I enclose herewith the circular and papers relative to the London Company's slate bricks, together with a copy of the tests made by our Engineer, Mr. Stedman. If there is anything further in this matter you would like, I will hunt it up; I have a table of the comparative tests of all the bricks manufactured on the line of our road, made at the time of the building of Vosburg Tunnel.

I will write to Mr. Potter, and meet him next time I go to New York.

Yours truly,
E. P. WILBUR."

"Second Edition.

A. D. 1878, 1st February. No. 431.

SPECIFICATION
OF
THOMAS EVANS.

Manufacture of Bricks, Pipes,
Mouldings, &c.

London:
Published and Sold at the Patent Office Sale Branch,
38, Cursitor Street, Chancery Lane, E. C.
Price 6d. 1886.

(Second Edition.)

A. D. 1878, 1st February. No. 431.

Manufacture of Bricks, Pipes, Mouldings, &c.

LETTERS PATENT to Thomas Evans, of Abergwili, in the County of Carmarthen, Manager of Slate Quarries, for the Invention of 'Improvements in the Manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and Similar Articles Used for Building Purposes, and Also in Articles Usually Made in Earthenware.'
Dated the 1st February 1878.

PROVISIONAL SPECIFICATION left by the said Thomas Evans at the Office of the Commissioners of Patents on the 1st February 1878.

Thomas Evans of Abergwili in the County of Carmarthen, Manager of Slate Quarries, 'Improvements in the Manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and Similar Articles Used for Building Purposes, and Also in Articles Usually Made in Earthenware.

"The object of my Invention is to make use of the slate refuse, large quantities of which may be seen at every slate quarry and I propose to use it for the manufacture of all kinds of bricks, tiles, quarries, pipes, mouldings, and other articles of a like nature used for building purposes, such as cornices, lintels of doors and windows, chimney jambs, and also for the commoner kinds of domestic utensils, which are usually made of brown earthenware.

Many attempts have been made to utilize this slate refuse in various ways, and usually with the admixture of some cementitious substance, but hitherto without any practical result.

In carrying out my Invention I take the slate refuse, and grind it up to a suitable fine state, which will depend upon the nature of the article to be made; thus for common bricks and tiles the grinding need not be carried to such a degree of fineness as will be necessary for mouldings or domestic utensils. The ground slate is then mixed with sufficient water to render it plastic, and is well worked up and moulded into bricks or other articles, either by hand or in a suitable machine.

The articles, when made by hand, are allowed to dry for a short time, and are then placed in a kiln, where

"A.D. 1878.—No. 431. Provisional Specification."

Evans' Improvements in the Manufacture of Bricks, Pipes, Mouldings, &c.

they are burned in the usual way, but the machine-made articles may be placed at once in the kiln.

The articles for domestic use may be glazed in the usual way.

The bricks and other articles made from this substance are very hard, and present a very good face, besides which they are less absorbent and more weather resisting than ordinary bricks, and consequently may be used with great advantage in exposed situations.

If desired, the articles may be colored by mixing with the ground slate suitable pigments."

"SPECIFICATION in pursuance of the conditions of the Letters Patent filed by the said Thomas Evans in the Great Seal Patent Office on the 1st August 1878.

Thomas Evans of Abergwili in the County of Carmarthen Manager of Slate Quarries. Improvements in the manufacture of bricks, tiles, quarries, pipes, mouldings and similar articles used for building purposes, and also in articles usually made in earthenware.

The object of Invention is to make use of the refuse slate, large quantities of which may be seen at every slate quarry, and I propose to use it for the manufacture of all kinds of bricks, tiles, quarries, pipes, mouldings, and other articles of a like nature and for buildling purposes, such as cornices, lintels of doors and windows, chimney jambs, and also for the commoner kinds of domestic utensils which are usually made of brown earthenware.

I am aware that many attempts have been made to utilize in various ways this refuse slate, which has usually been mixed with some cementitious substance to assist in binding the mass together, but hitherto no practical results have been obtained.

In carrying out my Invention I take the refuse slate and grind it up to a suitable fine state under edge runner rolllers, crushers, stampers, or other suitable crushing apparatus. The degree of fineness to which the slate should be ground will depend upon the nature of the article to be made; thus for common bricks and tiles and rough work, the grinding need not be carried to such an extent as will be necessary for work such as mouldings or domestic utensils. The ground slate is then mixed with a sufficient quantity of water to render it plastic, and the mass is well worked up and mouulded into bricks or other articles, either by hand or in a suitable machine.

The articles, when they have been made by hand, are placed in a stove or other suitable drying apparatus, where they should remain say from three to twelve hours, until they are sufficiently dry to be placed in a kiln, where they are burned in the usual way. The actual length of time necessary for the drying operation will depend upon the particular construction of the stove or drying apparatus used, and should be left to the judgment of the attendant. The machine-made articles will not require drying, but are placed at once in the kiln. The time allowed for burning will depend somewhat upon the construction of the kiln and the quality

of the fuel employed, but it may be set down at from twenty to sixty hours.

The bricks and other articles made from this substance are very hard, and present a very good face, besides which they are less absorbent and more weather resisting than ordinary bricks, and consequently may be used with great advantage in exposed situations.

"Specification. A. D. 1878. No. 431.

Evans' Improvements in the Manufacture of Bricks, Pipes, Mouldings, &c.

If desired the articles may be colored by mixing with the ground slate suitable pigments, and the appearance of those articles, intended for domestic use, may be improved by glazing or enamelling in any approved manner.

Having now set forth the nature of my invention for 'Improvements in the manufacture of bricks, tiles, quarries, pipes, mouldings and similar articles used for building purposes, and also in articles usually made in earthenware,' and having explained the manner of carrying the same into effect, I wish it to be understood that under the above in part recited letters patent I claim: Manufacturing bricks, tiles, quarries, pipes, mouldings and similar articles used for building purposes, and also articles usually made in earthenware, from slate refuse, in the manner above set forth.

In witness whereof, I, the said Thomas Evans, have hereunto set my hand and seal the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

THOMAS EVANS. (L. S.)

London: Printed by Eyre and Spottiswoode,
Printers to the Queen's Most Excellent Majesty,
For Her Majesty's Stationery Office.

(23475.—50.—2/86.)"

"Report
on the
Dolgwili Patent Brick and Tile Works, Carmarthen; also on the Llwynpiod Slate Quarries, Carmarthen, and the Porthgain Slate Quarries and Harbour, at Llanrhian, Pembrokeshire,

By J. Coley-Bromfield, Consulting Engineer, 49 Selborne Road, Hove, Sussex.

The result of my recent visit to Carmarthen and Pembrokeshire enables me to state the following facts, obtained from personal investigation:

The Dolgwili Patent Brick and Tile Works are conveniently situated on about one acre of freehold land, having a siding to the railway leading to the Port of Carmarthen, about one mile distant, where there is every facility for vessels carrying up to 400 tons burden, loading and discharging; the siding can accommodate sixteen railway wagons at one time.

The Llwynpiod Slate Quarries are distant about half a mile on the roadside leading to Lampeter. I was so impressed with the enormous mass of slate debris visible, rising from the level of the road like a mountain, that I had various views of the entire mass photographed, in order to convey anything like an adequate description. I likewise obtained plans and elevations by the road surveyor to the rural authorities, that the quantities might be checked. I have no hesitation, however, in stating that one million tons of slate refuse is a very low estimate of the supply that is already at hand. I ascertained that these quarries have been working for 300 years, and that the average waste is 40 tons for every single ton of merchantable slate that is produced, and until the discovery of the special manufacture, protected by patent, no use had hitherto been found for working up the slate refuse, which is now carried on with perfect success at the first and only works of the kind in the United Kingdom, known as the Dolgwili Patent Brick and Tile Works. Believing that

this must, at no distant date, become a very important industry, I entered into treaty, and succeeded in obtaining the right to a lease for forty years of some five additional acres of the field adjoining the present works, so that an increase may be carried out on advantageous terms to the owners of the Dolgwili Works. The demand for these bricks is now so great as to exceed the capabilities of the present plant, and there will not be the slightest difficulty in obtaining local orders for two or three times the present output; the extension works of an adjoining railway will soon require many millions of these bricks, which the contractors are already using in considerable quantities, the quality of them far surpassing any brick that has ever been introduced for engineering purposes.

The prices at present asked are ridiculously low, being fully £1 per thousand less than inferior bricks, yet at the present selling price there is a clear profit of one hundred per cent. Coals on the spot are very cheap, good 'through and through,' being obtainable and delivered at the works for 9s 6d per ton. Labor also is to be had in abundance; men from 14s to 16s weekly; boys, 6s to 8s weekly. Carting contracts vary from 6d per ton from the quarries to the works, or by day hire, for horse, man and cart, 6s to 6s 6d; but I would suggest that a light tram rail be laid, whereby the waste could be removed and delivered at the works for about 3d per ton, exclusive of the labor of filling in the trucks.

The Porthgain Quarries are admirably situated in the Parish of Llanrhian, Pembrokeshire, possessing a fine, well-protected harbour with good quays and anchorage for loading seven or eight fairly-sized vessels at any one time; there are no dues or other charges levied for the use of the harbour or quays, but I understand during the winter months there is some difficulty in making for the harbour.

These quarries have also been worked for several hundred years, and the accumulation of debris or waste is too vast for calculation, so much had it impeded the

steady work of the quarries, that the slate owners positively contracted to pay 1s 1½d per truck load for conveying away no less than 430 trucks daily for a period of two years, and tipping the contents into the Irish Channel. This same waste has now been secured on a long lease for 6d. per ton, thereby being converted into a profit in place of proving a loss. In addition to the debris contracted to be paid for at 6d. per ton, the right has been conceded to the whole of the debris lying in the harbour and the adjoining foreshore, free from any charge except that of labour of removal. The land upon which it is proposed to erect works for brick, tile, sanitary tubes, and such manufactures is only 200 yards from the head of the harbour, and comprises some five or six acres, to which can be added from time to time ten or twenty more if required. I would suggest a short line of tramway be laid down to unite the works with the quays, and to this proposal I have obtained the assent of the present proprietors. The facility for shipment would place these works in cheap water carriage with all the markets from Liverpool to Plymouth and the East and Southern Coasts of Ireland, and render futile any attempt at competition. I also ascertained that it has been contemplated to erect works at other quarries, in one instance a Company has actually been formed, and that several quarry owners are desirous of treating for licenses under the Patent. I have simply recorded facts that are easily verified by independent enquiry, and give it as my positive opinion that very few, if any, similar investments have been offered to Capitalists in this Country.

Language will fail to depict with any amount of word painting an adequate conception of the vast deposit of this useful and valuable raw material which can be utilized for so many purposes, in addition to producing the finest and most durable description of brick ever yet brought into the market. Amongst other novel adaptations may be enumerated an incomparably superior sani-

tary tube, the strength of which will be fully equal to bored granite, the crushing strain on which will be many times that of kilned clay, and twice that of the newly invented concrete tubes, having this further advantage, that in a few days after manufacture they will be at their maximum strength, requiring, after leaving the kiln, no waste of time to mature, as is the case with tubes. Kerbing, channelling and paving bricks can be produced equal in tensile strength to the best granite. Ridge copings and garden edgings may be formed from the slate, as well as inverts, baths, urinals and other sanitary ware, with this advantage, that the material is perfectly proof against the insidious and damaging effect arising from contact with sewage acids. There is also peculiar saponification and grip belonging to the nature of slate which renders it unique for pathways, flooring for sheds, kitchens, byres, areas, etc., in fact, the uses to which it may be applied renders the introduction of this invention a veritable boon to Architects, Surveyors, Engineers, etc., and its extension to an unlimited extent is only bounded by the vast dormant resources nature has so bountifully supplied, and which cannot be too publicly advocated. In truth, I predict an area marking a new departure in engineering science following upon its extended application. In this opinion I am fortified by the unqualified approbation bestowed on the specimens brought under the notice of leading Engineers, Architects and Contractors who have in this early stage offered to use the slate-brick alone to the extent of many millions.

J. Coley-Bromfield,
Consulting Engineer.

49 Selborne Road, Hove,
10th May, 1884."

"KILGERRAN SLATE-BRICK COMPANY.
(LIMITED.)
OFFICES:—5, WILTON ROAD, VICTORIA STATION,
WESTMINSTER, S. W.

TESTIMONIALS.

"Respecting the quality of slate-bricks produced from the waste of a neighboring quarry to that at Kilgerran, illustrating the value of the articles manufactured from the debris of slate, which material has hitherto been the source of much anxiety, and the cause of heavy loss, to all slate quarry owners, who regard it as a useless incumbrance. Enormous quantities have accumulated at the various quarries, the proportion of debris to saleable slates varying from 20 to 60 tons for each ton of merchantable slate produced, and in many instances to such an extent as to necessitate the absolute closing of the quarries through the inability to dispose of any further refuse; hence it is evident that a successful means of turning such waste to a practical and profitable account, must be of great value. Eminent engineers and contractors, who have seen and used the slate-bricks, confirm the opinion that there is nothing produced in the brick market that can compete with them, either in quality or price, vide the following extracts:

"(Extract from a letter from Mr. John Fowler, C. E.)
7 Queen's Place, Westminster,
July 20th, 1882.

"When these bricks were first brought to my notice, with an account of their resistance to pressure, I was incredulous, and sent a number of the bricks to Mr. Kirkaldy, who tested them and reported that their strength was far in excess of any other bricks manufactured in England.

"Under such circumstances you may safely assume, that engineers and architects will use them in cases where great strength is required.

JOHN FOWLER.

6, Great College St.,
Westminster, S. W.,
26th July, 1882.

"Dear Sir:—Your brick is admirably adapted for engineering purposes. For colour, shape and solidity it is decidedly preferable to the best class of bricks at present in use.

"I am prepared to specify its adoption for the Viaducts, Bridges, and Station Buildings on the Cardigan Extension Railway, the contract for which is now being let, provided you can undertake to meet the demand.

"I shall require these bricks for immediate use; that is, the delivery must commence not later than December next. Perhaps you will be good enough to let me know, with as little delay as possible, as to whether you will be in a position to meet these requirements.

Yours very truly,
JAMES B. WALTON,
M. I. C. E.

"Note.—A large number of bricks, made from slate debris, have since been used on the Whitland and Cardigan Railway, referred to above."

Dalmarnock Iron Works,
Baltic Street, Bridgeton,
Glasgow,
13th March, 1882.

"Dear Sir:—I had occasion to be in London last week, and was shown some bricks made by you, and which were reported to me to be a very good quality.

"As we have some large contracts in hand, where we are requiring extra good bricks, would you be kind enough to send us full particulars and prices free on board vessel at your nearest port? An answer at your earliest convenience will much oblige.

Yours respectfully,
WILLIAM ARROL & Co.

"26, Welbeck Street, Cavendish Square
W.
September 24th, 1883.

"Dear Sir:—I have carefully examined the samples of Bricks you sent me. They have every appearance of compactness, are well finished, have a good and uniform colour, and are well adapted for architectural purposes. If you will kindly let me know when you are redy to supply a given quantity, I shall have great pleasure in making use of them.

Yours faithfully,
HENRY PETIT."

"East India Chambers,
Leadenhall Street, London, E. C.
June 18th, 1883.

"Dear Sir:—Please give me very lowest price for your bricks delivered f. o. b. coasting vessel at nearest port, in lot of say 50-60,000. Also please send me a sample brick or two.

Yours truly,
THOS. C. STONE."

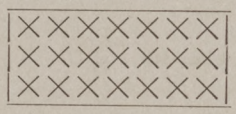
"138 York Road, Lambeth, S. E.
June 23rd, 1883.

"Dear Sir:—Hearing you are in town, and have an enquiry for 4 millions good hard bricks for a sewer job, we shall be glad to know if you can supply them, delivery to commence in two month's time. We may say, according to the sample sent us, you have just the brick that is required, and we have no doubt of being able to give you the order should you be able to execute it. The Engineer has seen and approved of the sample in our possession. Early reply will oblige,

Yours respy,
F. GEORGE & Co."

"138 York Road, Lambeth, S. E.
July 5th, 1883.

"Dear Sir:—In reply to your inquiry respecting the bricks, we have no hesitation in saying they would readily fetch in the London Market, ordinary make, 70s. per thousand, and the moulded ones, if as good as the samples we saw at the Exhibition, from £5 to £6 per thousand. We think they would also make capital paving bricks, by having a rougher surface, or the face formed similar to this:



Yours faithfully,
F. George & Co."

138 York Road, Lambeth, S. E.
April 18th, 1883.

"Dear Sir:—Thanks for your sample just to hand. We have well examined them (since seeing them at the late Exhibition) and are confident, from their being so well adapted for engineering purposes, that they would command a ready sale. Might we also suggest that your material (from the nature of it) would make some excellent paving tiles? If our surmise should turn out correct in this respect, and you can also make moulded bricks, to patterns we would give you, we have no doubt of being able to dispose of them as fast as they can be made. When you are in a position to put them in the market we shall be glad to hear from you.

Yours truly,
F. George & Co."

"Note—Paving Bricks, 9 in. by 4½ in. by 2 in. have, in accordance with the above suggestions, been made from slate debris, with the result anticipated, viz.: they excell all other kinds in every particular."

"Specimens of Slate-Brick can be inspected at the Inventions Exhibition, South Kensington, at Stand 124, Group 2, as well as a Working Model of Machinery, and Diagram of a complete Plan of the Works, suitable for carrying on the manufacture.

"The co-operation of Slate Quarry Owners is invited to whom Licenses will be granted to work the Patent Rights, under Royalties, or a commued money payment.

"Prices, Samples, and every information will also be afforded on application to the Manager and Consulting Engineer, of the Westminster Engineering Company, 5, Wilton Road, Victoria Station, London, S. W."

"For Private Circulation.

"Extract from the Presidential Address of Sir Frederick Bramwell, at the January Meeting of the Institution of Civil Engineers, for 1885:

"The Brick-making machine and the Hoffmann Kiln have economized labour and fuel, while attempts have been made which I trust may prove successful for utilizing the Clay which is to be found in those enormous mounds of slate waste which disfigure the landscape in the neighborhood of slate quarries.

"The
Kilgerran Slate-Brick Company,
Limited,

"Incorporated under the Companies Acts 1862 to 1883, whereby the liability of the Shareholders is limited to the amount of shares subscribed for.

"Capital, £12,500,
in 12,500 shares of £ each.

"To be paid 10s. per Share on Allotment, 5s. per share One Month after, and the balance of 5s. per Share in calls as required."

☞ The Silver medal was awarded for bricks made from slate debris in accordance with this patent at the International Inventions Exhibition, 1885.

DIRECTORS

"MAJOR-GENERAL SIR CHARLES H. PALLISER, K. C. B., Wallington, Surrey, Chairman.

H. N. BARTLETT, ESQ.,
J. COLEY-BROMFIELD, ESQ.,
} Directors of the Patent Slate- Brick and Sanitary Tube Company, Limited, will join the Board after allotment.

BANKERS.

SOLICITORS.

"Messrs. Foss & LEDSAM, 3, Abchurch Lane E. C.

AUDITOR.

"MILFORD NORSWORTHY (Chartered Accountant), 71 Cornhill, E. C.

Secretary's Offices.

"5, Wilson Road, Victoria Station, London, S. W.

PROSPECTUS,

"This company is formed with the object of manufacturing bricks and other Articles from the refuse of slate quarries.

"The enormous mounds of refuse form a conspicuous feature in the neighborhood of every slate quarry, and often cause a great deal of anxiety as to their safety and the necessity of keeping them within bounds. A practical attention, however, has now been devoted to utilizing this waste material, with the result that a patent has been secured, and has now been for some time at work, in such a manner as to demonstrate the success of this process, and to assure the profitable character

of the manufacture in which this Company will be engaged.

"The seat of the Company's operations is at Kilgerran, a village on the borders of Pembrokeshire, about 3 miles distant from the town and port of Cardigan. The works will be connected by a siding with the railway from Cardigan to Whitland, and will be thus in easy communication with the seaboard, and also with the coal districts of South Wales, and the consuming markets of the seaport towns of England and Ireland.

"The Company has secured a License from the Proprietors of the Patent for the manufacture of Slate-Bricks, Sanitary Tubes, Pasing, Kerb, Channelling, Mouldings, and other objects of kindred character.

"A License has also been obtained for the manufacture of Buff Coloured Bricks commanding a high price in the market.

"Slate Bricks have a character differing from all other kinds hitherto made. They possess a good appearance, extraordinary strength and durability, peculiar hardness and density. They will resist the greatest extremes of temperature, and are impervious to moisture. The crushing strain is more than twenty times greater than in the case of ordinary Bricks, and about twice as much as that of the best Fire Bricks. In this respect the Slate Brick has been officially tested by Mr. D. Kirkaldy, of Southwark, and certified by him to bear a greater strain than any other kind, and to be equal to granite.

Slate Bricks are in every way calculated to attract attention. Their superior qualities will especially recommend them for Engineering purposes. They are certain to obtain a preference for Foundations, Tunnels, Docks, Arches, Drains, and all works of a heavy character, and where powerful influences of disintegration or decay have to be resisted. These Bricks may also be used with economy for facing houses in exposed situations, thus superseding the costly application of Port-

land Cement, and its frequently renewed coats of paint. They combine, indeed, the durability of granite with the portability of the ordinary brick.

"The clay from which these bricks are made is so plastic as to be eminently adapted for architectural purposes, mouldings and ornaments being turned out with a sharp outline of finish and pleasing effect.

"Testimonials as to the superior quality of the Slate Bricks above all other kinds have been received from some of the most eminent Engineers and Contractors of the day.

"The cost of producing Slate Bricks does not exceed that of ordinary clay Bricks, while the test of experience has already shown that they will command the highest price in the Market.

"As soon as the company is in a position to deliver, there is no doubt of an ample demand for its productions. The first attention will be given to making Bricks. Large works are either in operation, or projected, which will require all available supplies in the neighborhood. Docks and corollary important engineering works are in course of construction at Milford Haven, in the same county as Kilgerran. A new town is also to be built at Milford, and the extension of the Cardigan Railways in another direction are already in view. If the resources of the company should not be fully occupied in this one direction, other branches of work can be developed. Drain Pipes of any diameter can be produced from the slate clay, which cannot fail to find approval, and will challenge competition with any productions of the same kind. As in the case of the bricks, the Tubes and other articles, while costing no more than those at present before the public, are certain to command the highest prices, and yield profitable results to the Company.

"The raw material necessary for the Company's operations, the quarry waste, may be said to be almost inex-

haustible at Kilgerran. It lies within a few yards of the intended works. There is cheap labour on the spot. Coal of good quality, suitable for steam purposes and for firing the kilns, can be delivered at the works for 9s to 10s per ton. The Directors have entered into a satisfactory agreement with the Vendor, by which they will secure ample land for Sheds, Machinery and Kilns, so as to carry on an extensive trade. The land is taken on a lease of fifty years from March 2d, 1885, at a surface rent of £12 per annum, with practically an unlimited supply of quarry waste at a dead rent of £100, merging into a Royalty of 4d per ton.

"An analysis of the material from which it is intended to manufacture the Kilgerran Slate-Bricks, was made by the late Professor Augustus Voelcker, and is here produced as follows:

"Water of Combination,	4.15
"Oxide of Iron,	9.05
"Alumina,	5.85
"Lime,	0.25
"Magnesia,	0.77
"Potash and Soda,	0.35
"Loss in Analysis,	0.61
"Insoluble Silicates, 78.95, consisting of:	
"Silica,	56.33
"Alumina,	19.72
"Lime,	0.71
"Magnesia traces of Alkalies,	2.21
	100.00

(Signed) AUGUSTUS VOELCKER.

"January 19th, 1882.

"There can be no doubt this enterprise embraces substantial advantages, which it will be the great object of the Directors to turn to account for the benefit of the Shareholders. The working estimates of the business leave a confident expectation that the profits will afford a high return on the capital embarked.

"Samples of the waste material and the Bricks made therefrom can be seen at the offices of the Company and at the International Inventions Exhibition, Stand No. 124, Group 2, where there is also exhibited a working model of the Patent Machinery as supplied by Messrs. C. Whittaker & Co., for the manufacture of Bricks from Slate debris.

"A contract, which is dated the day of 1885, and is the only Agreement affecting the Company, is made between of the one part, and of the other part. A copy of this Agreement may be seen at the offices of the Company, or their Solicitors.

"Application for shares may be made in the Form enclosed. Prospectuses, together with Forms of Application for Shares, may be obtained at the Offices of the Company, where the Memorandum and Articles of Association may be inspected.

RESULTS OF EXPERIMENTS. . .

To ascertain the resistance to a gradually increased thrusting stress of six bricks made from slate debris.

Test No.	Description.	Dimensions Inches.	Base Area. Sq. Inches.	Stress in pounds, when Cracked. Slightly.	Cracked. Generally.	Crushed Dropped.
4431	Red Pressed Brick not recessed, ...	2.33 8.70 by 4.25	36.98	355,200	504,000	633,180
4428	Do.	2.33 8.70 " 4.25	36.98	339,500	495,000	618,240
4430	Do.	2.33 8.70 " 4.25	36.98	332.800	488,400	614,770
4429	Do.	2.33 8.70 " 4.25	36.98	309,200	471,000	607,810
4432	Do.	2.33 8.70 " 4.25	36.98	298,000	459,200	588,260
4433	Do.	2.33 8.70 " 4.25	36.98	295,200	452,500	581,920
		Mean in lbs., ...	38.98	319,983	478,350	607,363
		Mean in Tons, ...		142.8	213.5	271.1
		Lbs. per square inch, ...		8,653	12,935	16,424
		Tons per square foot, ...		556.4	831.8	1065.2

Beded between pieces of Pine ⅜ inch thick.
DAVID KIRKALDY, 99, Southwark Street, London, S. E.

(Endorsed) "The Kilgerran Slate-Brick Company, Limited.

Capital, £12,500, in 12,500 shares of £1 each.
Prospectus. Offices; 5, Wilton Road, Westminster, London, S. W.

"Four Highest Awards Obtained.
"Westminster Engineering Company, Craven House, 23, Craven Street, Charing Cross, London.

"The Patent Silexferrine Brick,
"Silver Medal awarded at the International Inventions Exhibition of 1885.

"Trade Mark. "Silexferrine" Trade Mark

"The Patent Silexferrine Brick claims to surpass every known brick in compactness and strength, while in colour and finish it is excelled by none. It is vastly superior in every way to bricks made of ordinary clay, being harder, more durable, better looking, and offering greater resistance to damp. Eminent engineers and contractors, who have seen and used the Patent Silexferrine Brick, confirm the opinion that there is nothing produced in the brick market that can compete with it, either in quality or price. (Copies of Testimonials will be sent to any inquirer.)

"The Patent Silexferrine Brick is made from a material containing 79 per cent. of insoluble silicates with 10 per cent. of iron, which brings out in the process of manufacture the rich warm cherry-red colour, for which this Brick is specially noted. Each Brick is subject to a pressure of twenty-five tons, the result being a perfectly solid brick, uniform in texture and free from cracks. They are burnt at such an intense heat that they become almost vitrified. The Patent Silexferrine Brick will endure such intense heat that it may be used for most of the purposes for which ordinary fire bricks are used. It is virtually a red fire-brick.

"It is almost impervious to water, and will resist the greatest extremes of heat and frost.

"From the official test of Mr. Kirkaldy, it is proved to stand a crushing strain far in excess of any other known brick, the crushing strain being 1,056 tons to the superficial foot.

"RESULTS OF EXPERIMENTS TO ASCERTAIN THE RESISTANCE TO A GRADUALLY INCREASED THRUSTING STRESS OF SIX "SILEXFERRINE" BRICKS.

Test No.	Description.	Dimensions.	Base Area. Sq. Inches.	Stress in pounds, when Cracked. Slightly.	Cracked. Generally.	Crushed Steelyard Dropped.
4431	Red Pressed Brick not recessed, ...	2.33 8.70 by 4.25	36.98	355,200	504,000	633,180
4428	Do.	2.33 8.70 " 4.25	36.98	339,500	495,000	618,240
4430	Do.	2.33 8.70 " 4.25	36.98	322,800	488,400	614,770
4429	Do.	2.33 8.70 " 4.25	36.98	309,200	471,000	607,810
4432	Do.	2.33 8.70 " 4.25	36.98	298,000	459,200	588,260
4433	Do.	2.33 8.70 " 4.25	36.98	295,200	452,500	581,920
		Mean in lbs., ...	38.98	319,983	478,350	607,363
		Mean in Tons, ...		142.8	213.5	271.1
		Lbs. per square inch, ...		8,653	12,935	16,424
		Tons per square foot, ...		556.4	831.8	1056.2

"Beded between pieces of Pine 3/8 inch thick.

"DAVID KIRKALDY, 99, Southwark Street, London, S. E.

"The SILEXFERRINE BRICK is, therefore, peculiarly adapted for Engineering purposes, for Foundations, Tunnels, Arches, and other important Building works; while from its moderate price, beauty of colour and finish, it is most suitable for high-class architectural use. Price List will be sent to inquirers.

"A SILVER MEDAL was awarded for these bricks at the international Inventions Exhibition of 1885.

"Orders can now be received for immediate delivery, specimens may be seen at Craven House, 23, Craven Street, Charing Cross, London, and samples in bulk are now in London, from which deliveries or specimens can be had on application to:

J. COLEY-BROMFIELD, Consulting Engineer

"(Copyright entered at Stationers' Hall.)

"THE UTILIZATION OF SLATE DEBRIS.

"Reprinted from 'The Machinery Market' of 1st January, 1887.

"The process we call attention to in this article constitutes a new industry, which will afford large openings for the profitable employment of capital, and is therefore deserving of the closest attention on the part of practical men. Hitherto, owing to the want of means for turning to account the ugly and disfiguring heaps of debris in slate-quarrying districts and coal mines, large tracts of land have had to be given up for no other purpose than building up mountains of rubbish quarried in the manufacture of slates, and the making of so many ashpits as receptacles for the refuse of coal mines. Quarry and mine owners would gladly avoid this unsightliness, as well as expense, if they knew what to do with the material; and it is to them particularly that the new process will prove of special interest and importance. At the present time, acres of what would otherwise be productive land are turned into waste-heaps for the reception of this waste stuff. The benefit of be-

ing able to utilize these materials to commercial advantage is obvious; and as this desirable result now seems to be not only possible, but a proved accomplished fact, a detailed description of the manner in which it can be successfully done, and the machinery used for the purpose, will, we doubt not, be welcomed.

"If a profitable use can be shown to be made of slate debris, quarrying will not only prove much more profitable than at the present time, but our buildings will also be 'roofed' at a much less cost. The enormous outlay required in the removal of this debris will be obviated; and further, where, from efflux of time, very frequently, the difficulty experienced in finding a place for fresh deposits, will be overcome, and a hitherto waste article will be converted into a source of profit.

"Attempts to utilize the debris.

"It will first be interesting to give an outline history of the development of the new process, and of the attempts made to utilize this material. As far back as 1878 Mr. Thomas Evans actually took a patent for the manufacture of this slate waste into bricks. He had proved, by repeated experiments, that, by reducing the debris of slate to a fine powder, and then adding to it a proportion of water, then thoroughly incorporating the mass, filling the damp shale into a mould and bringing it under pressure, there were sufficient annealing properties in it to bind it together so as to form a compact and exceedingly strong and superior quality of brick. Having thereby proved it possible to turn what had hitherto been a difficulty and a source of great loss into a commercial profit, he realized the value there was in his discovery, and sought, by obtaining protection for it, to reap the benefit which was due to him. Considering the great benefit to be derived from this discovery, it is matter of surprise that, seing it has been

under notice so long a time, it should not have been more largely taken up.

"The possibility of making a high-class brick from this waste had been successfully demonstrated, and to make it also a commercial success, it only remained to discover the special machinery which should be adapted to this particular class of material. The patent for using up slate debris in this way was purchased by Messrs. J. Coley-Bronfield, and John Davies, who sold it to a company some time ago, under the style of the Patent Slate Brick and Sanitary Tube Company, Limited, who put down an expensive plant; but we understand that some difficulty was met with in adapting machinery to suit all the special conditions met with in dealing with this class of material. This difficulty, we are informed, has now been overcome, and the company has machinery available which enables them to turn out this waste in the form of a valuable commercial commodity. Elsewhere we give a description of some special plant, which has been devised to suit this work.

"Bricks for Engineering Purposes.

"For the high quality of the bricks and other goods, made by this process, the favourable consideration both of architects and engineers is bespoken. We are informed that for tunnelling and sewerage work where strength, form and imperviousness to wet are points of importance, they must be preferred; and architects may discover qualities in them which will command their preference. Their adamantine character will, it is claimed, serve them well as a pavior for paths and channel blocks, and also for every purpose where strength, form and colour are concerned. There is evidently a future for this class of goods, which will create a useful and profitable industry. We have to congratulate the original discoverer of the applicability of this waste to so useful a purpose.

"Qualities of Slate Debris.

"To those who at all doubt the applicability of slate debris for the purpose of brick-making, we may state that slate clay consists of the very component parts most desirable to the manufacture of refractory fire-bricks, viz.: alumina and silica, with an entire absence of fluxibility. Consequently, the qualities most desired in a perfect brick, viz., soundness, freeness from flaws and cracks, hardness to withstand fractures and strains, regularity of shape and size, are all present in what we may now term the valuable heaps of slate debris, lying about waiting to be turned into money. And while upon the subject of utilization of slate debris, it would be well if we briefly touched upon its chemical composition and mode of formation. This substance is, as its name implies, the refust slate left from the preparation of the more valuable portion of the mineral for building purposes, and amounts to millions of tons annually at the quarries, where it can be seen in the form of huge mounds covering many acres of land that might otherwise be profitably employed, agriculturally, or for mining or quarrying operations.

"Slate occurs in what is known to geologists by the name of the Lower or Cambro-Silurian Strata, and is a silicate of alumina containing also silicates of iron, lime, potash and other bases. This mineral is of aqueous origin, having been originally deposited as silt or mud, layer upon layer, then by the action of terrestrial heat and enormous pressure the stratified mass known as clay slate is produced. The color varies from grey through various shades to black and green.

"The bricks made from slate debris, which differ from all bricks hitherto made, will resist the greatest extremes of heat and frost, and stand a crushing strain far in excess of any other description of brick, having been proved up to 1,056 tons to the superficial foot, whereas the crushing strain of an ordinary brick is about 50 tons, and that of the best fire bricks from 300 to 500 tons to

the foot. The great superiority of the slate brick is so apparent, that the demand for them must greatly increase.

"One of the results of this process of the utilization of slate debris is the production of the Patent Silexferrine Brick, which claims to surpass every known brick in compactness and strength, while in colour and finish it is excelled by none. It is vastly superior in every way to bricks made of ordinary clay, being harder, more durable, better looking and offering greater resistance to damp. Eminent engineers and contractors who have seen and used the Patent Silexferrine Brick, confirm the opinion that there is nothing produced in the brick market that can compete with it either in quality or price. The Patent Silexferrine Brick is made from a material containing 79 per cent. of insoluble silicates with 10 per cent. of iron, which brings out in the process of manufacture the rich, warm, cherry-red colour, for which this brick is specially noted. Each brick is subjected to a pressure of twenty-five tons, the result being a perfectly solid brick, uniform in texture, and free from cracks. They are burnt at such an intense heat that they become almost vitrified. The Patent Silexferrine Brick will endure such an intense heat that it may be used for most of the purposes for which ordinary fire-bricks are used. It is virtually a red fire-brick. It is almost impervious to water, and will resist the greatest extremes of heat and frost. From the official test of Mr. Kirkaldy, it is proved to stand a crushing strain far in excess of any other known brick, the crushing strain being 1,56 tons to a superficial foot.

"One of the most profitable sources of manufacture in connection with slate debris is that of sanitary tubes, which can be made stronger, truer and of more imperishable material than any other known product. It has been satisfactorily proven that the sewage acids, which, in place of eating off the glaze that is vitrified upon the ordinary burnt clay, and rendering the pipes soft, tends to harden the slate debris pipe. In the question of cost,

it is stated that these pipes can be supplied at much less than the ordinary earthenware sanitary tube, and for about one-half the prices charged for the newly-produced Portland Cement concrete tubes, the chief advantage being the large size of tubes that can be made up to 3 or 4 ft. in diameter, or in egg-shaped form of corresponding dimensions, dispensing thereby with much expense and labor in the ordinary construction of sewers.

"Full particular may be had from the Westminster Engineering Co., Craven House, Craven Street, Strand, London, W. C.

"W. H. and L. Collingridge, City Press, London."

Q. Don't you remember, about the time this company was formed, that there was a very serious question discussed among you as to whether this was a patentable process and a process subject to protection by a patent?

A. I think not.

Q. Don't you remember that it was discussed when you were together, either informally or otherwise, that there was considerable doubt as to whether this was in fact a patentable invention?

A. No, sir; I don't think I ever had any doubt about it.

Q. Was there any discussion or question between you in which that subject was raised?

A. No, sir; I do not remember that there was.

Q. Now, Mr. Wilbur, do you remember also that there was a letter received from the representatives of that company—that is, the London company, or the London parties claiming that the Dickson patent was invalid, because it was covered by a prior patent?

A. I do not remember it.

Q. You don't remember it?

A. No, sir.

Q. You have no recollection, then, of any discussion as to the validity of this patent as a patentable invention, or any discussion at the time or prior to the organization

of the company, or at the time you took your stock, that there was a claim of an English patent covering the same invention?

A. Before the issue of the stock?

Q. Yes.

A. No, sir.

Q. Or at any time before or after?

A. Well, unless you refer to this (indicating *Exhibit W 11*).

Q. Except as to that, you have no other recollection?

A. No, sir; except that; no, sir.

Re-direct by Mr. Lindabury:

Q. When did you make your arrangements with Mr. Green by which you were to get, and did afterwards get, the 1,400 shares of stock from him?

A. I cannot recollect the time.

Q. Before or after the certificate of incorporation was signed?

A. Afterwards, I should think.

Q. Let me first go back; did you see this agreement between Judge Green and Simpson and Canfield which has been put in evidence here, and which bears date two or three weeks before the certificate of incorporation was filed—did you see that?

A. I think I did; yes, sir.

Q. Did you have that before you, or had you seen it, when you made your arrangement with Judge Green under which you were to get stock?

A. Yes, I think so.

Q. Now, how much were you to get under your first arrangement with Judge Green?

Mr. Kirkpatrick—I object to the question.

Mr. Lindabury—Won't you allow me to finish my question first?

Q. Was your arrangement with Judge Green, under which you were to get stock—

Mr. Kirkpatrick—I object to the question as far as it goes.

Court—Let us have the question first, and then you may make your objection.

Mr. Lindabury:

Q. Was the arrangement by which you got stock through Judge Green in writing or verbally only?

A. Verbal, I think.

Q. Now, how much stock did you first arrange to get from him?

Mr. Kirkpatrick—I object to the question; I think the best and proper way to prove that would be to ask the witness just what was said and done.

Question withdrawn.

Q. What was your first arrangement with Judge Green for the getting of stock?

Mr. Kirkpatrick—What was said and done?

Mr. Lindabury:

Q. I think my question is a proper one; what was your first arrangement with Judge Green for the getting of stock?

A. The arrangement I had with him was that I was to pay $10,000 and was to get the same amount of stock from Judge Green as he had himself, or as Judge Paxson, or as Mr. Potter had—those who subscribed the $10,000.

Q. How many, under that arrangement, were to put in $10,000—how many of you were to put in $10,000?

A. Four, I think.

Mr. Kirkpatrick—I object to these questions on the ground that they are leading questions, and also that they are assuming things that have not yet been proved at all.

Mr. Lindabury:

Q. I will do it your way, then; now, the certificate of incorporation mentions that you were to have 1,000 shares of stock; was that the 1,000 shares of stock that

you were to have under your arrangement with Judge Green, or some other; that is, was the 1,000 shares mentioned in the certificate of incorporation that you were to get the 1,000 shares you were to get through your arrangement with Judge Green, or some other 1,000 shares?

Mr. Kirkpatrick—I object to the question on the ground that it is leading, and also as assuming things that have not been proven.

Court—I will allow the question.

A. I was to get through Judge Green all that I did get, except the 100 shares which I paid cash for.

Mr. Lindabury:

Q. Was your arrangement, then, with Judge Green, under which you were to get 1,000 shares, made before the certificates of incorporation was signed or not?

A. Before.

Q. Was it made before or after the Judge Green contract with Simpson and Canfield, which is in evidence?

A. That I can hardly say; I do not remember.

Q. About how long before the certificate of incorporation was filed was that arrangement made?

A. It was in the early period of the organization of the company.

Q. Was that arrangement made with your loan, or was it made with the other gentlemen, whom you have named?

A. I think it was made with all of us, although I do not recall, that we were together when it was made.

Q. Now then, do you remember the quantity of stock which, under that agreement with Simpson and Canfield, was to go to Judge Green?

Mr. Shipman—Which arrangement was that?

Mr. Lindabury—The agreement which is in evidence.

Mr. Shipman—Then, if it is in evidence it speaks for itself, and I object to the question.

Court:

Q. The question is, do you recollect the amounts of stock under that agreement, between Judge Green and Mr. Simpson and Mr. Canfield, that was to go to Judge Green, and the amount that was to go to Simpson and Canfield each?

A. I cannot recall it.

Mr. Lindabury:

Q. Out of which batch of the stock that was to be issued under that agreement was your 1,000 shares to come—under the batch to go to Simpson and Canfield, or under the batch of stock to go to Judge Green?

Mr. Kirkpatrick—I object to the question as calling for a conclusion or inference of the witness.

Mr. Shipman—The agreement shows for itself.

Mr. Lindabury—The agreement shows that the stock is to go in part to Judge Green; it provides for the organization of the corporation with 1,000,000 of stock, for which these patents were to be turned over and $20,000 in cash, and for the issue of the stock, part to Simpson and part to Canfield, and part to Judge Green; in consideration of that it declares the division of stock between them. Now, I am asking, out of which batch of stock the witness had his arrangement with Judge Green his stock was to come.

Mr. Kirkpatrick—I object to it, and on the ground that it is putting an interpretation upon a certain paper which is in evidence and which should speak for itself.

Court—I will allow the question.

A. I think it was to come from the Canfield stock, or some of the stock that Judge Green got, or some that he already had, and I think that he was to get some more stock, but I cannot remember definitely about that.

Mr. Lindabury:

Q. Now, do you remember what the arrangement was as to the quantity of stock that was to be turned into the treasury?

Mr. Shipman—I object to that question on the ground that it is all provided for in the paper itself.

Court—I will allow the question.

A. Vaguely, I should say 1,800 shares went into the treasury.

Mr. Lindabury:

Q. Was that the arrangement?

A. No, sir; that was not the original arrangement; it was changed afterwards.

Q. What was the original arrangement, do you remember?

A. No, sir; I cannot tell you.

Q. By the original arrangement, do you mean the arrangement under the agreement—by the original arrangement, do you mean the one under the agreement, which is in evidence?

A. I do not recall that.

Q. The final arrangement was 1,800 shares, you think?

A. Yes, sir; I think so; I have that distinct recollection, but it may be accurate or not; I do not know.

Q. Do you remember when the arrangement was changed, so that you, instead of getting one thousand shares, were to get 1,500 shares, and how that came about—you actually got 1,500 shares, and the 100 shares you paid for, and you were originally to get 1,000 shares—now, when was the change made and how was it made?

A. I cannot recall that.

Q. Do you remember anything about it; how came you to get 1,500 shares instead of 1,000 shares?

A. I remember Judge Green told me I was entitled to that much stock in common with the others; just how

he got it I cannot recall, I do not know, and I do not know that I ever knew.

Q. Did you ever see this paper here, which is in Judge Green's handwriting, showing the disposition of the stock marked "original scheme" (handing *Exhibit D 9* to witness)?

A. Yes; I saw one similar to it.

Q. Now, the first part of it, "original scheme," sets forth the division of the stock as far as Simpson and Canfield are concerned, 4,000+200=4,200—250= 3,950; that is according to that written paper, the written agreement, is it not?

A. I think t is.

Q. I show you this paper, headed "original scheme," and which is testified to be in the handwriting of Judge Green; you say you have seen that paper before?

A. Yes, sir.

Q. Now, you will observe that this shows that there is to go into the treasury 800+1,000 shares; is that the 1,000 shares that you say was to be added by a second arrangement?

Mr. Kirkpatrick—I object to the question, because it assumes something that is not in the paper, and we object on the further ground that it is an attempt to put an interpretation to the paper, which the paper will not stand, and to change the phraseology of that paper.

Question withdrawn.

Mr. Lindabury:

Q. Can you explain that item in that paper, "Treasury, 880+1,000=1,800"?

Mr. Kirkpatrick—I make the same objection to that question.

Court—I will allow the question.

A. I do not think I can explain it, further than this paper does explain it.

Mr. Lindabury:

Q. The paper does not explain it at all?

Mr. Kirkpatrick—We object then.

Question withdrawn.

Mr. Lindabury:

Q. What does it mean, do you know?

Mr. Kirkpatrick—I object to that question; he cannot put his meaning to the paper.

Question withdrawn.

Mr. Lindabury:

Q. What explanation do you make of that?

Same objection.

Objection sustained.

Mr. Lindabury:

Q. Under the original scheme, as mentioned in that paper, neither you nor Judge Paxson or Mr. Potter are named, but here you are down for each 1,000 shares, each, and Judge Green is down for 1,000 shares plus 250; can you explain that?

A. I do not think I can explain it.

Q. Were you to get that; were you to get 1,000 shares of that stock?

A. I understood so.

Q. Out of what?

A. Out of the remaining stock, over and above that which was this 3,950 shares.

Q. You said you understood when this stock was voted to be issued for the patents, that there were other licenses than the Salmon license, or rather that you were informed that there were other licenses than that granted to Mr. Salmon; who gave you that information?

A. Judge Green.

Q. Do you remember about how many other licenses he spoke of as capable of being issued, or licensees who were ready to take licenses?

A. No, sir; I do not think I can recall.

Q. Well, about how many were there?

A. He spoke of several; I do not think any of them had been made, but he was negotiating for them.

Q. Now, in a letter which has been put in evidence here, which you seem to have written to Judge Green, in October, 1891, and which has been marked *Exhibit W 7*, you speak of a test of bricks made by a Mr. Stedman, which you regarded as unfavorable and unfortunate; do you remember what test that was and of what brick it was a test?

A. Yes, sir.

Q. What?

A. It was a test of some of these brick made with a view of showing that in a tunnel, that the Lehigh Valley Railway Company were about to line with brick, a large contract, as I say; it was with the view of using that brick in that tunnel, to line that tunnel, of the Lehigh Valley Railroad with that brick.

Q. Were they made for that particular purpose?

A. Well, these were—

Q. I mean these particular ones?

A. Well, they were sent as samples of what could be furnished. I do not think they were made specifically; I think they were hard brick baked out—

Q. About this time?

A. I speak of the sending of the test in that letter—

Q. Did that letter have any reference to the test that you have made before you went into this company—before the stock was issued?

A. Oh, no, sir.

Q. It is said that you enclosed a letter which you had written to Fred Green, the treasurer of the company, and which bears date October 27th, 1891, and which has been offered in evidence and marked *Exhibit W 8*, in that letter—

A. Yes, sir; that was a letter from Mr. Stedman; I enclosed that letter to Fred Green.

Q. Now, it is a letter from you, a copy of which you enclosed to his father, in the letter from Fred Green, you enclosed the letter *Exhibit W 8,* together with a blue-print showing certain brick tests made by Mr. Stedman, for the purpose of selecting a brick suitable for the proposed new station at Buffalo; now, is that the station you refer to?

A. No, sir; I was speaking of a brick made for the Vosburg Tunnel, on the Lehigh Valley Railway.

Q. Did you have a chance to supply brick to some new station at Buffalo?

A. I don't know whether this brick were furnished to that place or not.

Q. In that letter you are speaking "of selecting a brick suitable for the proposed new station at Buffalo"?

A. Yes, sir.

Q. Now, what station was that?

A. A station on the Lehigh Valley Railway.

Q. And then you say: "You will notice that, so far from standing first in the list, as regards strength, as we supposed they did, the tests show out bricks unusually low. You will also notice what he says about the test of the glazed brick. Wilson & Bro. are the architects for the Buffalo station, as they are, I understand, for the Reading Terminal, and of course are familiar with these tests, and the whole thing looks to me very discouraging." Now, when were these tests made?

A. About that time.

Q. Were any of the tests to which you refer here made before you went into this thing or not?

A. No, sir.

Q. Or before the stock was issued to you?

A. Oh, no, sir.

Q. And then you say in that letter: "One reason for this, in my opinion, is the lack of proper supervision in the manufacture of the brick. I have repeatedly expressed my opinian with regard to the superintendent, as had, I believe, everybody connected with the establishment. Certainly the way things are going, no ex-

penditure, in my opinion, should be incurred beyond that for which the money is at the time actually provided, so that in the event of a necessity for closing the concern we shall not find it burdened with a large floating debt." Do you remember that?

A. Yes, sir.

Q. Did you, then, even at this time, in 1891, suppose there was any trouble with the brick, except those defects in the manufacture of the brick, or in its superintendent?

A. Oh, no, sir; we were using the brick elsewhere.

Q. And with good results?

A. Very good.

Q. Did the company's failure, in your opinion, result from anything but this mismanagement?

Mr. Kirkpatrick—I object to that as immaterial and incompetent, and as calling for a conclusion and opinion of the witness.

Court—I do not think you would be justified in asking the opinion of the witness; but I think you have the right to show, if you can, that the company did not fail because the patent or the process was bad; I think you can do that.

Mr. Lindabury:

Q. Did the company's failure result from an inability to make good brick, and at prices at which it could be profitably sold, under these patents?

Mr. Kirkpatrick—I object to the question for the reasons heretofore given.

Court—I will take it.

A. I think not.

Q. What did it result from?

A. The failure of the company?

Q. Yes.

A. Well, from the failure to secure returns from these licenses and from moneys being frittered away in various experiments, getting one thing going and then abandoning it and going to something else—

Q. Something like what we sometimes call mismanagement?

A. Very much; yes, sir, very much.

Q. Take that letter of 1887, and referring to the postscript of that letter, which has been offered in evidence and marked *Exhibit W 10,* which I will read; you say: "P. S. As you say nothing about the *new process,* I suppose it came to nothing. I really don't see much in it, and am rather relieved not to spend any money on it"; do you remember what that "new process" was?

A. No, sir; it was one of the many; I don't remember it.

Q. Well, it was not the main one, under which you were proposing to manufacture, or were manufacturing?

A. Oh, not at all.

Cross-examination, by Mr. Kirkpatrick:

Q. Were you at the works during 1886 and 1887, at different times; were you at the works, at the manufacturing plant in Phillipsburg in 1886 and 1887?

A. I think so; I do not remember dates.

Q. You were there a number of times, were you not?

A. Yes, sir.

Q. Mr. Cole was the foreman, and the person who had immediate charge of the manufacture of the bricks, was he not?

A. Who?

Q. George Cole?

A. No, sir; it was a man by the name of Wilson, I think.

Q. That is right, I remember now; now, when did they begin to make bricks there?

A. I cannot remember that much.

Q. Don't you remember that there were repeated burnings of bricks in the kilns, of which anywhere from one-third to one-half of the bricks were utterly worthless?

A. I do not think I remember it. I think if there was anything of that kind, it was kept from us; if there were

any such work as that going on, then it was kept from us.

Q. You do not remember making any investigation of the actual manufacture of the brick, and ascertaining what proportion was failure or anything of that kind?

A. Not in that sense.

Q. And of course you had no knowledge or direct information on the subject, so far as your inspection of the books were concerned, or how the company was managed and conducted during the years 1886, 1887, 1888, 1889 and 1890?

A. Except in a general way.

Q. You never looked into the books of the company to see how many bricks were made, or to see how many bricks were sold, or the prices at which the bricks were sold, or what rights were given, or licenses granted, did you?

A. No, sir; we never could get any information in regard to the books or of the business.

Q. I ask you whether you looked at the books and made any examination yourself, as to that, did you?

A. We made efforts to look at the books.

Q. Now, will you answer my question, please—whether you looked at the books and made any examination of the books yourself, as to how many bricks were made, how many bricks were sold, or the prices at which they were sold, or as to the rights that were given, or the licenses granted?

A. There were no books to look at that amounted to anything.

Q. Well, did you look at the books that were there?

A. Yes, sir.

Q. And you knew nothing about the actual details of the management of the expenditures and receipts of the company, by any direct knowledge of your own?

A. No, sir.

Q. And as I understand you, you got your stock in September 27th, 1887, at which time the company had

been in operation, and been manufacturing brick, and carried on the burning of brick, for upwards of a year, prior to that time, had they not?

A. I cannot recall when they began.

Q. Is it not a fact that they started in the summer or the fall of 1886?

A. At Phillipsburg, do you mean?

Q. Yes.

A. That may be; I cannot recall it.

Q. It may be that they did?

A. Yes; but I don't recall it.

Henry A. Potter, recalled in his own behalf, saith: (Examined by Mr. Martin.)

Q. You were one of the incorporators of this company, were you not?

A. Yes, sir.

Q. How did you come to go into it?

A. Why, at the instance of my father-in-law, Judge Green.

Q. How long before the company was formed was your attention called to it?

A. What do you call the formation of the company—the date of the incorporation?

Q. The date of the incorporation?

A. Oh, I should say probably five or six months.

Q. Were you engaged in any other business at the time?

A. Yes, sir.

Q. What?

A. The manufacture of oil-cloth and linoleum.

Q. To a large extent?

A. Yes, sir.

Q. Whereabouts?

A. In Philadelphia.

Q. What concern?

A. Thomas Potter Sons & Co.

Q. Is that a large concern?

A. We think it is.

Q. How was it then?

A. We considered at that time, from all the knowledge we could get, that it was the largest factory in this country, and possibly in the world.

Q. Had you any other business connections?

A. No, sir.

Q. When this process was called to your attention, what was the status of the affair—who controlled the process?

A. Why, Canfield and Simpson, as I understood it, were applying for a patent on this process of making brick out of pulverized slate. And it was discovered, or they were connected in some way as contractors—well, I don't know whether as contractors or not—but they were connected in some way in the building of a tunnel near Pittsburg, and either they or another contractor had a contract to line this tunnel with brick, and in the progress of digging this tunnel they went through a bed of slate, and it was discovered that the slate, on being ground up by the cart-wheels, when they got mixed with water, became a spongy mass, something like clay, and they experimented with it and found that they could make bricks out of it. And so they took this slate and ground it up and made bricks out of it, and submitted these bricks to the owner for the purposes of lining the tunnel, and they were accepted and put in that tunnel. And Judge Green, having heard of this, looked the matter up, because Easton was in the vicinity of the slate quarries of Pennsylvania, where there were large masses of refuse slate which could be gotten by loading it on the cars and transporting it—

Q. Without any cost?

A. Without any cost whatever, excepting for the freight and handling of it.

Q. After this matter was called to your attention first, do you know of any investigation that was made into the merits of it?

A. Well, Judge Green told me that he and Judge Paxson had examined the matter, and had built, or or-

dered to be built, or caused to be built, a kiln at some place—I forget exactly now, but it was in the vicinity of Pittsburg—for producing or making some of these bricks to see whether they were commercially valuable—

Mr. Kirkpatrick—If your Honor please, I suppose it will be understood that our objection is repeated and goes to any conversations or occurrences taking place between Judge Green and this witness, or any one of the other parties that are interested in this matter.

Court—Of course, I shall not pass upon any such general objection as that. If you object to any question, or to any portion of the evidence, you must make your objection as the question is asked or the evidence given.

Mr. Kirkpatrick—I object, then, your Honor, to any negotiations or to any conversations that took place at Pittsburg, or elsewhere, relative to these patents, prior to the organization of the company, with this witness or any of the other parties interested in the case.

Court—I shall overrule your objections.

Q. Did you, yourself, have any negotiations with these patentees?

A. I did not.

Q. By whom were the negotiations carried on?

A. Judge Green.

Q. Did he carry them on for himself or for you?

Mr. Kirkpatrick—If the witness was present he can testify to that, but if he was not present, then we object to it.

Court—I think the objection is well taken to that question.

Mr. Martin:

Q. In making this agreement, which is put in evidence, was Judge Green acting as your agent?

A. He was not.

Q. Did you see that agreement at any time before the company was incorporated?

A. I could not say that I saw the original agreement. I saw a draft of the agreement that was to be made, of which the original agreement is a copy.

Q. Before the incorporation, did you know that this agreement had been made?

A. Yes, sir.

Q. Did you know what the agreement contained?

Mr. Kirkpatrick—I object to that; he said he did not see it.

Court—He can answer the question whether he knew what it contained or not.

A. I did.

Mr. Martin:

Q. Do you know whether Judge Green had acquired any interest over this process before the incorporation of the company?

Same objection.

Court—I will take it.

A. Yes, sir.

Q. How much of an interest?

Same objection.

Mr. Martin—All I want to bring out is whether the witness knew, or had been informed that Judge Green had acquired the control of these patents.

Court—By what—by that agreement?

Mr. Martin—Yes.

Court—He said he knew there was an agreement, and he saw a copy of it, and he knew it was executed. It is hardly worth while going over that again.

Mr. Martin:

Q. How did you get interested in the company, or in the process, or how did you acquire your interest in the company?

A. Why, from Judge Green.

Q. Was that written or verbal?

A. Verbal.

Q. Tell us what it was, and when it was made?

A. Which—the verbal agreement?

Q. The verbal agreement between yourself and Judge Green?

A. No, sir; I cannot recollect the date.

Q. Was it before or after the incorporation of the company?

A. Before the incorporation of the company.

Q. Was it after Judge Green had acquired his interest?

A. It was; yes, sir.

Q. What was the verbal arrangement between yourself and Judge Green?

Mr. Shipman—I object to that question; how could that bind us, a verbal agreement between this witness and Judge Green; how could we know anything except what is contained in the certificate of incorporation.

Court—I will allow the question.

A. Why, that he had acquired an interest, or had acquired these patents, which to his mind were valuable, and under the agreement he was to organize a company, the capital of which was to be one million of dollars, and it was to represent the purchase of the patents. In further agreement, he was to supply or pay into the treasury of the company $20,000 as working capital, or capital sufficient to build a plant to exploit these patents; and that he had interested Judge Paxson and Mr. Wilbur, and it would be probable that the four of us would put that money in, and if it required more than that to build a plant, we stood ready to put in an amount up to $10,000 each to build a plant and exploit these patents.

Q. What was the $10,000 you were to put in, to go for?

A. To build a plant to exploit the patent.

Q. Were you paying that on account of your stock subscription?

A. Not as I understood it; I was to get something as an equivalent for that $10,000 which was put in to—

Mr. Lindabury:

Q. What were you to get; what was the whole arrangement?

A. I was to get an equal share of stock with Judge Green, of preferred stock, which we issued for these patents.

Mr. Martin:

Q. You say "preferred stock," what do you mean; there was no preferred stock, was there?

A. Well, stock issued for the purchase of the patents.

Q. Judge Paxson and Mr. Wilbur testified—

Objection by Mr. Kirkpatrick.

Question withdrawn.

Mr. Martin:

Q. What was the entire arrangement?

A. Why, that if the four of us put up the money to build this plant and exploit it with Canfield and Simpson we were to have a certain amount of stock, under the agreement; the balance, or some of it, or some of the balance, that they did not get, was to go into the treasury of the company, and whatever did not go into the treasury, and did not go to Simpson and to Canfield, was to be divided between Judge Paxson, Judge Green, Mr. Wilbur and myself.

Q. And how much did you get?

A. I got 1,500 shares.

Q. Was that the original arrangement?

A. No, sir.

Q. What was the original arrangement?

A. That I should get one thousand shares.

Q. How did you come to get 1,500 shares, then?

A. Under an arrangement which Judge Green made with Canfield and Simpson to give up half of the stock which they were entitled to, under the agreement, and the division of that stock was made among the four of us.

Q. Was Simpson and Canfield to give that up to the four of you, or to give it up to Judge Green?

A. Simpson and Canfield was to give up that stock to Judge Green.

Q. And then he was to divide it up—

Mr. Kirkpatrick—I object to that; what did he do?

Question withdrawn.

Mr. Martin:

Q. Was that before the stock was issued that Simpson and Canfield gave up part of their shares of stock?

A. My impression is it was before.

Q. Do you know whether any action was taken by the directors authorizing this issue of shares, or authorizing the issue of any shares of the stock of the company?

A. I know that the shares were ordered issued by the Board of Directors.

Mr. Kirkpatrick:

Q. Were you present at any such meeting?

A. I think I was.

Mr. Martin:

Q. What were the shares issued for?

Mr. Kirkpatrick—I object to that; we ask that the witness tell what took place.

Court—That is proper; ask him what took place.

Mr. Martin:

Q. What took place?

A. Well, what do you want—what took place? Well, there was a meeting, and the stock was ordered issued.

Q. Ordered issued for what?

A. Why, pursuant to the agreement that the stock was issued to me—1,500 shares was issued to me for my share in the patent.

Q. Was this order for shares to be issued made by resolution?

A. I suppose so.

Mr. Kirkpatrick—I object to that answer; we do not want what he supposes.

Court:

Q. Don't you know whether it was or not; what is your recollection about it?

A. My recollection is that most of these meetings were informal; that is, we would not hold them like we would hold meetings of a Board of Directors of a railroad company, or any company such as that, and have resolutions offered in writing, or submitted in writing, and all that sort of thing; there was no formalities of that kind occurred at any of these meetings; it was more or less informal, and if the stock was ordered issued it was ordered issued by resolution, verbal resolution—

Mr. Lindabury:

Q. Not by a written resolution?

A. No, sir.

Mr. Martin:

Q. Did the resolution state what the stock was issued for?

Mr. Kirkpatrick—I object to that question; he has not said that it took place by resolution at all, yet.

Court—I will take it.

Mr. Martin:

Q. Was there any such resolution?

A. Yes, sir.

Q. Was that meeting before or after the stock was actually issued—that is, the certificates?

A. It had to be before the issue, of course.

Court:

Q. Well, was it before?

A. Yes, sir.

Mr. Martin:

Q. Do you know where the meeting was held?

A. I do not recollect.

Q. Do you know whether the resolution provided that the stock was to be issued for patents?

Mr. Shipman—I object to that; let him tell what the resolution was.

Objection sustained.

Mr. Martin:

Q. What was the resolution?

A. I do not recollect it; I only recall the purport of it.

A. To issue the stock.

Q. For what?

A. For what?

Q. For what consideration?

A. For the possible value of that patent.

Mr. Martin:

Q. Well, the stock could not be issued unless something was given for it—did the resolution provide for an issue of stock for cash or for property?

Mr. Kirkpatrick—I make the same objection.

Objection sustained.

Mr. Martin:

Q. Before this stock was issued, or before this resolution was passed, authorizing the issue of stock, had any investigation been made by you, or to your knowledge, as to the value of the patents?

A. I made no personal investigation of the value of the patents.

Q. Did you know of any investigation being made?

A. I was told that Judge Paxson—

Mr. Shipman—I object to that.

Court:

Q. Who told you?

A. I was told by Judge Green that Judge Paxson and Mr. Wilbur and himself had investigated it, and I was satisfied on that testimony to go in.

Mr. Martin:

Q. What was said at this meeting as to the value of the patents?

A. Well, I do not know which meeting you refer to now.

Q. At the meeting where the resolution authorizing the issue of stock?

A. I don't know that the value of the patent was discussed at that meeting—at that special meeting—but it was discussed at some meeting.

Q. Was it discussed prior to the issue of stock, or prior to the authority to issue stock?

A. Oh, yes, sir.

Q. It was discussed by the directors?

A. By the directors and by the individuals as directors, and as individuals.

Q. What was said as to the actual value of the patents at any meeting prior to the issue of the stock?

Mr. Shipman—I object to the question as being too general.

Court—It is entirely too general; I will overrule the question in that form.

Mr. Martin:

Q. Was the value of the patents computed by the directors, or do you know if it was computed by the directors at all, or not?

A. Judge Green informed me that from his investigation, that bricks could be produced at a certain price and sold at a certain price, if a plant were built to produce so many thousand bricks it would show a profit of so much. Besides that, there were, or there could be, sold the rights in this patent to other people to make bricks, and on which they would pay a royalty to this company, and his calculation was that we could make enough money out of this alone to pay interest on more than one million dollars.

Q. Did you rely on these statements?

A. Entirely.

Q. What was your conclusions as to the value of the patents when you voted on the issue of the stock?

Mr. Shipman—I object to that; there is no evidence that he voted yet.

Court—He said he was there; I will take the question.

Mr. Kirkpatrick—I also object, your Honor, on the further ground that he cannot give his own mental conclusions in regard to it.

Court—I think he can; I will allow the question.

A. I considered the patent was worth, under these conditions, the one million of dollars, under the issue of the stock.

Mr. Martin:

Q. Did the other directors express any view as to the value of the patents?

A. I think we all agreed as to that same value.

Q. After the original issue of the stock do you know whether Judge Green acquired any further interest in the Simpson and Canfield shares—do you know what

became of the balance of the Simpson and Canfield shares of stock?

A. Yes, sir; they were purchased by Judge Green.

Q. What then became of them?

A. Why, Judge Green sold some of those to other parties, who became interested in the company.

Q. And are those other parties the persons holding the stock?

Mr. Kirkpatrick—I object to that; you cannot prove it in that way.

Objection sustained.

Mr. Martin:

Q. Do you know anything about this resolution calling for an assessment of one dollar a share?

A. I got a notice of it.

Q. Were you present at the meeting?

A. I was not.

Q. You made some payments on account of this assessment?

A. I did.

Q. When you made that payment, did you make it as on account of a liability?

Mr. Kirkpatrick—I object to that as immaterial and irrelevant.

Objection sustained.

Mr. Martin:

Q. Did you ever protest against the assessment?

Mr. Shipman—I object to that as irrelevant.

Court—I will take it.

A. I did.

Q. On what grounds?

Same objection.

Objection sustained.

Mr. Martin:

Q. How did you make the protest?

Same objection.

Court—I will take it.

A. I protested to Judge Green, the president of the company.

Q. What was the protest?

Mr. Kirkpatrick—I object to that; was it in writing or verbal?

Court—I will take it.

A. I verbally protested to Judge Green, the president of the company.

Q. What did you say?

A. I told him I would not pay it.

Q. But you afterwards made payments?

A. I did.

Mr. Martin—I ask that the two assignments of patent heretofore put in evidence and marked *Exhibits D 1* and *D 2*, be spread in full in the record.

Copy of *Exhibit D 1:*

"Received for record July 31, 1890, and recorded in Liber Y 41, page 459, of Transfers of Patents.

"IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

"C. E. Mitchell,

"[SEAL.] "Commissioner of Patents.

"Fred F. C. T.

"Know all men that we, Lenox Simpson, of Pittsburg, Pa., and Morris P. Canfield, of Phillipsburg, N. J., assignees of the whole right, title and interest in and to Letters Patent No. 313,480 for Improvement in

"Brick, Tile and Drain Pipe, &c.,

issued to Henry Dickson, of Pittsburg, Pa., the 10th day of March, 1885, in consideration of one dollar, receipt of which is hereby acknowledged, do hereby sell and assign to The American Brick and Tile Company of New Jersey, all our right, title and interest in and to the aforesaid Letters Patent, the same to be held and enjoyed by said assignee, its successors and assigns, for its and

their sole use and behoof, to the full end of the term thereof.

"Pittsburg, Sept. 27, 1887.

"Lenox Simpson,
"Morris P. Canfield.

"Witness
"Jno. A. Kurtz.

Endorsed as follows:

"Assignment of Patent. Lenox Simpson & M. P. Canfield to American Brick and Tile Co.
"Dickson Patent.
"U. S. Patent Office Chief Clerk Jul 31 1890
"U. S. Patent Office Recorded Jul 31 1890
"Special—W. H. Doolittle, Washington, D. C.
"Pat. Office (1) Div. D. 1890. 17687

Copy of *Exhibit D 2.*

"Know all men that I Lenox Simpson, of Pittsburg Pennsylvania, for the consideration of one dollar receipt whereof is hereby acknowledged, do hereby sell and assign to The American Brick and Tile Company of New Jersey the whole right and title in and to Letters Patent "No. and No. issued to me the day of September 1886 for Improvements in "Kilns "the same to be held and enjoyed by said assignee, its successors and assigns for its and their sole use, and behoof to the full end of the term thereof.

"Pittsburg Sept 27, 1887 Lenox Simpson

"Witness:
"Jno A. Kurtz.

Endorsed as follows:

"Assignment of Patent
"Lenox Simpson to American Brick and Tile Co.
"Kilns Patents

Adjourned to December 1st 1904, at 10 A. M.

IN CHANCERY OF NEW JERSEY.

Between
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE CO.,
Defendant.

Transcript of Stenographer's notes of evidence, taken in the above-entitled cause, before his Honor, James J. Bergen, Vice-Chancellor, at the Chancery Chambers, Trenton, N. J., December 1st, 1904, at 10:15 A. M.

Appearances: Mr. George M. Shipman, for William M. Davis, receiver; Mr. W. S. Kirkpatrick, of the Northampton county Bar, Pa., for the Easton National Bank, a creditor; Mr. R. V. Lindabury and Mr. M. Samuel Dickson, for Edward M. Paxson and Charles R. Mayer, and E. P. Wilbur, individually, defendants; Mr. R. C. Stewart, of the Northampton county Bar, Pa., for Fred. Green, individually, and also as executor of the estate of Henry Green, deceased; Mr. W. H. Walters and Mr. E. J. Fox, for the Easton Trust Company, and Mary B. Knight, executor of Fletcher H. Knight, and Elizabeth Knight and Samuel Knight; Mr. J. H. T. Martin, for Henry A. Potter; Mr. James Buchanan, for the E. P. Wilbur Trust Company; Mr. H. M. Haggerman, of the Northampton county bar, Pa., for Henry Short, a creditor.

Henry A. Potter, being recalled, his direct examination resumed:

Examined by Mr. Martin:

Q. The last day's testimony closed with a statement that you, after protest, made payments on account of this four-dollar assessment—will you tell us why those payments were made?

Mr. Shipman—I object to the question, because, may it please your Honor, there is the

resolution and his conclusion or reason, which he may have had in his mind, how are we bound by that; how are we bound by what his mental conclusion was, as to why he paid them.

Mr. Stewart—I also object, your Honor, because he did pay them, and it seems to me that he cannot now be permitted to explain why he did a certain thing, in pursuance of the resolution, the matter is closed, and it is a mere mental operation in contradiction of a fact which he has already performed.

Court—I think the witness is entitled to give the grounds of his protest.

A. I was not present at the meeting that voted this assessment; that is, the meeting of the Board of Directors of the company, and when Judge Green told me that this resolution—

Mr. Shipman—I object; is this competent, your Honor?

Court:

Q. Give your reasons; do not state the conversation with other persons?

A. I was informed by Judge Green that this assessment had been made.

Q. Did you not get a notice from the company?

A. No, sir; I said I would not pay it—

Mr. Shipman—I object.

Court—I will allow the witness to answer.

A. Because I did not consider that the board had any right to assess my stock. I afterwards did pay part of the assessment, because Judge Green told me he had pledged me, or made a pledge on my part that I would pay.

Mr. Martin:

Q. How did you pay for your stock?

Court—Which stock do you mean?

New Jersey State Library

Mr. Martin—He only got one certificate; he got 1,500 shares which was all marked "issued for property purchased."

A. How did I pay for it?

Q. Yes.

A. I paid Judge Green for it.

Q. State how the corporation was paid for your stock?

Court—He said the corporation was not paid, he paid Judge Green.

A. I got my stock from Judge Green. He acquired these patents and I shared with him the money that he was required to put up under the agreement, and received my certificate of stock for that reason.

Mr. Kirkpatrick—Would it be proper for this witness to give what purports to be nothing but a mental conclusion or reason?

Court—Oh, no, that is not right.

Q. Just tell us what happened; what you said when you were asked to pay for the stock; cannot you tell how you paid for it, whether in money or property, or services or how?

A. Why, I paid $10,000 into the company to build a plant to work these patents, and the stock that was issued to me, was issued for property purchased, and that was the patents.

Mr. Martin:

Q. Did you know from Judge Paxson, anything about the investigation that was made as to this patent; you told us the last time you were on the stand, that you were informed by Judge Green?

A. All of the gentlemen who were interested in the purchase of these patents, held conversations and conferences at various times, about these experiments that were being carried on at Pittsburg, to determine the value of the patent.

Court:

Q. That does not answer the question; did you know from Judge Paxson anything about the investigation that was being made as to this patent?

A. Yes, sir; Judge Paxson informed me of the experiments that were being made.

Mr. Martin:

Q. Was that before the meeting at which the stock was authorized to be issued?

A. Yes, sir.

Q. Did you yourself make any computation as to how much the patents were worth?

A. I did not.

Q. Did you yourself form any estimate as to the value of the patents?

A. I certainly did.

Q. State how you did that?

A. I am afraid somebody will object. I formed my opinion of the value of the patents from what Judge Paxson, Judge Green and Mr. Wilbur told me.

Q. Was that before or after the resolution providing for the issuing of the stock was passed?

A. Why, my idea of the value of these patents that I got from these gentlemen, was before the filing of the articles of incorporation even. It was discussed afterwards, too; whether it was at that meeting or whether it was before the stock was issued or not, I do not remember.

Q. Can you tell from your recollection what the resolution for the issue of stock provided?

A. Why, the provisions of the resolution, as nearly as I recollect, and it is some eighteen years ago, provided that all of the stock, the $1,000,000 of stock, excepting what was to be retained in the treasury, and that which was to be issued for cash, was to be issued for the patents.

Cross-examination, by Mr. Kirkpatrick:

Q. I believe it appears somewhere in the case that you are a son-in-law of Judge Green?

A. Yes, sir; I am a son-in-law of Judge Green, or was.

Q. In your examination at the last hearing, you stated something in the nature of your experience as a business man, and as being connected with the linoleum and oil cloth works or manufactory; is that a corporation or a partnership?

A. A corporation.

Q. And it has been managed as a corporation for how many years?

A. Ten years.

Q. A New Jersey corporation?

A. No, sir; a Pennsylvania corporation.

Q. And, of course, you have had more or less experience generally as a business man, and you are acquainted with the operations and methods of carrying on business of that kind?

A. Yes, sir.

Q. You are also here as a claimant or one of the creditors claiming against the company?

A. Yes, sir.

Q. Upon a note?

A. Yes, sir.

Q. And you were examined, not the last time, but at a time previous, and I just want to ask you a question or two with reference to that; that note you spoke of was a note for $5,000?

A. Yes, sir.

Q. And it was the last of a series of renewals of notes that began several years before?

A. Yes, sir.

Q. And I have here a number of notes which we will keep altogether in one package, and it will not be necessary to identify each particular note; now, will you kindly look at these notes and I will ask you simply to identify the entire package; I think they commence in

1891, do they not—that is the time when the money was first loaned, was it not?

A. I don't remember the date, but I suppose you have them all here.

Q. Yes, I presume they are all here.

Witness examines notes.

Court:

Q. What is the date of the last renewal?

Mr. Martin—That note has been put in proof, and it is admitted that that note was in renewal of a series of former notes of the same purport, extending back for some time.

Mr. Kirkpatrick—Yes, I believe it was.

Q. When was it you loaned the money?

A. March of 1893 seems to be the first one.

Q. That was about the time that you loaned the money?

A. Yes, sir; it seems to be.

Q. Now, there was a series of renewals, at intervals of two or three months apart, that succeeded each other from that time on, until the note was finally taken up by you?

A. Yes, sir.

Q. And just another question. Were these notes all in the same form—a note purporting to be the note of the American Brick and Tile Company by "H. Green, President"?

A. Yes, sir; they appear to be in that way, all of them.

Q. And endorsed by you?

A. Yes, sir. This whole series; they are all in the same form and are all signed by "The American Brick and Tile Co., by H. Green, President."

Q. And all in his handwriting?

A. Yes, sir; all in his handwriting.

Q. And these notes succeeded each other in the series, by way of renewal, as they became due?

A. Yes, sir.

Q. Until it culminated in the last note, which you took up?

A. Yes, sir.

Q. And what year was that in?

A. What year did Judge Green die?

Q. In 1900.

A. Well, it was in 1900—yes, sir.

Q. At intervals of every two or three months apart, are they not?

A. I think they are all three-months notes.

Q. So that every three months there would be these renewals made in this way?

A. Yes, sir.

Q. You were a director of the company from the time of its organization, were you not?

A. Yes, sir.

Q. Now, as I understood you on direct examination the other day, you were acquainted with the contents of the agreement between Judge Green and Canfield and Simpson that was made in March, 1886, were you not?

A. Yes, sir.

Q. That knowledge you got from the preliminary draft from which the agreement was finally drawn, as I understand you?

A. Yes, sir.

Q. Was it before or after this agreement was drawn, or how long after was it that you saw this agreement; was it after the company was organized?

A. I do not recollect.

Q. A short time after?

A. Well, it may have been three months or six months, or it may have been a month after.

Q. After this agreement was made with Canfield and Simpson, and before the company was organized, the arrangement was made by which you went into the company as one of the incorporators, was it not?

A. Yes, sir.

Q. And it was with the knowledge of the contents of that agreement that you entered into and made your arrangements with Judge Green?

A. Yes, sir.

Q. About becoming a member of this company?

A. Yes, sir.

Q. And at the same time Mr. Wilbur and Judge Paxson also entered into the same arrangement, did they not?

A. Yes, sir.

Q. That is at the same time?

A. About the same time, I do not know exactly.

Q. Yes, at or about the same time?

A. Yes, sir.

Q. You knew how much Simpson and Canfield were to receive for the patents, did you not, under that agreement which you saw?

A. I did at the time, yes, sir.

Q. Yes—you did at the time?

A. Yes, sir.

Q. And you knew at that time, when you entered into the arrangement to become a member of this corporation, after this agreement had been made, that Simpson and Canfield were to receive the sum of $5,000, and they were also to receive four-tenths of the stock—$400,000 of the stock?

A. Yes—that is as you read it from the agreement—I recollect it, I think.

Q. That was stipulated in the agreement?

A. So I believe.

Q. And as you recollect?

A. Yes, sir, as I recollect.

Q. Now, after this agreement was made between Judge Green and Canfield and Simpson, you say you entered into an arrangement, along with Judge Paxson and Mr. E. P. Wilbur, to become members of this corporation—was it at that time, and part of that interview, that you each were to receive 1,000 shares of the capital stock—originally you said—that is the original distribu-

tion was to be 1,000 of the capital stock of this company —was that so?

A. We signed the articles of incorporation, as subscribers to 1,000 shares of the capital stock of the company.

Q. I understand that, but I mean—you have already said that it was after this agreement with Canfield and Simpson was made, and Judge Green had acquired whatever interest he had under that agreement, then, it was you made your arrangement, or entered into an arrangement, to become a member of this company, and about the same time Judge Paxson and Mr. E. P. Wilbur became members, or agreed to become members of the company—was it at that time, when this arrangement was made, that it was arranged as part of that transaction that each of you were to receive 1,000 shares of the capital stock of the company, or of a company that was to be formed?

A. No, sir, I do not think the 1,000 shares was ever mentioned—I do not think it was ever mentioned excepting in the articles of incorporation.

Q. It was not mentioned—the only thing that was mentioned at the time you entered into the arrangement with Judge Green to become one of the members of this company was when you signed the articles of incorporation?

A. Yes, sir.

Q. As to the amount of stock which you were to receive?

A. That is all.

Q. It had not yet been determined as to how much or what you share of the stock was to be, that was to be handed to each of you, until the articles of incorporation were signed?

A. I do not quite catch your question.

Q. (Question repeated)—It had not yet been determined as to how much, or what your shares of the stock was to be, that was to be handed to each of you, until the articles of incorporation were signed?

A. The agreement as to the amount of my stock was, that it was to be equal to Judge Green's.

Q. That is to say, you were to get as much from the company as Judge Green got?

A. Yes, sir.

Q. And that was the agreement at the time you signed the articles of incorporation?

A. Yes, sir, that I was to be equal with Judge Green.

Q. And according to the articles of incorporation you each were to receive one thousand shares of the capital stock of the company?

A. I do not recollect the articles of incorporation; they are on file.

Q. Was it in the same arrangement, or at the same time, that you say took place, at which you agreed to become a member of the company, along with Mr. E. P. Wilbur and Judge Paxson, before the actual incorporation of that company—was it at that interview, or at that meeting, or that getting together, that it was agreed between you that you should each receive an equal share of the stock of that company, and that it was to be considered as fully paid stock?

A. Well, I don't think, Judge, that there was any formal meeting of the four of us, but it was about that time; about that time, I think.

Q. And that was part of the arrangement?

A. Yes, sir.

Q. That you were to get this share of the stock that each of you were to get from the company, and that it was to be taken and considered as fully paid-up stock?

A. My arrangement was with Judge Green, to get whatever he got, an equal share with him. What arrangements he made with Judge Paxson and Mr. E. P. Wilbur I did not know, and I do not know; I have no knowledge of them, excepting that I understood—

Q. Now, at that time, then, you say that that was the arrangement you had with Judge Green?

A. Yes, sir.

Q. Now, in that arrangement it was then determined, as I understand you, and as part of the arrangements with the other gentlemen, that they were all to get an equal share of the capital stock of the company, and it was to be issued to them by the company as fully paid-up stock?

Court—The witness says he does not know what the bargain was with the other two gentlemen; he has only given what his bargain was with Judge Green.

Mr. Kirkpatrick—But in his former examination, your Honor, he said that this was all done before the incorporation of the company, before the company was formed.

Q. That was so, was it not—you talked this over with the other gentlemen before the company was formed, did you not?

A. It was talked over before the company was formed, certainly, but it was not at any meeting where Mr. E. P. Wilbur, Judge Paxson and Judge Green and myself were present together—my conversations and all the knowledge I had of this company and its affairs I got from Judge Green—

Q. There was no formal meeting, but occasionally you got together and talked the matter over before the time of the actual incorporation of the company, did you not?

A. I talked it over with Judge Green.

Q. And with the other two gentlemen, did you not?

A. I might have mentioned it; I do not recollect whether I did or not.

Q. Did you ever talk with them at all about it before the incorporation of the company; that is, with Judge Paxson and Mr. E. P. Wilbur?

A. Yes, sir, but not about the issue of the stock, but I did talk with them about the affairs of the company.

Q. About the formation of the company?

A. No, sir; not about the formation of the company, but about the value of the patents that were to be acquired by the company.

Q. Then, when you testified here the other day—well, we will leave the answer stand as it is—how long after the incorporation of the company, after the articles of incorporation were filed and the charter granted, was it that you had a meeting; that is the meeting you speak of in your direct examination the other day, as an informal meeting, at which the subject of the issue of the stock was discussed—about how long after the incorporation of the company was that?

A. I cannot tell you that; I do not recollect the length of time.

Q. It had already been understood and agreed between you as to how much or what proportion of the stock of the company you were each to receive before the company was organized, you said; that is correct, is it?

A. I said I was to get an equal share with Judge Green.

Q. Now, you cannot tell whether it was a month or two months or three months after the company was organized that you had this meeting at which you stated that some action was taken about the issue of the stock?

A. Judge, if you give me the date of the articles of incorporation I can probably refresh my mind—I think it occurred about eighteen years ago, and I haven't got any very great recollection of it now.

Q. It was on the 30th of March, 1886?

A. Now, you are asking for the time—

Q. I am asking you to tell us whether it was a month or two months or three months after the company was organized that you had this meeting, this informal meeting as you put it, at which you said that some action was taken about the issuing of the stock?

A. What was the date when the stock was issued?

Q. In September, 1887?

A. Well, now, what is your question again?

Q. I would like to know when it was that you held this informal meeting, at which you said some action was taken about the issuing of the stock?

A. As nearly as I can recall it, it was in the summer of 1887.

Q. Is it a matter of recollection, or is it just an inference from these dates that I gave you?

A. Just an inference from the dates you gave me.

Q. That meeting was held—there was no particular call for that meeting that you recollect now, was there?

A. Not that I recollect.

Q. You do not recollect who were present at the meeting?

A. No, sir; I do not.

Q. And you do not know where it was held?

A. I do not recollect where it was held, or who was there; it might have been held at a number of places.

Q. You have no absolute knowledge now of where it was held?

A. No, sir; I have no absolute knowledge of where it was held.

Q. And you cannot speak now, as a matter of recollection, as to who was present?

A. No, sir; I can only think—

Q. That is not what we want; we want your recollection?

A. No, sir.

Q. And of course you cannot recollect as to whether anyone presided at the meeting; that is, as a matter of recollection?

A. Well, my recollection is, that there was no presiding officer at any of the meetings; they were entirely informal, all of them.

Q. And you have no recollection as to who acted as secretary, if anyone?

A. No, sir; I don't recollect who acted as secretary, and I do not recollect whether there was a secretary at all, or not.

Q. And you have no recollection of any of the minutes being taken and recorded at any such meeting?

A. No, sir.

Q. And you never saw any minutes that had been taken and recorded at any such meeting?

A. No, sir.

Q. Either recorded in a book or on sheets of paper, or in any shape or form?

A. No, sir.

Q. And you cannot recollect now, as to precisely what, or about what action was taken; you cannot recollect what shape the action took, or how it was taken?

A. Well, my general recollection of all that occurred at that meeting was, that these meetings were very informal affairs. I recollect that a resolution was passed at one of these meetings to issue this stock; I recollect that.

Q. And the only thing you distinctly recollect about it was, that at that meeting there was some decision arrived at; whether voted upon or not, you do not recollect, as a formal matter at all?

A. No, sir; I do not.

Q. And the only thing you recollect now, in a general way is, that there was some agreement or some decision arrived at, in some informal way, to issue the stock?

A. Yes, sir.

Q. To divide it up; in what form, in what shape?

A. I don't think that was in the resolution.

Q. That was not in the resolution, you think?

A. I have no recollection of any resolution wherein it was stated in what shape or form the stock should be issued.

Q. What you have a recollection of is simply that there was a resolution or some action or decision of an informal character, deciding to have the stock issued?

A. Authorizing the officers to issue the stock.

Q. Now, you said you learned, or had the opinion or the testimony of Judge Paxson as to the patents; do I

understand you to say, that what he told you was, that he had performed some experiments, or had had some experiments made under the patents, as to the making of the brick?

A. As I know, and all I know is, that Judge Green and Judge Paxson erected a kiln in Pittsburg for experimenting—

Q. A small kiln?

A. Yes, sir; just a small kiln.

Q. And that is what you referred to, when you speak of their telling you about their investigations, as to the value of the patent?

A. Yes, sir.

Q. There was no manufacture of brick by any establishment that you knew of, under the patents?

A. Not that I knew of.

Q. That is prior to the organization of this company?

A. No, sir; not that I know of, excepting as I testified before, that these parties who were building this tunnel in Pittsburg, they made brick and put them in the tunnel—

Q. Well, they made the brick in an accidental way?

A. They discovered it accidentally, and then they submitted the bricks to the owners and they had them substituted for those specified in the contract.

Q. After it was decided that the stock should be issued; the company had been running along since 1886, in the making of brick, and in the making of experiments, running along considerably into 1887, when the stock was issued?

A. Yes, sir.

Q. And in the meantime you and Judge Paxson and Mr. E. P. Wilbur had paid in various amounts, $10,000 each, for the purpose, as I understand you, of erecting the kilns and the works, and the carrying on of these experiments you speak of?

A. Yes, sir.

Q. And for that money which you paid in you got no receipt, you got no certificate of any kind at that time—

that is, at the time you paid in these amounts aggregating $10,000 each, you got no receipt or certificate of any kind from the company for it?

A. No, sir; I gueass the only thing I got was the check returned from the bank that I had paid out when I paid the money.

Q. And that is the only voucher you have?

A. Yes, sir; that is all.

Q. You got your certificate of stock in September, 1887, in the shape of a single certificate of stock from the company, for 1,500 shares of the stock of that company, did you not?

A. If that is the date, I got the 1,500 shares of the stock in a single certificate from the company; now, I don't know what the date was, but if that is the date, that is all right.

Q. And that stock was delivered to you by the company in that form of one certificate for 1,500 shares of the stock, and which certificate contained on it the printed statement, "Issued for property purchased"?

A. Yes, sir; I got my stock, I think, in one certificate for 1,500 shares, and it had printed on it "Issued for property purchased."

Q. The stock was actually handed to you by Judge Green, was it not?

A. Well, now, I don't know; it might have been mailed to me; I cannot recollect now whether it was mailed to me or whether it was handed to me by Judge Green.

Q. It may have been mailed to you?

A. Yes, sir.

Q. And, of course, it was signed in the usual way by Judge Green and countersigned by the secretary of the company?

A. Yes, sir.

Q. And Judge Green was the president of the company?

A. Yes, sir.

Q. What did you pay for that 1,500 shares of the stock of that company—what did you pay for it?

A. What did I give for it?

Q. Yes, what did you pay for it?

A. I paid Judge Green $10,000 to build a plant and to help to purchase the patents.

Q. To help to purchase the patents?

A. Well, to build a plant so as to exploit the patents; I suppose that whatever was paid to Canfield and Simpson came out of my money.

Q. But you do not know that?

A. No, sir, because whatever I paid was paid to Judge Green.

Q. But whatever was paid to Canfield you had nothing to do with that?

A. No, sir; I had nothing to do with that.

Q. And whatever was paid to Canfield or to Simpson you do not know anything about that?

A. No, sir.

Q. And all you paid for that stock was the sum of $10,000, which you say you paid towards the erection of the plant?

A. Yes, sir; I paid $10,000 to build a plant with and to help purchase the patents or exploit the patents—

Q. And you paid nothing else?

A. No, sir.

Q. You did not get any certificate for 100 shares of stock, did you?

A. No, sir.

Q. This payment of $10,000 was on account of your entire issue of 1,500 shares of stock, was it not?

A. No, sir; I did not know what the number of shares was to be.

Q. Well, whatever the shares of stock you were to get; that is, you paid your money on the stock that you were to get in bulk; that is to say, you were to get the entire shares of stock altogether, and you paid your money on account of those shares of stock that you were to get?

Mr. Martin—I object to the question on the ground that it is not cross-examination.

Court—I will take it.

A. I paid $10,000 to Judge Green, for which I was to have an equal share in the company, which he was to organize.

Q. And that $10,000 went into the company for the purpose of building a plant and making these experiments, in the making of this brick?

A. Yes, sir.

Q. Yes, that is it, is it ?

A. Well, not in making experiments, no—

Q. Well, to exploit the patents?

A. Yes, sir; to build the plant and exploit the patents.

Q. And your 1,500 shares of the capital stock of that company were really issued to you on November 28th, 1887, were they not?

A. I do not remember the date, the certificate will show the date of its issue.

Q. Does not your certificate show it?

A. Yes; whatever the certificate shows is correct.

Q. Whatever date that bears, it was then that you received your shares of stock?

A. It must have been.

Q. In your examination about the meeting at which the assessment was made, you testified the other day that you got notice of the meeting that was held, for the purpose of making an assessment; that is correct, is it?

A. I do not recollect that I testified to it.

Q. I will read your testimony from the notes. This question was put to you: "*Q.* Did you know anything about this resolution calling for an assessment of one dollar a share? *A.* I got notice of it." What did you mean by that?

A. Well, not notice of the meeting, it means notice of the assessment.

Q. Then it means that you got a notice of the assessment?

A. Yes, sir.

Q. And you were not present at the meeting?

A. I was not present at the meeting.

Q. And you made payments—the payments you made were the installments, as they were called for, were they not?

A. No, sir.

Q. Did you make the payments all in one payment?

A. No, sir.

Q. There were four payments of four installments, were there not?

A. Why, yes, sir.

Q. There was an assessment of a fixed amount, upon the stock, held by the respective holders of stock, of the company?

A. That is what the assessment says.

Q. So payments were made in four different installments, were they not?

A. I don't think they were. The bill sets forth the payments that I made, but I do not recollect that that is correct, now.

Q. You do not recollect whether you did or not?

A. No, sir.

Q. You did make four payments?

A. I don't recollect whether I made four payments or not.

Q. Well, you did not make them all at once?

A. I did not make them all at once.

Q. And you made them as they were called for?

A. No, sir.

Q. And your protest that you speak of, as having been made to Judge Green himself, privately, that you would not pay the assessments?

A. Yes, sir.

Q. That is all?

A. Yes, sir.

Q. But, subsequently, you afterwards did pay it?

A. I did. I did not pay all of it.

Q. Didn't you pay all of the four dollars a share?

A. No, sir; I don't think I did.

Re-direct, by Mr. Martin:

Q. In one of Judge Kirkpatrick's questions he asked you in substance, if that $10,000 which you paid in originally was a payment in bulk on your stock. I would like you to state again, just what that payment was for?

Court—What was the answer he made?

Question and answer read by the stenographer as follows:

"*Q.* And that $10,000 went into the company for the purpose of building a plant and making these experiments in the making of this brick?

"*A.* Yes, sir.

"*Q.* Yes; that is it, is it?

"*A.* Well, not in making experiments, no—

"*Q.* Well, to exploit the patents?

"*A.* Yes, sir; to build the plant and exploit the patents."

Q. Was that $10,000 paid for your stock?

A. Before the stock was issued.

Q. Was that $10,000 what you were to give for your stock?

A. I was to get something for it, and under the agreement the $20,000 had to be paid into the treasury of the company to build the plant, and I acquired a half right in that agreement by the payment of the $10,000 to Judge Green.

Q. Was there any other consideration for the interest you acquired besides that $10,000?

A. Well, I was to get an equal share with Judge Green in the corporation that was to be formed.

Q. What was the consideration with Judge Green; was that $10,000 all that he expected to get?

A. Out of me?

Q. For your influence or anything else?

A. Out of me? It was all he was expecting to get.

Further cross-examination by Mr. Kirkpatrick:

Q. That $10,000 you speak of was paid to the company—that is to say, it went into the treasury of the company, and was appropriated to the erection of the plant?

A. I suppose so; I sent it to Judge Green.

Q. That is, you gave to Judge Green, in the shape of a check, $10,000 for the benefit of that company?

A. Well, I don't recollect how the checks were drawn.

Q. But it was paid in for the purpose of building this plant?

A. Yes, sir; it was paid in for the purpose of building the plant and exploiting the patents.

Q. For the company?

A. Yes, sir.

Mr. Martin—I ask counsel for the complainant for the statement which Mr. Siegfried promised to have ready for me showing the consolidation of the Easton National Bank notes.

Mr. Kirkpatrick—I have the statement (handed to counsel).

Frederick Green, recalled in behalf of the defendants, saith:

(Examined by Mr. Martin.)

Q. Will you state what payments were made out of the account of the American Brick and Tile Company, in the Easton National Bank, after the 1st of January, 1898?

A. Do you mean all of them, as they are here?

Q. Yes?

A. January 4th, 1898, I drew a check for $75, which money was deposited in the Phillipsburg National Bank to the account of the American Brick and Tile Co. in that bank; that was the first one.

January 7th, 1898, I drew a check to the order of the Lehigh National Bank for $8.13.

January 10th, 1898 (it is really marked 1897), check to the order of E. P. Wilbur Trust Company for $76.67.

January 31st, 1898, check to the order of Fred Green for $25. On account of interest.

January 31st, 1898, check to the order of E. P. Wilbur Trust Company, $115. Discounts.

February 4th, 1898, check to the order of Lewis Starr, $130.52.

Court:

Q. Do you know what that was for?

A. For counsel fees; it does not appear on the stub, but I know that it was for counsel fees.

March 7th, 1898, check to the order of the Lehigh Valley National Bank for $8.40 discounts.

March 18th, 1898, check to the E. P. Wilbur Trust Company for $76.67. Discounts.

March 28th, 1898, check to the order of Henry Short, $120. Interest.

April 4th, 1898. This check was drawn to myself; the money was drawn from the Easton National Bank; $75; and deposited in the Phillipsburg Bank in the account of the company there.

April 18th, 1898, check to the order of the Wilbur Trust Co. for $15.50. Discounts.

May 2d, 1898, check to the order of the Wilbur Trust Company, $23.25.

May 12th, 1898, check to the order of the Wilbur Trust Company, $17.00.

May 23d, 1898, check to the order of the Wilbur Trust Company, $48.60.

May 25th, 1898, check to the order of the Wilbur Trust Company, $10.33.

June 15th, 1898, check to the order of the Wilbur Trust Company, $15.50.

July 5th, 1898, I drew a check to my own order for $75, which was cashed and the money deposited in the Phillipsburg National Bank in the account of the company.

July 5th, 1898, check to the order of the Wilbur Trust Company, $45.58.

July 9th, 1898, check to the order of the Lehigh Valley National Bank, $8.29.

July 11th, 1898, check to the order of G. W. Penfield & Son, for $302.39.

Court:

Q. What was that for?

A. Well, that was to pay for a machine that was bought of those people.

July 14th, 1898, check to the order of the Wilbur Trust Co., $17.60.

July 14th, 1898, for revenue stamps, $5.00.

July 27th, 1898, check to the order of the Wilbur Trust Company, $52.03.

August 16th, 1898, check to the order of the Wilbur Trust Company, $16.00.

August 28th, 1898, check to the order of the E. P. Wilbur Trust Co., $51.87.

September 7th, 1898, check to the order of the Lehigh Valley National Bank, $8.56.

September 22d, 1898, check to the order of the Wilbur Trust Co., $43.33.

September 23d, 1898, revenue stamps, $10.00.

September 27th, 1898, check to the order of the Wilbur Trust Co., $25.12.

October 4th, 1898, it appears to be a check to the order of myself for $75—it was money deposited in the Phillipsburg National Bank in the account of the company.

October 24th, 1898, check to the order of the Wilbur Trust Co., $41.00.

October 31st, check to the order of the Wilbur Trust Co., $24.42.

November 28th, 1898, check to the order of the Wilbur Trust Co., $71.25.

November 23d, 1898, revenue stamps, $10.00.

December 2d, 1898, Allen H. Wallace, collector, $5.30.

December 30th, 1898, check to the order of the Wilbur Trust Co., $68.27.

January 3d, 1899, check drawn to myself, for $75, and the money deposited in the Phillipsburg National Bank to the order of the company.

January 9th, 1899, check to the order of the Lehigh National Bank, $16.98.

January 26th, 1899, check for revenue stamps, $10.00.

January 28th, 1899, check to the order of the Wilbur Trust Co., $68.00.

March 3d, 1899, check to the order of the Wilbur Trust Co., $61.32.

March 15th, 1899, check to the order of the Lehigh National Bank, $10.58.

March 23d, 1899, revenue stamps, $10.00.

March 31st, 1899, check to the order of the Wilbur Trust Co., $67.57.

April 7th, 1899, I drew $77 from the Easton National Bank and deposited it in the Phillipsburg National Bank to the order of the company.

April 28th, 1899, check to the order of the Wilbur Trust Co., $68.75.

May 13th, 1899, check to the order of the Lehigh National Bank, $8.40.

March 3d, 1900, H. Green, $1,800, account of loan. I have already testified to that.

March 3d, 1900, paid to self. That is my own order for stamps for me, $2.50.

March 3d, 1900, Henry Short, $240. Interest.

March 3d, 1900, John McNeal, Jr., $6.00 for surveying.

March 3d, 1900, Fred. Green, $260, account of interest on loan.

March 13th, 1900, check to the order of the Lehigh National Bank, $10.72. That is the last one.

Mr. Martin:

Q. These payments were all made out of the account of the American Brick and Tile Co. in the Easton National Bank?

A. Yes, sir; all of them.

Cross-examination by Mr. Kirkpatrick:

Q. The E. P. Wilbur Trust Co. and the Lehigh Valley National Bank, you have mentioned as in a number of these checks—you were not a customer of and had no deposits with either of those banks, had you?

A. No, sir.

Q. Where did you do your business?

A. We did our business in the Easton National Bank, generally. We had a small account in the Phillipsburg National Bank.

Q. And you occasionally used that bank?

A. Yes, sir; we would occasionally use that bank.

Q. But your principal business was done with the Easton National Bank?

A. Yes, sir; our prinicipal business was done with the Easton National Bank.

Q. How was it in regard to the notes—in which you speak of the renewals of the notes of the Easton National Bank; how were those notes renewed, and how were they from time to time settled with the bank, by the company, as the series of renewals went on?

A. Well, I would take a new note, when one of the notes was due. I would take a new note and hand it to the discount clerk for discount, and when it was agreed to be discounted, he would enter it up in my bank book, with the discount taken off.

Q. That is to say, you would submit that note to the bank for discount?

A. Yes, sir.

Q. And when the note was discounted, the net proceeds were placed to the credit of the company?

A. Yes, sir; when the note was discounted, the net proceeds went to the credit of the company.

Q. That is to say, when you discounted the note, the amount of the discount was deducted, and the balance whatever it was, was placed to the credit of the company in the bank.

A. Yes, sir; after the note was discounted, the proceeds of the note, after the discount was taken out, was placed to the credit of the company in the bank.

Q. Now, what became of the note, which was ready at that time for discount?

A. That note was charged up to the company in its account in the bank.

Q. For the full face of it?

A. Yes, sir; for the full face of the note.

Q. And what became of the note which was cancelled; was it returned to you?

A. Yes, sir; the note that was cancelled was returned to us, whenever I had the book settled up or balanced.

Q. All of these notes, prior to the final notes, upon which the claim of the Easton National Bank was based, were cancelled in that way, by the discounting of a new note, and the placing of the net proceeds of that note, to the credit of the company, and charging up against the account of the company, as paid, the old note that immediately preceded it?

A. Yes, sir; that is the way it was always done.

Q. That is the way it was always done?

A. Yes, sir.

Q. And the old notes were delivered into your hands cancelled?

A. Yes, sir; when I got the book settled up.

Q. And then all these notes came into your possession, or into the possession of the company?

A. Yes, sir; they all came into the possession of the company, whenever I got the book made up.

Q. Then, being a customer of the bank, and having a running account with the Easton National Bank, the discounts for these various notes were paid in the way that you have described, by simply giving your company

credit for the net proceeds of the notes, and then charging against the company as paid the note that immediately preceded it, and for which the new note was given?

A. Yes, sir; that is right.

Q. Well, as I understand you now, the new note was always offered, too, and submitted for the action of the board of directors?

A. Yes, sir.

Q. And when it was acted upon, then this transaction took place, for which you got credit for the net proceeds of the note, and the old note was charged off, and which note was delivered to you cancelled by the bank when paid?

A. Yes, sir.

Henry G. Siegfried, recalled in behalf of the defendants.

Examined, by Mr. Martin:

Q. From the statement which you have prepared of the notes which has been handed to me by Mr. Kirkpatrick, can you tell what notes of the American Brick and Tile Company were held by the Easton National Bank on January 1st, 1898?

A. Yes, sir; at that time there were four notes, one for $2,800, one for $5,500, one for $5,000, and one for $900.

Q. These notes ran along by renewals until when?

A. They ran along by renewals until October 31st, 1898, when the $5,500 note and the $900 note were consolidated and a note made for $6,400.

Q. And then the $6,400 notes, with the two unconsolidated notes, ran along until when?

A. The $6,400 note and the two unconsolidated notes ran along until August 28th, 1899, when the $6,400 note and the $2,800 note were consolidated, making a new note of $9,200.

Q. And then an additional note was shortly afterwards put in?

A. An additional note was put in on November 10th, 1899, for $600.

Q. And this latter note, with the other two, ran along until when?

A. They ran along until the suit was commenced; that is, until they were protested finally. The last record we have of it was August 4th, 1900.

Q. And the last three renewals are the ones upon which your claim is founded?

A. Yes, sir.

Cross-examination by Mr. Kirkpatrick:

Q. As I understand, when you speak of renewals in what way were they renewed?

A. They were renewed in this way—they were brought in and they were left with our clerk—we have an offering book, and they were entered in that offering book, and they were offered for discount at the meeting then coming due, and then after they were offered, and, if accepted, they are discounted, and then, when they fall due, if renewed, we take a new note for them and the old note is charged up against the account of the American Brick and Tile Co. and the new note placed to the credit of the American Brick and Tile Co. in the bank.

Q. And in charging up the old note against the account of the American Brick and Tile Co. was it charged up as paid?

A. It is charged as paid; yes, sir.

Q. And it is charged up as paid for the full amount of it?

A. Yes, sir.

Q. So that if there was a note of $5,000 put in the transaction would be this: the old note being due at that time, a new note, in renewal of it, is substituted as a renewal, that note would be offered for discount?

A. Yes, sir.

Q. And that note would be ordered discounted by the board?

A. Yes, sir.

Q. And when discounted the net proceeds of that note, deducting the amount of the discount, would be credited to the company to be drawn on by it?

A. Yes, sir.

Q. And the full amount or face of the $5,000 note, to the extent of $5,000, would be charged against their account as paid?

A. Yes, sir.

Q. And what would become of the old note?

A. That note was cancelled.

Q. That note was cancelled as paid?

A. Yes, sir.

Q. And was it delivered to the company?

A. Not at that time, but when the book was settled up it would be.

Q. And that is the way these notes were all delivered to the company, is it?

A. Yes, sir; the notes were all delivered to the company when the book was settled up at different times, excepting the last three notes, upon which the suit was brought.

Q. They were delivered to the company by the bank as paid and cancelled?

A. Yes, sir; they were delivered up to the company by the bank as paid and cancelled.

Warren A. Wilbur, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath, saith:

Examined by Mr. Dickson:

Q. You are a son of Mr. E. P. Wilbur, one of the defendants?

A. Yes, sir.

Q. And where do you reside?

A. South Bethlehem, Pa.

Q. And what was your business in 1887, 1888 and 1889?

A. I was connected with the E. P. Wilbur Trust Company and also with the E. P. Wilbur Company and the Lucy Furnace Company and other corporations.

Q. And you had your business offices in South Bethlehem, Pa.?

A. Yes, sir.

Q. You knew Judge Green, of course?

A. Yes, sir.

Q. Did you ever hear of the American Brick and Tile Company?

A. Yes, sir.

Q. How did you come to be a stockholder in that company?

A. I had a conversation with Judge Green, on the occasion of the Fermers' Club dinner given by my father. I knew something of the organization of the company and of the enterprise, and I was asked at that time if I would like to take an interest in it—

Q. Had you known anything about the product of the bricks they made?

A. Yes, sir.

Q. Had you seen the works of that company?

A. I cannot say certainly whether I had seen the works prior to that conversation or not.

Q. Had you made any tests of the brick made by that corporation?

A. Yes, sir.

Q. With what result?

A. I forget the figures.

Q. I don't care about the figures—but generally?

A. It was highly satisfactory. The engineer's test of the Lehigh Railroad and our own tests of evaporation, hardness, &c., were highly satisfactory.

Q. Were they used in any of the buildings of which you had any knowledge?

A. Yes, sir.

Q. Which buildings were they used in?

A. In our own office building at South Bethlehem.

Q. Anywhere else?

A. Yes, sir; they were used—I don't just recollect where now.

Q. Do you remember any railroad tunnels or railroad buildings in which they were used?

A. Oh, yes, sir; they had a sample arch built in the Musconetcong Tunnel of the Lehigh Railroad.

Q. Did anyone else become associated with you in the purchase of stock of the American Brick and Tile Company?

A. My brother-in-law, Mr. R. P. Linderman.

Q. He is now dead?

A. Yes, sir.

Q. What was his business at the time?

A. He was president of the Bethlehem Iron Company.

Q. State what was said to you by Judge Green to induce you to become a purchaser of the stock of the American Brick and Tile Company?

A. I think he was the vice-president of the company at that time.

Q. And subsequently became president?

A. Yes, sir.

Q. What was the conversation between Judge Green and yourself in that respect?

A. Judge Green indicated that he would like Mr. Linderman and myself to be interested in that company, and he asked us to buy certain stocks that he had secured from the owners or the patentees, Messrs. Canfield, and the other name I have lost just now.

Q. Mr. Simpson?

A. Yes; Simpson and Canfield—

Q. Had the company been organized for some months then?

A. Yes; I believe it had; in fact, I know so.

Q. And the stock which he asked you to take was a part of that stock which he himself had acquired from them; that is, Simpson and Canfield?

A. Yes; Mr. Simpson and Mr. Canfield.

Q. And did you agree to take the stock?

A. Yes, sir.

Q. Did you take it and pay for it?

A. Yes, sir, we did, after discussing first as to our liability as to further calls, and being satisfied—

Q. What did he say?

A. Well, he said we would be subject to no liability—

Mr. Shipman—I object to that.

Court—Judge Green was evidently promoting this corporation, and he claiming to have this stock which he got from these patentees, of course he did not say how he got it, but he tried to sell it to these people, and they were dealing with him as the owner of the stock, and also, I suppose, as an officer of the company. I will take the evidence.

Mr. Dickson:

Q. What did he say to you on the question of liability?

A. Well, both Mr. Lindeman and myself were both very anxious about that point, and asked him that question, and he told us very clearly that there could be no liability, as the stock was fully paid. And we were convinced of its value, and agreed to purchase the stock which we did, by paying certain notes of Judge Green's, given to Simpson and Canfield, and the balance in cash. My letter book will show the transaction in full.

Q. How many shares of stock did you buy each?

A. Five hundred shares.

Q. What did you give for each?

A. Well, now, I have my letter book here, and I will refer to it, to refresh my memory as to that.

Q. (Letter book handed to witness)?

A. I have found it.

Q. What did you give for the stock?

A. We gave our checks, on November 30th, 1887, for $1,075 each, and we took up a note dated October 1st of $2,000, of Mr. Simpson's, given by Judge Green

in the same year; and a note, due December 2d of the same year, of $1,500, given by Judge Green to Mr. Canfield, making $3,500—the aggregate of these is $5,650. My letter to Judge Green explains the transaction.

Q. Will you read it?

A. Yes, sir; it reads as follows: "November 30th, 1887. Henry Green, Esq., President of the American Brick and Tile Co., Easton, Pa., Dear Sir; Yours of the 20th inst. at hand, with enclosures as stated. Herewith I enclose check of R. P. Lindeman for $1075., and my own check for the same amount. We will pay the note given to Canfield maturing December 2nd, 1887 for $1500. Thus making as follows:

Our $5650. in full for 500 shares each.

Paid Note October 1st, $2,000.

Paid note December 2nd, $1500., Canfield.

Cash November 30th, R. P. Lindemand, $1075. W. A. W.

$1075—$2150.—aggregating $5650. for which we have received 1,000 shares of the capital stock for which please find enclosed our receipt to the secretary.

Yours truly,".

Q. Have you your original certificate of stock with you?

A. I have not; I did not know—

Q. Your certificate was numbered 10, and was for 500 shares?

A. Yes, sir.

Q. I will read the stub of the certificate book.

"Issued for No. .....
No. of certificate 10
No. of shares.....500
By whom.....H. Green
To whom.....W. A. Wilbur
Dated, Nov. 28, 1887.
Received the above certificate.....
Cancelled by issue of No.....
Date of cancellation....."

I also offer and will read from the stub of the certificate No. 9 as follows:

"Issued for No.....
No. of certificate.....9
No. of shares.....500
By whom.....
To whom.....R. P. Lindeman
Dated.....Nov. 28, 1887
Received the above certificate.....
Cancelled by issue of No.....
Date of cancellation....."

Did Mr. Lindeman and yourself ever receive any other stock than the certificates represented by these stubs or memoranda?

A. No, sir.

Q. Mr. Wilbur, the last minute in the minute book of April 25th, 1891, purports to have been signed by yourself as secretary pro tem; is the minute in your handwriting?

A. It is not.

Q. Or is it transcribed by Mr. Fred Green?

A. I do not recognize this writing; I do not know it, but I presume it is a copy of mine.

Q. You kept a minute of which you sent a copy?

A. Yes, sir.

Q. Were you present at the meeting, or the minute shows or purports to show that there were present Henry Green, president; Judge Paxson, and E. P. Wilbur?

A. Yes, sir.

Q. You were not a director at that time, were you?

A. I think not.

Q. You were the secretary pro tem and did not enter yourself as a director, and I therefore infer you could not have been a director?

A. I think not.

Q. What was stated by Judge Green to be the object of the meeting?

Court—Do the minutes show that?

Mr. Shipman—Yes, sir; the resolution shows that.

Mr. Kirkpatrick—Now, your Honor, I do not think, where there is a record of or a minute of the proceedings of a meeting, that there ought to be any other evidence in regard to it; that is the repository and the official statement of the proceedings and of what took place.

Mr. Dickson—I propose to show, may it please your Honor, that Judge Green asked for a fund to be raised to enable him to build a new plant to experiment with in the making of enameled bricks, and that the fund which was then raised was raised for that purpose, and not at all for the ordinary expenses of the company; and I propose to show that this was a voluntary contribution, and not at all a compulsory assessment.

Court—I think you may go on and show that it was a voluntary contribution, but I do not think you can show what the fund was used for.

Court:

Q. Have you the minute in your own handwriting?

A. I have the letter written at the time I enclosed the resolution to Fred. Green, the secretary of the company.

Q. What did you write to Judge Green?

A. May I ask what the date of the meeting was?

Q. April 19th, 1891.

A. I will read the letter; it is addressed to Fred. Green and is dated October 24th and reads as follows: "Fred Green, Esq., Secretary the American Brick and Tile Co., Easton Pa., Dear Sir; Enclosed herewith please find the minutes of meeting of the directors of the American Brick and Tile Co. held in April last. I had expected to hand you these minutes before, but over-

looked it. Please enter them on your books, as they are correct as written.

Yours truly, W. A. WILBUR."

Q. Was that a called meeting from all the stockholders indicated?

A. I don't recollect ever having seen any call—written call—for a meeting.

Q. What was stated as the reason for making the payment?

Mr. Kirkpatrick—I object to the question as incompetent, immaterial, irrelevant.

Court—On what theory do you ask that question—is it for the purpose of contradicting the minutes, or is it to show that the minutes do not record fully what happened?

Mr. Dickson—It is for the purpose of showing what is meant by the assessment; that it is a voluntary assessment and not a compulsory assessment.

Court—Here is the witness himself who made the record; he is supposed to have recorded the determination of the meeting, of the stockholders of the corporation; that is to say, its ultimate action, irrespective of and notwithstanding the various conversations, talks and arguments or consultations that have been had previous to the recording of the minutes. Then he records the ultimate action of the corporation.

Mr. Dickson—I will change my question—did you afterwards make a payment of anything in the shape of an assessment?

A. I did.

Q. Why did you do it?

Mr. Kirkpatrick—I object to the question; he cannot give his mental conclusion.

Objection sustained.

Q. Did you make it as a legal obligation, or as a voluntary contribution?

Same objection.

Objection sustained.

Q. Have you a letter, or a copy of a letter, showing your final remittance?

A. I have.

Q. Please produce that letter?

A. Shall I read it?

Mr. Kirkpatrick—I object.

Mr. Dickson—We shall have to have the letter on the record before you can object to it.

Court—You may read the letter.

A. (Reading). "October 23,

"Fred Green, Esq., Treasurer, American Brick and Tile Co.,

Dear Sir; Enclosed herewith please find my check $500., as per call of Treasurer, Kindly send me certificate of stock or such other evidence on the part of your company, of indebtedness, as the other contributors have received for like payments.

Yours truly, W. A. WILBUR."

Q. Did you receive any certificate of stock in response to that letter?

A. No, sir.

Q. Or any acknowledgment of certificate of indebtedness, or anything of that kind?

A. No, sir.

Q. Was this assessment paid by all the stockholders?

A. No, sir.

Q. Why not?

Mr. Kirkpatrick—I object.

Objection sustained.

Q. Were you the secretary *pro tem.* of the meeting of the stockholders of the American Brick and Tile Co., held at the Continental Hotel, in the city of Philadelphia, on the 19th of April, 1898 (handing witness paper)?

A. Yes, sir.

Q. Is that word "principal" in your handwriting, do you know (indicating on *Exhibit E 12*)?

A. No, sir.

Q. Do you know in whose handwriting it is?

A. No, sir.

Q. The rest of the minute is in your handwriting?

A. Yes, sir.

Q. Was this a formal meeting, a called meeting, or an informal meeting?

A. Formal, in that we had a verbal notice, I think.

Q. All the parties who were present are noted here in the minute; there was no other party present than those mentioned there in the minute?

A. No, sir.

Q. Now, in pursuance of that meeting, what did you do in regard to the accounts of the company?

A. May I refer to the memorandum, and refresh my memory by reading this *(E 12)*?

Q. Yes.

A. Yes, sir; Mr. Lindeman and myself employed the American Audit Company of New York to make up a statement of the liabilities and assets of the company.

Q. To examine the books and vouchers?

A. Mr. Lindeman and myself prior to the calling in of an expert accountant, attempted to examine the books, but we were unable to do so.

Q. Why?

A. They were not sufficiently clear.

Q. And then you employed the expert?

A. Yes, sir.

Q. And was that the first statement of the liabilities of the company you had?

A. Yes, sir.

Q. And that was in the year 1898?

Mr. Dickson—I have a letter written by Judge Green to Mr. W. A. Wilbur, dated November 28th, 1887, and I will ask counsel if they will admit that this letter is in the handwriting of Judge Green, and that it was received by Mr. W. A. Wilbur.

It is admitted that the letter is in the handwriting of Judge Green, and that it was received by Mr. Wilbur.

Mr. Dickson—I offer that letter in evidence, and ask that it be copied into the record.

Marked *Exhibit W 12* and reads as follows:

"EASTON, Nov. 28th, 1887.

"Mr. W. A. Wilbur,

My Dear Sir—Enclosed I send two certificates of stock of Am. Brick & Tile Co., each for 500 shares for yourself and Mr. R. P. Linderman. The cost of these shares as per statement sent heretofore to Mr. E. P. Wilbur is $5.65 per share, amtg. to $5650
from which deduct cash payt..... 2000

$3650

I gave one note to M. P. Canfield maturing abt. Dec. 2 and payable at E. P. W. Trust Co. $1500

Bal. $2150

Please pay that note and send it to me and also your and Mr. Linderman's checks for balance $2150, so that I get them by Wednesday of this week, as the $2,000 note I gave Simpson matures then & oblige,

Yours truly,

H. GREEN."

Mr. Kirkpatrick—The original minute of the stockholders of April 19th, 1898, is offered in evidence. I see it has been marked *E 12* for identification and I will ask that it be marked in evidence and copied in the record.

Marked *Exhibit E 12,* and reads as follows:

"Meeting of the stockholders of The American Brick & Tile Co. held in Judge Green's rooms Continental Hotel, Philada. April 19/1898.

Present, Henry Green, E. P. Wilbur, Robt. P. Linderman, W. A. Wilbur, Judge Green in the chair. He re-

ported that notices of the meeting had been sent to the principal stockholders.

A statement, or a list of bills payable & a list of stockholders was presented.

Robt. P. Linderman & W. A. Wilbur were appointed a committee to investigate the affairs of the Co. & be authorized to employ competent assistants in making up a full & complete statement of the company's affairs & when completed to report to Judge Green who will submit the report to a meeting of the stockholders.

W. A. WILBUR,
Secty. *pro tem.*"

Cross-examination by Mr. Kirkpatrick:

Q. As I understand, the only certificate that you ever got for the 500 shares of the capital stock of this company was the certificate the stub of which you have referred to in this stock book?

A. Yes, sir.

Q. No. 10?

A. Yes, sir.

Q. And that was sent to you or received by you from Judge Green, who was then the president of the company?

A. Yes, sir.

Q. Likewise the certificate of R. P. Linderman, the only certificate for his stock in this company that was ever issued was issued by the company, and is numbered nine; there was no other certificate?

A. Not that I know of.

Q. Issued to Mr. Linderman?

A. No, sir.

Q. And that also was issued at the same time, and is dated the same date as the certificate issued to you—November 28th, 1887?

A. Yes, sir.

Q. You got no certificate of any kind from Judge Green transferring any stock to you that you have any recollection or knowledge of, except these?

A. No, sir.

Q. And there was no certificate that you surrendered to the company and for which you took any new certificate in the place thereof?

A. No, sir.

Q. Calling your attention to the places shown to you there in the stub, the written portion upon these stubs are all in the lithographed form, excepting the number of shares, "500;" the name, "R. P. Linderman," and the date, "Nov. 28," and the figures "87," added after the printed figures "18"?

A. I presume so.

Q. That is likewise the case with respect to certificate No. 10, the stub of which follows?

A. The same; yes, sir.

Q. Now, you also have said that you paid for this stock by your check and the payment of a note?

A. Yes, sir—notes.

Q. The payment of notes?

A. Yes, sir.

Q. You and Mr. Linderman?

A. Yes, sir.

Q. And you referred to a letter addressed to Judge Green which was transcribed in full upon the notes; now, that letter was addressed to "Henry Green, Esq., President American Brick and Tile Co."?

A. Yes, sir.

Q. And it was, of course, sent to him under that address, as president of the company?

A. I would not swear to that, because I addressed numerous communications to Judge Green.

Q. I am asking you in respect to this particular letter?

A. I cannot say.

Q. But that is the way the letter appears to be addressed?

A. Yes, sir.

Q. Do you remember or did you see the notes to which reference is made in that letter?

A. I presume I did.

Q. Have you any recollection of them now?

A. I would not like to say.

Q. Did you take up the notes?

A. Yes, sir.

Q. And were they delivered into your possession?

A. Not perhaps into my personal possession, but—

Q. But you saw them afterwards—that is, after they were paid?

A. I would not like to say that; I know that the young man who has charge of my affairs saw them, but I don't know that I personally saw them.

Q. Well, either individually or someone acting for you saw them?

A. Yes, sir.

Q. You don't know now what shape these notes are, as a matter of recollection—whose notes they were; whose notes did they purport to be?

A. Henry Green's.

Q. Were they not the notes of the American Brick and Tile Co., endorsed by H. Green?

A. Not as I understand it.

Q. You don't know that, as a matter of recollection?

A. Yes, sir.

Q. Well, how were they endorsed?

A. They were endorsed by Simpson and Canfield, and, I presume, re-discounted.

Q. Have you any recollection on the subject?

A. Yes, sir.

Q. Were they not notes drawn to the order of H. Green, and endorsed by Canfield and Simpson, or either of them?

A. I cannot answer the question in that way.

Q. Well, as a matter of fact, you have no recollection of that, have you?

A. I have no recollection of having seen these notes individually.

Q. And you would not know what form the notes were in?

A. No, sir; only from my recollection of conversations that I had with Judge Green.

Q. But I am asking you, as a matter of recollection, whether you recollect seeing these notes and seeing the form that they were written in?

A. I cannot say that I ever saw the notes, and, therefore, I cannot say that I know anything about the form they were written in.

Q. Then, as a matter of recollection and as a matter of knowledge—that is, you would not have any knowledge as to having seen these notes?

A. Not from having seen them; no, sir.

Q. Now, the only amount you ever paid upon these 500 shares of the capital stock of this American Brick and Tile Company that you got was the amounts that are indicated in this letter of November 30th, 1887?

A. Yes, sir.

Q. You never paid anything more?

A. No, sir.

Q. Either to the company, or to anyone else?

A. No, sir—well, I paid more money to the company, but not account of this stock.

Q. I mean on account of this particular stock?

A. No, sir.

Q. Except the $4.00 a share assessment, you paid that, didn't you?

A. I made a contribution—

Q. I am asking you whether you paid the $4.00 a share assessment—I don't ask you to put your own interpretation upon what you paid; I simply ask you the question whether you paid the $4.00 a share assessment or not?

A. I paid $4.00 a share in accordance with my letter addressed to the treasurer of the company, in which I enclosed my last check of $500 and asked for a receipt.

Q. Have you those letters in which you enclosed those checks; have you them here, or have you the press-copy of the letters?

A. Yes, sir; I have the press-copy of the letters.

Q. What does it say—just read it?

A. I have read it.

Q. Read it again, please?

A. (Reading). "Fred Green, Esq., Treasurer of the American Brick and Tile Co., Easton, Pa., Dear Sir; Enclosed herewith, please find my check, $500, as per call of the treasurer"— That is the letter in which I asked for the receipt.

Q. Did you read this one before?

A. Yes, sir.

Q. Then read the others—read the whole of the letter, address and all of it?

A. It is addressed to "Fred Green, Esq., Easton Pa.," and it is dated "May 2, 1891." "Fred Green, Esq., Easton, Pa. Dear Sir; Yours of the 27th inst. at hand. Enclosed herewith please find my check $500., being my proportion of assessment, called for, and due May 1st.

Mr. Linderman and myself were appointed with you members of the executive committee of the board of directors, and as such it is necessary that we see as early as possible, trial balances from the books of the company.

Will you kindly send to me at your earliest possible convenience a copy of your last trial balance and oblige

Yours truly, W. A. WILBUR."

Q. That is signed by yourself?

A. Yes, "W. A. Wilbur." It is not my own signature, but is signed by a young man in my office.

Q. You deputized him to sign it?

A. Yes, sir.

Q. What is the next one?

A. There were only two in relation to the payment of the assessment; you have them already in.

Q. You said that you employed the American Audit Company of New York after that meeting of April 19th, 1898?

A. Yes, sir.

Q. Now, look at this letter marked *Exhibit W 11*—that letter you signed, did you not (handing paper to witness)?

A. Yes, sir.

Q. And enclosed a copy of the Audit Company, did you not?

A. Yes, sir.

Q. A report, either that one or one identical with that, I suppose (handing paper heretofore marked *Exhibit E 11*)?

A. Yes, sir.

Q. And that was the report you think was enclosed in that letter?

A. Yes, sir.

Mr. Kirkpatrick—We offer in evidence the letter by Mr. Wilbur, addressed to Hon. Henry Green, dated July 29th, 1898.

Marked *Exhibit W 11*, and reads as follows:

"E. P. Wilbur Trust Company,

"South Bethlehem, Pa., July 29, 1898.

Hon. Henry Green,

Easton, Pa.

Dear Sir—Enclosed herewith I beg to send you a copy of the report of the Audit Company of New York, in regard to the affairs of the American Brick & Tile Co. I expect my father to be here in Bethlehem the early part of next week.

Yours truly,

W. A. WILBUR,

per C. T. Weir."

Q. You say that you had looked somewhat into the making of brick under this Dickson patent?

A. Yes, sir.

Q. That is, the making of brick from the pulverized slate refuse, as covered by this patent?

A. Yes, sir.

Q. The work of the company had been carried on

for upwards of a year and a half after its organization or formation before you acquired this stock, hadn't it?

A. I cannot say that definitely.

Q. A very considerable time, was it not?

A. No, sir; I think I visited the works at Phillipsburg very shortly after they made their first brick there.

Q. When was that?

A. I cannot recollect now.

Q. Was not that in the year 1886?

A. I cannot recollect; I don't recollect whether it was prior to or after my paying for the stock.

Q. You cannot recollect whether it was prior or after you paid for your stock?

A. No, sir.

Q. You only visited the works once?

A. Oh, no, sir; I visited the works several times.

Q. But not very often, did you?

A. Three times, I think.

Q. Three times altogether?

A. Yes, sir.

Q. And you spent how much time at each visit?

A. Perhaps two hours.

Q. And of course you did not see what was done there, or the progress of the work or the quality or kind of work done there at other times, when, of course, you were not present; you could not know anything about that, except from hearsay?

A. No, sir.

Q. You said also that there were some tests made?

A. Yes, sir.

Q. When were those tests made?

A. I don't recollect.

Q. When was the building built in which some of the bricks were used; after you acquired the stock?

A. I think before.

Q. Was it not some considerable time after 1887 that this building was built, in which some of these bricks were used?

A. I think it was before.

Q. You think it was before?

A. Yes, sir.

Q. But you are not positive of that, are you?

A. The building was built when I was abroad in 1887, and I didn't take up the stock until after I returned, which was in April, and I then took up the stock, I think in November, and the first building that was built with that brick was built while I was away.

Q. What building was that?

A. It was a building built by ourselves, the E. P. Wilbur Trust Company, for the purpose of the Lehigh Valley Railroad Company, and other officers—

Q. Was the whole building built with the brick, or was it built with brick from some other source?

A. Part of the front of the building was built with brick from other sources.

Q. You do not know, of course, how these bricks were selected; you were not there when they were selected?

A. No, sir.

Q. All you know is, that the bricks came from there and that they went into the building?

A. Yes, sir.

Q. Now, you said there were some tests made; you did not see the tests made, did you?

A. I made some of the tests myself.

Q. When did you make these tests that you made yourself?

A. That was after April, 1887, after my return from abroad.

Q. After your return from abroad in April, 1887?

A. Yes, sir.

Q. And these tests were unsatisfactory, were they not?

A. No, sir.

Q. They were not?

A. No, sir.

Q. Where did you get the bricks from that were tested?

A. I think Judge Green or Mr. Wilson brought them up to Bethlehem.

Q. How many did they bring?

A. Oh, perhaps a dozen or half a dozen—well, it was quite a big lot for one man, I know.

Q. And these bricks were tested, you say, by yourself?

A. Personally, by myself?

Q. Personally by yourself, yes?

A. Yes, sir.

Q. And how these bricks were selected, or where they actually came from, you do not know, do you, of your own knowledge?

A. I did not see them made, of course.

Q. Or how they were made—you did not know how they were made up, or what their composition was, or what went into these bricks, did you, from any knowledge you have yourself?

A. From general knowledge they were slate brick.

Q. They were brick that purported to come from this factory, were they?

A. They were slate brick, and they were brick that came from this place.

Q. But whether there was other material besides slate refuse in their composition or not, you do not know?

A. No, sir.

Q. In other words, you have no knowledge of the composition of these bricks, or the manner in which they were made, or how they were selected?

A. I do not know that I saw these identical bricks made, but I did see bricks made in the works at Phillipsburg.

Q. But not these identical bricks?

A. No, sir; but I presume these were made in the same way.

Q. Now, when you got the stock you speak of, which was issued to you by these two certificates—that is, to you and Mr. Linderman—where was it you made the arrangement for the purchase of these shares of stock?

A. Where?

Q. Yes?

A. At a dinner given during the month of October that year.

Q. And these shares of stock were spoken of there, and you were asked to take, each of you, 500 shares, were you?

A. Well, Judge Green wanted us to become interested in that company, and he said that he had purchased some or had obtained certain stock which he would like us to take off his hands; and after talking it over with Mr. Linderman, and asking Judge Green the question as to the liability for the future, and being informed by him—

Q. Why did you inquire as to liability?

A. Well, I knew something about buying stock that had not been fully paid for, and I was afraid of it.

Q. And you were afraid of it, and therefore you asked about the liability?

A. Yes, sir; I asked Judge Green because I thought his judgment in such matters was better than my own—

Q. And he gave you the opinion?

A. Yes, sir—well, we did not pay for it.

Q. That is, you did not pay for the opinion?

A. No, sir; we did not pay for the opinion; we paid for the stock, though.

Q. He did give you such a legal opinion, did he?

A. Yes, sir.

Q. But he did not say that all the money on the stock had been paid in?

A. I don't know that I asked him that.

Q. You did not ask him that?

A. I don't think so.

Q. All you asked him was whether you would be legally liable for anything more than you paid for the stock?

A. Yes, sir.

Q. And what proportion of it was it you paid for the stock?

A. That is a matter of calculation; I did not figure it out.

Q. The total amount you paid was $5,650 for the 1,000 shares of stock, was it not?

A. Yes, sir.

Q. So that would be $5.65 on each share?

A. Yes, sir.

Re-direct by Mr. Dickson:

Q. The certificates you received were in the form which have been produced here and marked "issued for property purchased"?

A. Yes, sir.

Q. You said that this stock was issued to you by Judge Green?

A. Yes, sir.

Mr. Dickson—In this connection, counsel for Mr. Wilbur desires to call attention to the exhibit heretofore offered and marked "L. 1.," being a statement of the capital stock account of the American Brick and Tile Company, in the handwriting of Judge Green, and I especially call attention to the two entries, which read as follows:

"1887, Nov. 28, by shares transferred to R. P. Linderman, Certificate No. 9,... 500

"1887, Nov. 28, by shares transferred to W. A. Wilbur, Certificate No. 10,..... 500"

Mr. Kirkpatrick—Why doesn't it speak for itself?

Mr. Dickson—It does, but I thought I would copy it in again here, so as to save referring back to it—you would have it right here, and it would save time.

Mr. Dickson:

Q. You said you did not know from the handling of the note that you paid off for Judge Green, who was the maker of it; will you please tell us how it is you ascertained or did find out, or know, that fact?

A. Well, I knew it from my young man who looks after my affairs, and who took it up, and I know also from the records of the Wilbur Trust Company, as in their office.

Q. And did Judge Green say anything to you on the subject?

A. Yes.

Q. What did he say?

A. He asked me to take up the notes.

Q. Whose notes did he ask you to take up?

A. Simpson and Canfield's.

Q. Whose notes—given by whom?

A. Judge Green.

Mr. Kirkpatrick—I object to this; that is a mere declaration; how can you prove the contents of a letter by the declarations of a third party?

Court—I think the witness is right when he says that Judge Green told him to take up the notes, but whether his recollection, as to the form of the note amounts to anything, that is another question.

Mr. Kirkpatrick—But your Honor, I object to it, so far as it purports to give the contents or purport of the notes themselves.

Court—I will let it stand.

Mr. Dickson:

Q. Was Mr. Linderman present at the time you conversed with Judge Green, when you discussed the question of purchasing the stock?

A. Yes, sir.

Q. And when he told you that there was no liability?

A. Yes, sir.

Defendant rests.

Andrew C. Givler, a witness produced in behalf of the complainant in rebuttal, being duly sworn according to law, on his oath saith:

Examined by Mr. Kirkpatrick:

Q. Where do you live?

A. At Carlyle, Pa.

Q. Are you connected in any way, or were you connected in any way with Col. J. C. Fuller, or the company in which he was interested in Pennsgrove, Pa.?

A. I was secretary and treasurer of the Fuller Brick and Slate Company of Pennsgrove, Pa., in which company Col. Fuller was president.

Q. That was Col. J. C. Fuller, was it?

A. Yes, sir.

Q. When was that company organized?

A. In 1891.

Q. What was it organized for—for what purpose?

A. For the manufacture of brick from slate.

Q. And in connection with that, was there any railroad enterprise?

A. Yes, sir; we built a railroad to our slate deposit, five and a half miles in length.

Q. You say that company was organized in 1891. How long after it was organized was it before they commenced to do any work?

A. I think, from my recollection, we started to build the plant that same summer, and got it in operation in November in the same year.

Q. 1891?

A. Yes, sir.

Q. And you did not commence to build the plant then until after the company was organized?

A. No, sir; we did not.

Q. How about the railroad?

A. That was built during the same year we were building the brick plant.

Q. You commenced to build that then after the company was organized?

A. About the same time; the two companies were organized just about at the same time.

Q. That is, there was a railroad company and a brick company organized?

A. Yes, sir.

Q. When was it you got permission, either from Judge Green or from the American Brick and Tile Co., to manufacture brick from slate?

A. That, I think, was about a year and a half, or two years before that. Mr. Fuller became interested in this scheme through Judge Green.

Q. That would be then—you say the company was formed in 1891—that would be some time in the early part of 1890, or 1889?

A. Yes, sir; to the best of my recollection.

Q. But until the company was organized nothing has been done, except as you have described it?

A. No, sir; nothing.

Q. Then, Mr. Givler, shortly after the organization of the company, did you proceed to manufacture brick from pulverized slate?

A. At once.

Q. What was the result of your work in that direction?

A. It was a failure.

Q. It was a failure?

A. Yes, sir.

Q. It could not be done?

A. It could not be done.

Q. What kind of a kiln did you use?

A. The Eudaly patent down-draft.

Q. Do you remember Judge Paxson being there after the company was formed?

A. I remember Judge Paxson visiting Col. Fuller several times about that time, but I think his visit was more in the nature of a personal visit—socially.

Q. Was it about the time you commenced your work there of making brick?

A. Just about that time.

Q. Just about the time you commenced the making of brick there?

A. Yes, sir.

Q. So that when he refers to the making of brick and the building of the railroad it would be some time in the year 1891, would it?

A. Yes.

Cross-examination by Mr. Dickson:

Q. When did Col. Fuller become interested, do you know?

A. He was always interested in the Pennsgrove furnace.

Q. I know that, but in the brick patents, or the brick company, when did he become interested in them?

A. About a year before we got the company organized he was very much interested, and wrote to a good many friends, and tried to get them interested in this thing, in this new concern.

Q. How do you know that—do you know when he first became interested, and when Judge Green first spoke to him on the subject?

A. No, sir; I don't know that.

Q. That may have been a year, or a year and a half, before that again, might it not?

A. Yes, sir.

Q. You cannot say when it was; it might have gone back to 1886 or 1887?

A. I cannot say.

Q. The company was not organized until 1891?

A. As near as I can recall, it was 1891.

Q. What was the capital stock of the company?

A. $600,000.00.

Q. And do you know how much was expended on the kilns?

A. Do you mean the kilns or the plant?

Q. The plant?

A. The entire plant?

Q. Yes; the entire plant?

A. About $60,000.

Q. And then, in addition to that you had about five and a half miles of railroad?

A. Yes, sir.

Q. A broad or narrow-guage railroad?

A. A broad-guage railroad, starting at Pengrove Furnace, and running out to what we called the slate bed.

Q. And that was over a pretty rough part of the country, was it not?

A. Yes, sir; it was over a very heavy grade.

Q. And was that built for the purpose of reaching these slate quarries?

A. For that purpose, and for the purpose of developing these slate quarries.

Q. After the kilns were completed, how many bricks did you make?

A. Well, we made, or tried to make, six or seven kilns of bricks on the slate process—

Q. How many brick in each kiln?

A. 120,000 to the kiln.

Q. And what proportion of them was marketable?

A. We didn't get any marketable.

Q. None at all?

A. No, sir.

Q. How long did you continue your experiments?

A. It lasted about a year.

Q. Whom did you have as your superintendent?

A. J. W. Ivory.

Q. Where was he brought from?

A. England.

Q. Had he ever made slate brick before?

A. I don't think he had.

Re-direct by Mr. Kirkpatrick:

Q. This brick was made under the Dickson patent, or the patent that the American Brick and Tile Co. had?

A. Yes, sir.

Q. And you say you continued these experiments and trials and burnings of these bricks for a period of a year before you abandoned it?

A. Yes, sir; just about a year.

Q. This man you had there was a competent man, so far as you know?

A. No, sir; I don't think he was.

Q. You yourself was there and saw what was going on, didn't you?

A. No, sir; but he tried two other experts—two other expert brick-makers.

Q. During that time?

A. Yes, sir.

Q. So that during this year you tried to make brick under the Dickson patent, or a patent you had permission to work under, from the American Brick and Tile Co., and you had other experts and patented processes and other persons to conduct the work, did you not?

A. Yes, sir.

Q. Entirely competent persons?

A. Yes, sir.

Q. Did you have anyone up there from Phillipsburg on this work?

A. Yes, sir; a Mr. Cole.

Q. George Cole?

A. Yes, sir; I think it was Mr. George Cole.

Q. Who was he sent up by?

A. By Judge Green, I supposed.

Mr. Dickson:

Q. You don't know of your own knowledge?

A. Mr. Fuller said he sent him a man up there.

Mr. Kirkpatrick:

Q. And he came up there from the American Brick and Tile Company's works, and was there how long with you trying to make these bricks?

A. It is not a long time, but I think he was there about a week or ten days, or he may have staid there as long as two weeks.

Q. And the work he was sent up there to perform did not succeed?

A. No, sir; he said he thought that we were doing all that was possible to be done under that process.

Q. And what bricks were marketable?

A. None really. Well, now, I don't say that we didn't sell some of the bricks out of that whole 840,000 brick that we burned, for we did sell a few for kulls, but we had to sell them at a very small price—

Q. And you did not succeed?

A. No, sir.

Further cross-examination by Mr. Dickson:

Q. Do you know what difference there is between that quality of slate and the Lehigh slate?

A. No, sir; I don't know that I ever saw an analysis of the Lehigh slate.

Q. You don't know whether this result was due to the quality of the slate or not?

A. No, sir.

Q. The operations at Pengrove have not been successful, as I understand?

A. No, sir; they have not.

Q. How many years has Col. Fuller undertaken to carry on the furnaces there?

A. Oh, the iron business was successful.

Q. You did not make any money at it, did you?

A. They did up to a certain time.

Q. That is a good many years ago, is it not?

Mr. Kirkpatrick—I object to that question as immaterial.

Objection sustained.

Court:

Q. The railroad from the main line down to his house, or just across the stream from his house, that is not a part of the railroad you are talking about?

A. No, sir.

Q. You extend beyond that?

A. Yes, sir.

Charles H. Salmon, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath saith:

Examined by Mr. Kirkpatrick:

Q. You live in Philadelphia at the present time?

A. Yes, sir.

Q. Were you engaged in the brick business at any time, and if so, where?

A. At Stillriver, Mass.

Q. When was it you were engaged there?

A. Why, I think from about 1887 for about two years, or three years—two or three years—that is as near as I can remember now.

Q. And did you have any, or do anything—that is, did you do any manufacturing of bricks in connection with that business, from slate?

A. Entirely.

Q. Yes; entirely?

A. Yes, sir.

Q. When was it, did you say?

A. In 1887, to 1890, or 1890 or '91, or in that vicinity; I haven't any record of it, particularly.

Q. You had a license to make that brick for some of the New England States, had you?

A. Yes, sir.

Q. From whom?

A. I got it from Judge Green.

Q. From the American Brick and Tile Company?

A. Yes, sir; from the American Brick and Tile Company.

Q. That was in what year was it you made your agreement with them?

A. I don't remember the year now. I think it was in 1887 or 1888; that is my recollection about it, although I am not sure.

Q. What was the process?

A. Why, using the pulverized slate, and getting it into a proper state of consistency, and mixing it with

water, and getting it into shape for making the brick, just about the same as you make clay brick.

Q. Was that under the Dickson patent?

A. Yes, sir.

Q. Making the brick from the pulverized slate?

A. Yes, sir.

Q. How long did you try to make the brick out of pulverized slate under the Dickson patent?

A. I cannot say how long it was exactly, but I think it was about two years that we were experimenting in almost every way.

Q. You tried it in almost every way?

A. Yes, sir.

Q. And what was the result?

A. The result was, that we found we could not make a marketable brick from pure slate.

Q. How many bricks did you burn in the first kilns that you tried?

A. I cannot tell you exactly, but I think perhaps 25,000.

Q. What proportion of that number were merchantable brick?

A. None.

Q. And what other experiments or trials or efforts, did you make to make this brick from this material, as you have described it?

A. Well, we built three different kilns there, three different steam kilns; the last one was a kiln the same as was used by the Peerless Brick Company of Philadelphia, under their patents, and I think they called it the "Melka Kiln"; I think that was the name it went under.

Q. What kind of kiln did you use in your first effort to make brick from this material?

A. The ordinary kiln which was used in the making of ordinary brick, the ordinary burning of bricks.

Q. When you received this license or permission to use this patent process, was any particular kiln suggested?

A. None.

Q. And it was claimed that they could be manufactured by any of these kilns that were in ordinary use for the burning of ordinary brick?

A. Perhaps I had better explain the matter a little more fully. In the first place we sent our slate to Phillipsburg; we did that before we ever attempted to make them ourselves, and they, after we sent our slate to Phillipsburg, showed us some bricks which they said was made from it.

Q. That is, purporting to be made out of the materials you sent there?

A. Yes, sir; I might so purported to be made out of the material or refuse slate we sent there, or purported to be made by Mr. Wilson at Phillipsburg.

Q. You don't know what material went into them, or how they were made?

A. No, sir; except that we sent him our own pulverized slate, and the bricks were returned to us, and we understood that they had been made from the material we had sent them.

Q. Then you can state whether or not you can say that they making of the brick by yourselves, you gave a fair and full trial for the making of brick from this material, at your own place of business?

A. Well, we certainly did; we tried it in almost every way to make a good, marketable brick, but we found we could not do it. We had Mr. Canfield there, who was the original owner of the patent, to help us make the brick; we had him there for from six to eight months, working at it right there in our own place—

Q. Working at it to make brick?

A. Yes, sir.

Q. And you worked under his direction?

A. Yes, sir.

Q. And under his supervision?

A. Well, we tried every way; we bought land from a clay brick maker, right adjoining our own property, and we had the benefit of their experience and sugges-

tions, and they were men of large experience in the making of clay brick—

Q. So that in the attempt to make brick from this refuse slate, under the supervision, or with the assistance and under the direction of Mr. Canfield himself, it was a failure, was it?

A. Yes, sir; it was.

Q. And was also Mr. Cole there?

A. Afterwards we brought Mr. Cole there.

Q. What was the object of bringing Mr. Cole there?

A. Because he had had great experience at Phillipsburg, in the making of this brick there, and we brought him there to see if he could make brick for us, or make some suggestions whereby we could make the brick out of the slate refuse, so as to be a success, and after we had tried and tried we made up our minds that we could not do it, and as I say we then brought Mr. Cole there from Phillipsburg—

Q. You knew Mr. Cole, did you?

A. Well, I met him there at Phillipsburg, at the works of the American Brick and Tile Co.; that is the way I first became acquainted with him; that is in the first place—

Q. Do you remember his purpose of going there?

A. I employed him to go there.

Q. You employed him?

A. Yes, sir.

Q. And how long was he there?

A. I think he was there about two weeks; that is according to my recollection—about two weeks.

Q. I think you said that you went to Phillipsburg yourself?

A. I went there several times with Judge Green.

Q. Do you also remember a man by the name of Stephen Deitrich, a practical brick-burner?

A. Yes, sir; I met him.

Q. Do you remember him?

A. Yes, sir.

Mr. Dickson—I object to this evidence as immaterial. Now, if your Honor please, I do not think it is necessary to go into the items and particulars of each and every experiment that was made.

Recess.

Mr. Kirkpatrick:

Q. Just look at *Exhibit W 3*, being the articles of agreement made on May 9th, 1888 (handing paper), is that the contract or agreement for a license that was granted by the American Brick and Tile Co. to you?

A. It is, and Judge Green promised to send me a copy of it, but he never did. That was down at the Continental Hotel. I never received a copy of it.

Q. Did you ever pay any royalties under that agreement?

A. I paid a matter of some fifty dollars—

Q. And that is all that was paid?

A. Yes, sir.

Q. And what was that for?

A. It was for bricks I used in building another kiln; they were not merchantable bricks, but as I built the kiln with them I paid the royalty on them.

Q. And that is all that was ever done in that direction?

A. Yes, sir.

Q. Can you tell us how much it cost you to make these experiments and these trials of this process?

A. As near as my records show, about $35,000.

Cross-examination by Mr. Dickson:

Q. Had you had any experience before this in brick-making?

A. Nothing further than my ordinarily noticing the making of brick, nothing actual—

Q. You never had been a brick-maker before this?

A. No, sir.

Q. You had no knowledge of the construction of kilns yourself, had you?

A. I had, yes.

Q. Before you began to construct these kilns that you have mentioned?

A. Yes, sir; I had a knowledge of the construction of kilns before that time.

Q. Brick kilns?

A. Yes, sir.

Q. Where and how—describe it?

A. Through friends of mine in Philadelphia, various ones; I cannot tell you exactly who they were now. You say prior to this experimental work—I understand you to ask the question, prior to that arrangement with the American Brick and Tile Co.?

Q. Yes?

A. Well, I had.

Q. Now, what was the extent of your knowledge?

A. Simply examination.

Q. Only a casuel examination?

A. The general manufacture of clay bricks.

Q. But you never had had any real practical experience in the building of kilns, had you?

A. No, sir.

Q. Or in operating them?

A. No, sir.

Q. You say you started this thing in Massachusetts?

A. Yes, sir.

Q. At Stillriver?

A. Yes, sir.

Q. And you experimented, you said, I think, for about eighteen months?

A. That or more; yes, sir.

Q. And the plant cost you how much—$30,000?

A. The whole expense of the plant and everything, the experimenting and everything of that kind was about thirty or thirty-five thousand dollars; in that vicinity.

Q. And how much did the plant cost you?

A. That I cannot say; I could not tell you exactly as to that.

Q. I think you said you had sent some of the pulverized slate from your place down to Phillipsburg to be tested there?

A. I did; that was prior to my signing that agreement.

Q. And how did that turn out; how did that slate turn out?

A. Apparently they were all right, if the bricks were made out of my slate, which I never doubted at the time, of course.

Q. But how many bricks did you have made at Phillipsburg out of your material?

A. I think I sent enough material to make up about 500 bricks, and I saw about four or five samples altogether.

Q. And how many in each sample?

A. Four or five bricks, they had them numbered from one to five, I think.

Q. And these bricks were entirely satisfactory, were they?

A. Apparently so; yes, sir.

Court:

Q. Do I understand you to say you had had experience in the manufacture of other kinds of brick, before you started in the manufacture of brick from this material?

A. Simply by investigation, as to the manufacture of clay brick, before I went into the making of brick by this process. That is, I knew the process of manufacture and the style of clay to be used in the manufacture of brick.

Q. Did you investigate this scheme sufficiently to know that if it was successful, it would be very valuable?

A. I did, otherwise I should not have gone into it.

Mr. Dickson:

Q. When did you begin your investigation?

A. Why, when the matter was first brought to my notice by Mr. Wilson, Richard Wilson, I think it was, who first brought the matter to my notice.

Q. How long before you actually executed this agreement, was that?

A. I think about the year—well, I would not be positive about it, but I think it was about the year 1887—'86, perhaps.

Q. You think you had had it under consideraton a year before you signed this agreement?

A. That, or nearly so.

Q. Did you visit the works at Phillipsburg?

A. I not only visited the works at Phillipsburg, but I had my superintendent work there, and I paid his expenses while he worked there.

Q. How long?

A. Several months; I cannot say exactly how long, but anyway from two to five months, I cannot say which now.

Q. And as the result of your own observation, and as you received the reports from these people, from that information and those reports, you determined to take this license, did you?

A. I did not go by his reports, I simply sent him there so that he could get his experience; I sent him there for the purpose of learning their process of manufacture—

Q. And as a result of his training there, and the experience he obtained, he went on with the experiments afterwards?

A. As the result of my investigations and the experience he gained and the knowledge he obtained, I went on with the experiments.

Q. And did you organize a company?

A. No, sir; it was a company that had been organized for a number of years, and which company I represented; that is, I was one of the directors.

Q. And what was the name of the company?

A. The Lancaster Slate Company.

Q. And it was taken as an adjunct to the slate business, was it?

A. I had a big pile of slate refuse there, which I wanted to utilize if I could.

Q. And if you had been able to utilize it and make brick from it, as good as the samples you had seen, in your judgment, would it have been a profitable undertaking for your company?

A. I think so.

Q. And in point of fact, the handling of the material would have been the cheapest way of getting the material to be made into brick, that is known, would it not?

A. The handling of what material?

Q. The reduction of the slate on the ground there?

A. Yes, sir.

Q. And if you could have pulverized and handled it in the kilns there, you would have avoided all the expense of excavation and handling, and assuming that it had been a successful operation, it would have been a very cheap way of making brick, would it not?

A. Hardly—I would not say that.

Q. Would it not have been cheaper to have used this refuse slate right there at your door, than to have gone elsewhere and dug the clay, and hauled it to your works?

A. In my case it would; the clay was handy at my door, and I would not have had to handle it very much.

Q. Did you experiment at all, with a mixture of clay and slate?

A. I did.

Q. Did that succeed?

A. Well, it was better than the other.

Q. What number of bricks did you make altogether?

A. About 100,000, more or less; I would not be certain as to the number.

Re-direct by Mr. Kirkpatrick:

Q. Your company, making these bricks there, and making these experiments, in addition to Mr. Canfield, being there with you, you sent a man there who remained there seven or eight months, and then you sent Mr. Cole there, who was there seven or eight weeks—now, was Mr. Dietrich there?

A. Well, now, I don't remember whether he was at the works or not, but I remember he was there at Phillipsburg; I know he was there at Phillipsburg.

Q. Did you have a competent workman at the place in charge of the work?

A. We presumed we did.

Q. You employed men whom you assumed to be entirely qualified in that respect?

A. Yes; and if we could have made the bricks out of the slate refuse, we had in our possession the material, which could easily have been pulverized, and besides that, we were entirely organized and fitted up in every possible way to enable us make it a success.

Stephen Deitrich, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath, saith:

Examined by Mr. Kirkpatrick:

Q. Where do you live?

A. Allentown at present.

Q. You formerly lived in Easton, Pa.?

A. Yes, sir.

Q. And what was your occupation?

A. A brick maker.

Q. A brick maker?

A. Yes, sir.

Q. And how long had you followed that business?

A. All my life time.

Q. And how old are you now?

A. Fifty-five.

Q. Were you in the employ of the American Brick and Tile Co. in the year 1886 or 1887?

A. Yes, sir.

Q. When did you go there?

A. In 1887.

Q. What part of the year?

A. The fall of 1887.

Q. In the early fall?

A. Well, along up by October, I think.

Q. Might it have been sooner than that?

A. I cannot tell you.

Q. Well, about that time?

A. Yes, sir; I think about that time.

Q. And you cannot fix any dates?

A. No, sir.

Q. In what capacity were you there, brick burning?

A. Yes, sir; I was there engaged in brick making, brick burning.

Q. What did you have charge of particularly?

A. I had charge of the brick burning and the setting.

Q. Do you remember at that time—or I will ask you to state whether or not they were using the kiln spoken of as the "Simpson kiln"?

A. Yes, sir.

Q. What were the characteristics of the kiln; was it the down-draft?

A. One was the down-draft and the other was what was supposed to be the up-draft.

Q. But they were called the "Simpson kiln"?

A. Yes, sir; the Simpson kiln; that is what they called them.

Q. How long were you there?

A. I worked there, I suppose, three years.

Q. That would be from 1887, sometime, until 1890?

A. Until I went to Massachusetts to Mr. Salmon.

Q. What was the experiments, and what was the result of the attempt to burn the bricks, with what was known as the Simpson kiln, that you found there when you first went there?

A. Well, out of 100,000 brick burned there was no more than 75,000 brick that was good for anything, while in the Simpson kiln there was none good at all.

Q. None good?

A. No, sir; none good.

Q. How long was that used after you went there; that is, what was called the Simpson kiln?

A. Well, they tore it away just after I got there.

Q. Shortly after you got there they tore it away, did they?

A. Yes, sir.

Q. Was that a success or a failure, so far as the burning of brick was concerned?

A. A failure.

Q. What kind of a kiln did they put up after that?

A. A regular Dutch kiln; same as they have here in use in Trenton.

Q. Same as they burn the ordinary clay brick in?

A. Yes, sir; same as they burn the ordinary clay brick in now.

Q. How long had they been using the Simpson kiln you do not know, but you found it there when you came there first?

A. Yes, sir; I found the Simpson kiln there in use when I first went there, but how long they had been using it before that I cannot tell you; I don't know.

Q. Do you remember the bricks being made from pulverized slate refuse?

A. In the Simpson kiln?

Q. In any of the kilns over there that you found at work there?

A. Yes, sir.

Q. And that was the patent under which the company was operating?

A. Yes, sir.

Mr. Dickson—I object to this line of examination as immaterial.

Court—What is the object of this examination?

Mr. Kirkpatrick—The object of this examination, your Honor, is to answer the evidence they have put in, that they were making brick out of this material, this pulverized slate, under the process described, and that it was a successful process. Now, if your Honor please, we want to show that it was not a successful process, and that they did not have any success at all in the manufacture of brick, but, on the other hand, that it was an entire failure. Now, the distribution of the stock was made on the 27th of September, 1887, and your Honor will, no doubt, remember that this very question came up on the examination conducted by Mr. Lindabury, and he insisted upon putting it in, because he said that they had the right to show that they had a good thing, that it was a valuable thing, and that it was a good business enterprise.

Court—I will take the evidence.

Mr. Kirkpatrick:

Q. This brick that was made was made under what is called or known as the Dickson patent; that is, the making of brick from slate refuse?

A. Yes, sir.

Q. Now, what was the result of the burnings from time to time; how often and how many brick were burned at a time; explain that, please?

A. Well, some kilns were set with 100,000 brick, and some were set with as high as 200,000 brick.

Q. And what was the proportion of bricks that were lost, that were no good?

A. Well, as I said before, out of 100,000 brick you would get out 75,000, the other part was no good at all, and they were not—that is, the 75,000 brick were not what you would call saleable brick.

Q. The 75,000 brick that came out were not saleable?

A. No, sir.

Q. Were there some good bricks that might be picked out here and there?

A. Yes, sir; there was a few brick that you could pick out here and there that were fair, and then they were set over in another kiln—

Q. Now in your judgment as a practical brick maker, and from your knowledge and experience as a practical brick maker, was the brick made there by that process during the time you were there, was that a success or not?

A. It was a failure.

Mr. Dickson—I object to this evidence as immaterial and incompetent.

Court—I will take it.

Mr. Kirkpatrick:

Q. It was a failure?

A. Yes, sir.

Q. And what was the difficulty with it?

A. Well, because they would not stand the pressure.

Q. They would not stand the pressure—describe more fully?

A. Well, now, you could not go to work and set a kiln of brick there without you set them damp; if you set them dry then they would come right down on you, and they would all go to dust—

Q. And you say, out of 100,000 brick set, in the kiln, at least 25,000 of them were utterly worthless, and that the other 75,000 brick were not saleable brick?

A. Yes, sir; at least 25,000 of them were entirely worthless, and the balance were not what you could call a saleable brick; they were either badly shaped or the edges and corners broken and pulverized—

Q. Could the brick be made in that way, out of this waste material, and the kind of bricks that were made, could they have been made at a profit or not?

A. No, sir.

Cross-examination, by Mr. Dickson:

Q. During all the three years you were there, you never made any good brick?

A. Oh, they made some brick there that you could use, but they were not such brick that would stand the pressure—

Q. Did you see the brick that were put in the Wilbur Trust Company's building at South Bethlehem, Pa.?

A. I did not.

Q. You did not burn them?

A. No, sir; I did not see them.

Q. Did you burn them?

A. I burned them; yes, sir.

Q. These bricks that were used in the building of that building, are there yet?

A. Yes, sir.

Q. Now, did you burn the brick that was put into the Reading Terminal building?

A. Probably I did.

Q. And the Reading Terminal still stands, does it not?

A. That can be so.

Q. Had you ever had charge of any brick work as an independent operator yourself, before going to Phillipsburg?

A. Yes, sir; I think I had.

Q. Where?

A. Me and my brother were in the brick business for years before—Dietrich & Brother.

Q. And running your own kilns?

A. Yes, sir; running our own kilns.

Q. How many bricks did you make?

A. Well, we made brick as high as 2,000,000 brick a year; that is, out of clay, not out of refuse slate.

Q. How many burnings would you have in the course of a year, while you were at Phillipsburg?

A. Well, I cannot just exactly say.

Q. And you went on during three years making no good brick?

A. I didn't say "we didn't make no good brick"—I say that out of 100,000 brick 25,000 was no good.

Q. And then you said, as I understood you, that the 75,000 were not marketable?

A. Well, they sold them; I don't know where they did sell them, or where they got to; I don't know really what they done with them.

Q. They sold them, didn't they?

A. Yes, sir.

Re-direct by Mr. Kirkpatrick:

Q. What was the quality of the brick that was sold?

A. Some were sold for paving brick and some for building, but the first lot that was sold to any one, after they got them, they never came back for any more.

Q. Were they as good as ordinary brick made from clay for the same purposes?

A. No, sir; why, no; I think they all of them understood that they were not.

George Cole, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath, saith:

Examined by Mr. Kirkpatrick:

Q. What business are you engaged in?

A. My business was the brick business up to about nine years ago.

Q. Until nine years ago?

A. Yes, sir.

Q. You live at Phillipsburg, N. J.?

A. Yes, sir.

Q. Were you in the employ of the American Brick and Tile Co. in 1886?

A. Yes, sir.

Q. When did you go into their employ?

A. I went there in 1886.

Q. What time of the year?

A. In the forepart of May.

Q. In what capacity—what position did you occupy there?

A. At first I went there, it was for the running of the brick machines, and then I was put in as foreman.

Q. And you continued in the employ of that company as foreman until what time?

A. I was there some nine years, until we quit making slate brick.

Q. Prior to that time had you had experience in the making of brick?

A. Yes, sir; I had made brick for thirty years; that was my business.

Q. You had been making brick for thirty years?

A. Yes, sir.

Q. Do you remember what kind of kiln was used there in the early part of your stay there?

A. The first kiln we used was the Simpson patent kiln, that he had there, and there was Mr. Canfield there, and there were two other different kilns; one was called an up-draft and the other was a down-draft kiln.

Q. And under whose supervision and direction were they worked?

A. Well, Mr. Canfield's.

Q. He was there at the time?

A. Yes, sir; he was there at the time.

Q. And what positon did Mr. Canfield hold there?

A. He was supposed to be the superintendent.

Q. And you were the foreman?

A. Yes, sir.

Q. Were there any burnings of brick in these kilns?

A. Yes, sir; we set these kilns, but they never would prove satisfactory; they never gave any satisfaction at all; we never burned any satisfactory bricks in these kilns.

Q. What was the effect of these kilns upon the brick?

A. They would not burn the brick.

Q. They were given a fair and full trial, were they?

A. Yes, sir.

Q. And for how long a time?

A. Well, they would burn continuously for six and seven days and nights.

Q. And for a whole year they were used?

A. Yes, sir; they were used a year or a year and a half, or something like that, and then they were just torn down.

Q. And then they were discarded for what reason?

A. They would not burn any brick.

Q. What became of the bricks they did burn, or attempt to burn?

A. Well, part of them, when we opened the door of the kiln, they would fall out and go into broken, pulverized slate again; that is they were not hard enough.

Q. And then what did you do?

A. Then we got some patent kiln for the burning of ordinary brick—an ordinary brick-burning kiln, just the same as is used in the clay brick burning—

Q. And what process did you use after that?

A. Well, we had a pretty bad process—

Q. You had the process of brick made from slate refuse?

A. Yes, sir; we had the process of brick made from slate refuse, but it was a failure.

Q. Explain how it was a failure?

A. Well, out of 100,000 brick we made, we might get 75,000 out to sell; that is, by picking them out we had some good brick in the whole lot.

Q. But what was the general quality of the 75,000 brick you mentioned?

A. Well, some of them would be very soft or would melt or pulverize, and the ends of them would be broken off, or the bricks would be broken in half, or something like that.

Q. But you could pick out some good brick?

A. Yes, sir.

Q. How many good brick do you suppose you could pick out?

A. Well, it is pretty hard to tell you that. Out of 100,000 brick you might get 50,000 that would do to lay up on the outside, or something like that.

Q. You burned these brick under the Dickson patent, did you?

A. Yes, sir.

Q. That is, under the patent for making brick from slate refuse?

A. Yes; we called them slate brick.

Q. What was the result as to success or nonsuccess in the burning of brick during the years 1886 and 1887?

A. Well, it was not very good, there was one year just about as good as the other, I cannot tell which year it was, but there was a slight difference in one year, but it was not very good until we got the dry process brick machine in; it was a failure entirely, you might say.

Q. So that, you would say, that the burning of these bricks, made of this refuse slate under this process; that is, for the purpose of merchandising them, was it a success or a failure?

A. A failure.

Q. You considered them a failure?

A. Yes, sir; it was a failure.

Q. How long was Mr. Canfield there as the superintendent?

A. I cannot say rightly, but I think he was there three or four years.

Q. Three or four years?

A. Yes, sir; I think so.

Q. So that during all this time, in 1886 and 1887, and beyond that, Mr. Canfield was there in charge, as superintendent?

A. Yes, sir; he was superintendent, and I went under his direction.

Q. Do you remember that some of these bricks were used at South Bethlehem, and went into a building there?

A. Yes, sir.

Q. How were these bricks selected?

A. We sorted them all out; we had to sort them all out.

Q. How about the Reading Terminal building?

A. We sorted them all out, the good from the bad, we had to sort them all out.

Q. They were all sorted out of the kiln?

A. Yes, sir.

Q. How much of that kind of brick would you use?

A. Well, as I said before, out of 100,000 brick, we would not get over 50,000 that we could lay on the outside of the building.

Q. And what became of the other brick?

A. Well, we sold them wherever we could; we sold them to Blairstown, or a good many of them.

Q. What did you sell the other for?

A. We sold them as low as $5 to $7 per thousand.

Q. And they were used to fill inside the walls?

A. Yes, sir; they were used as inside filling.

Q. What became of the 25,000 brick that you say was no good at all?

A. Well, they would be all broken to pieces, or all pulverized material, and of no good at all; they were all melted, and all in big clinkers.

Q. And what became of them?

A. They threw them in the dump and sold them, or some of them, for $1.00 a load.

Q. Was this state of affairs existing all during the years 1886 or 1887?

A. Yes, sir; that condition of affairs existed as long as I was there.

Q. What was the difficulty, if any, about the color of these bricks?

A. Well, they would not burn a good color, they would be white, and one time we got some ore sand and burned it with them, and rubbed the brick on the outside, before we put them in the kiln, and they then

looked a pretty good color, but they turned a bad color afterwards.

Q. Was there any difficulty to anyone going there and ascertaining any of these facts, if they had wanted to do so?

A. No, sir.

Q. The process was conducted openly, was it?

A. Yes, sir; any one could go right in and see all about it.

Q. And see the result of the burning process?

A. Yes, sir.

Q. And you say also there was a difficulty with the color; was there any difficulty of the tendency of the bricks to warp?

A. Well, when we pressed them by the hand-press, they would bulge up in the middle. Now, in making a clay brick, if you press it, it will bulge up, and then go back again to its proper shape, but these would not.

Q. Was there any tendency to crumble?

A. Yes, sir; you could mash them up with your fingers—that was, in the dry process of making the brick, they would crumble and go into dust.

Q. Now, this condition of things, this proportion of the burnings that were thrown away, or were no good, and the proportion of bricks that were retained, that were to some extent usable, that continued, you say, all the time you were there?

A. Yes, sir.

Q. And you left there, you say, in what year?

A. Well, it is about nine years ago; between nine and ten years ago.

Q. And that condition of affairs continued during all that time?

A. Yes, sir.

Q. And you left there nine or ten years ago?

A. Yes, sir.

Q. Now, do you remember going up to Pennsgrove, Pa.?

A. Yes, sir.

Q. What year was that in?

A. That I cannot tell you; I cannot tell you what year it was.

Q. But you remember going up there?

A. Yes, sir; I was up there, but I cannot tell you what year it was I went.

Q. At that time the company had already been formed, and they were then trying to make these bricks out of this pulverized slate, were they?

A. Yes, sir; they were making what we called a soapstone brick, there was a kiln there at the time, but I do not remember the kind of kiln it was, but it all fell down into dust.

Q. Did you make any other sample of brick there?

A. I made about a dozen or so, and I found that I couldn't make it go, and so I left.

Q. From your judgment and knowledge of the business and from the experiments you tried, was this making of brick from this patent, or on this patented process from the slate refuse—was that a practical and successful or unsuccessful thing?

A. I do not consider that it was a successful business. We tried as hard as anyone could try; we tried everything we knew, and we had two or three other good brick burners there, and we could not do anything with it; we tried other burners; we had a man there from Phillipsburg, and he couldn't do anything with it, they all fell down on me and him; they fell down on him whenever he was setting them, and we could not do anything with them—

Q. In your case was it a success?

A. No, sir; it was not a success, and I don't think it could be done; you could make some good brick, but the proportion of brick that was good was very small—

Q. But you could make some good brick?

A. Yes, sir.

Q. And these good brick were the brick that went into these buildings that have been spoken of?

A. Yes, sir.

Q. Now, do you remember the brck that went into the building of the Reading Terminal?

A. Yes, sir; I think those were enameled brick.

Q. Do you remember about those brick?

A. Yes, sir; I remember that a good many of them split—

Q. Were any complaints made of those brick?

A. Yes, sir; I heard them make complaints about those brick. Mr. Wilson sent word up that there was complaints there (interrupted)—

Mr. Dickson—I object; he cannot tell what was said by Mr. Wilson.

Court—He said that he heard complaints, he is not giving the conversation.

Mr. Kirkpatrick:

Q. Did you go up to work for Mr. Salmon?

A. Yes, sir.

Q. Where was that?

A. In Massachusetts, at Stillriver.

Q. Do you remember what year it was?

A. I cannot tell you what year it was.

Q. Was it shortly after you got through—

A. It was two years after I went up there.

Q. What did you do there?

A. I did not do anything much; I went up there and fixed there brick machines and got them in good shapes and I told Mr. Salmon it was no use my staying there, and I left.

Q. Did you try to make bricks there from this slate refuse?

A. No, sir; I did not try it there; I tried it below and couldn't do it, and I told him it was no use, and I left there.

Q. Do you remember about his sending some slate refuse down there and making bricks from it?

A. Yes, sir.

Q. How was that?

A. Well, of course, the first I made it all lay in a heap of dust in the kiln, and I then went to work and I set them up again, and I boxed them all up inside, so that there would not be any weight on them, and then they came out pretty nice, and the last lot that was made, we put some of our own slate refuse into it, and they all crumbled up; I didn't do it myself—

Q. You did not do it?

A. No, sir.

Q. These brick were specially fixed for the purpose of making good brick out of them, were they?

A. Yes.

Q. Was there any special direction given to you as to how you should make these particular bricks?

A. Yes, sir.

Q. And you say the bricks that were made from the slate refuse sent down there from Massachusetts went all to pieces?

A. Yes, sir.

Q. And the bricks you say you made that were good, they were made from special material, were they?

A. Yes, sir.

Q. That was their own material you used on them?

A. Well, the first I put in I set them up four or five high, and they all mashed down into a heap of dust, and the others I set them up so that there was no weight on them, and as I said before, they all came out pretty nice.

Q. But if there had been any weight on them, what would have been the result then?

A. They would have gone down into dust same as the others, we had to stop burning the brick in the bottom, so as to leave that to collect the waste.

Q. But without this special preparation, they would have gone down into dust also?

A. Yes, sir.

Cross-examination, by Mr. Dickson:

Q. How many years were you there, do you say?

A. I think I was there nine years, or about that.

Q. And drawing your salary all that time?

A. Yes, sir; I got my pay.

Q. And you were making, during all that time, the good brick that went into the Wilbur Trust Company building?

A. Yes, sir.

Q. And into the Reading Terminal?

A. Yes, sir.

Q. And that were used in the Lehigh Valley building?

A. Well, some was used at Easton in the Lehigh Valley station, and the Central Railroad station.

Q. The Lehigh Valley station?

A. Yes, sir; and the Central Railroad station.

Q. They are all there yet?

A. Yes, sir; they are there.

Q. They are first rate brick, and looking well, are they not?

A. Of course, I cannot say as to that now.

Q. The buildings were there, and they were good brick?

A. I guess it holds up all right.

Q. Something was said about some of this brick being used for paving?

A. Yes, sir; there was some of this brick used for paving in Easton.

Q. How did they stand?

A. They did not stand, they were taken out.

Q. In point of fact, paving brick ought to be baked very hard, should they not?

A. Yes, sir.

Q. And the wear and tear on a brick pavement is very much greater than if they were put into a building?

A. Yes, sir.

Q. As a result of your operations there, they thought it worth while to send you to Pennsgrove, Pa., to superintend the operation up there, did they not?

A. Col. Fuller came up there himself for me—he came up there himself—

Q. Where?

A. To Phillipsburg—he came up there after me and he said, "You make them here, why cannot you make them up there for me"?

Q. And so did Mr. Salmon, didn't he?

A. Yes, sir; he came up there after me, also.

Q. And he came and saw you making brick there, didn't he?

A. Yes, sir.

Q. And as a result of what Colonel Fuller and Mr. Salmon saw, and what you said to them, you went to each of their places, you say, to show them how to make them, didn't you?

A. Well, I went up there; I did not show them; they were at it when I got up there.

William Bray, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath, saith:

Examined by Mr. Kirkpatrick:

Q. Where do you live?

A. East Bangor.

Q. You are in the slate business?

A. Yes, sir.

Q. What is your capacity?

A. Superintendent of the East Bangor Consolidated Slate Co.

Q. A very large slate company, is it not?

A. Yes, sir.

Q. Are you interested in the ownership of the company?

A. Yes, sir.

Q. What official position do you hold in regard to the National Bank of East Bangor?

A. I am the president of the Merchants' National Bank of East Bangor.

Q. You were acquainted with Judge Green and were acquainted with Judge Paxson and the other gentlemen interested in the American Brick and Tile Co., were you not?

A. Yes, sir.

Q. For how many years?

Mr. Dickson—What is the object of this evidence?

Mr. Kirkpatrick—I wish to show a statement, or declaration, made by Judge Green, when he was trying to interest Mr. Bray and others in the company, as to what the Dickson patent cost them.

Court—I will receive this evidence as to Judge Green; it will bind him unquestionably, but I will not receive the evidence as to the others; declarations by Judge Green cannot bind the others.

Mr. Kirkpatrick:

Q. Do you remember at any time, in the years 1886 or 1887, Judge Green making any effort to interest you, or any other persons connected with your slate quarry, in the manufacture of these brick made by this American Brick and Tile Co.?

A. Well, yes sir.

Q. When was this, about when?

A. I think—well, in the year 1887—let me take a little explanation—

Mr. Dickson—I object to this; Judge Green is dead and is no longer here to defend his memory, and I think this evidence is clearly immaterial and irrelevant.

Court—Mr. Fred. Green is Judge Green's executor; he has been a witness in this cause and testified to everything that his father said or did, and in that way he has opened the door to the admission of all this class of evidence; I think the evidence is competent and will take it.

A. In the year 1887 I was building a house and Judge Green requested me to come to Phillipsburg to look at this brick, and I went down there in the month of May, if my memory serves me right, in 1887, and I had a look at the brick. Being a slate man, I was very anxious to have a slate brick house, and Judge Green stated to me that it was a sort of—well, they hadn't got the thing down yet as fine as they wanted it—well, I objected to the brick, first, because of the poor corners of the brick; second, because of the different colors, and the third objection was because of the rumpy back, or rounded back of the brick, and I came home and did not purchase the brick.

Well, on the last Saturday of July of that year, which was our semi-annual directors' meeting, and Judge Green was present at the meeting, and he said to me that he wished me to buy this brick; he said they were much improved since I was there, that the last kiln had turned out very nicely, and, more than that, he said: "We want you gentlemen to be interested in this affair." And he said: "While the thing had gone on as far as they had they desired to prove what they had—yet he thought they had a good thing, and we were led to understand—

Mr. Dickson—I object to the understanding—what was said?

Court:

Q. What did he say?

A. He invited us to join them, some time in the early future, and he stated "that we should come in on the ground floor." I did not understand at the time—

Mr. Dickson—I object to the understanding.

Court—I will take it.

A. We were informed that we could come in on the ground floor, and it was told us by Judge Green, that the money that was being expended was for experimenting, and going ahead with the business.

Mr. Kirkpatrick:

Q. Now, what was said, if anything, about the patent for making the brick from slate, as to whether it cost anything, or how much?

A. He stated that he had secured a patent from some party, I don't remember the name now, and he said that it had been used in making the brick for a tunnel—well, the information drawn, was not to my mind, that the patent was not on the brick, but that the patent was simply a patent on the process of making it.

Q. What did they say as to whether they paid much or little for it?

Mr. Dickson—I object to the question as leading.

Court:

Q. You may tell all that was said by Judge Green about the patent or the manufacture of bricks?

A. I have just said it.

Q. If there is anything more, tell us, but do not repeat it, if you have already told us?

A. We were told that we could come in on the ground floor; that he had secured this patent at a very low price—at a low price—

Mr. Kirkpatrick:

Q. Now, that you say was in the spring or summer of 1887?

A. That was the last Saturday of July in the year 1887.

Q. Did you, after that, get some of this brick?

A. I did.

Q. You never got any of the stock of the company?

A. No, sir; I did not want any.

Q. What was the result of the use of the brick that was sent up there?

A. I used the brick that was sent up, after objecting to them, and was told, after they were put in the wall, that they would look much better than they did, after they were put in, and as an outcome of it, I used it, and in two years after I had to paint the building, and I have been painting it ever since.

Q. What was the shape or condition of the bricks that were put in the building?

A. They were rounded.

Q. That is, they were warped?

A. Yes, sir; they were warped, and the plaster would not lay even between each course.

Q. This was what kind of house you put these bricks into?

A. My own residence.

Q. Were they satisfactory or not?

A. They were not satisfactory.

Q. Would you consider them as saleable bricks or not?

A. Saleable for some purposes.

Q. But whether or not, were they saleable for pressed brick?

A. No, sir; not for pressed brick.

Cross-examination by Mr. Dickson:

Q. Judge Green was the president of your slate company, was he not?

A. No, sir.

Q. Was he connected with it?

A. He was a director.

Frederick Green, being recalled in behalf of the complainant, saith:

Examined by Mr. Kirkpatrick:

Court—What do you want to show now?

Mr. Kirkpatrick—I want to show that there is a statement in the handwriting of Mr. Fred. Green, showing what the cost of the brick was, and what the brick sold for in the year 1889. I want to show this to meet their case, in which they have undertaken to show that they could manufacture brick at six or seven dollars a thousand, and sell them for seventeen or eighteen dollars a thousand. Judge Paxson testified to that; he said that that was done when he went there at different times.

Court—Cannot you ask the witness the question about it, without showing him the paper?

Mr. Kirkpatrick—It is a statement that I did not know we had until we found it among the papers of the receiver; it was overlooked, and I would like to have the witness testify to it.

Mr. Dickson—If you say you overlooked the paper I will withdraw my objection.

Mr. Kirkpatrick—I never saw the paper until just now; it has been entirely overlooked.

Q. Just look at this statement, which is in three sheets; is that in your handwriting (handing papers to witness)?

A. Yes, sir; it is in my handwriting.

Q. In a general way, please state what it is?

A. It is a statement made up from the books of the company, showing the sales for that year and the costs for that year, and striking an average.

Q. Did you make the statement for the purposes of the company at that time?

A. Yes, sir; to show what we were doing that year.

Q. Does it contain a statement of the average cost and the average sale per thousand?

A. Yes, sir.

Q. How much was it—what was the average cost per thousand for the year 1889?

A. According to this statement the average cost per thousand was $11.69.

Q. What was the average cost of the sales?

A. The average price received per thousand of the sales was $12.58.

Cross-examination by Mr. Martin:

Q. What year was that for?

A. That is for the year 1889.

Mr. Kirkpatrick:

Q. That statement was made up to that time?

A. It was made up shortly after the close of the year 1889; that would be after the 31st of December, 1889, shortly after.

Q. That was found among the papers in this cause?

A. Yes, sir; I found it among the papers.

Court:

Q. I see this statement says "Cash sales." Did you have any sales that do not appear in the cash account?

A. In the book accounts.

Q. Where are they?

A. Down at this end, "cash received, sales of 1889; cash received in Dr. cash account, accounts due, cash sales, and cash received in trade."

Q. What do you mean by "Add accounts due;" is that all that was due according to your books?

A. Yes, sir; there was $1,295.08 of accounts due; that was all that was due to us at the end of the year.

Mr. Kirkpatrick—I offer those statements in evidence and ask that they be copied into the record.

Statements marked, respectively, *Exhibits E 14, E 15,* and *E 16.*

Copy of *Exhibit E 14.*

"Manufacturing Account.

Sales 1889, ...	895,916	
Manufactured 1889		
Best Pressed	631,900	
Standards	155,300	
Common	181,000	
	968,200	
Cost of Manf.		
Cash Pd. Labor & Material &c.....		10,014.44
Add. Coal.....		869.67
Old Bangor Slate Co. Bal.....		41.43
R. D. Wilson, Bal. Sal.....		246.28
		11,171.82
Add. Dec. pay. Pd. Jan. 90,..	93.32	
" Bal. Comm. Neuer...	50.–	
	143.32	
		11,315.14
Average cost per M. $11.69		
Cash recd. sales of 1889.....		9,116.18
Add. Cash recd. in trade.....		199.46
" Accts. due.....		1,295.08
" Cash sales.....		193.86
" due from Ritter.....		35.48
" sales to H. Green.....		433.72
		11,273.78
Average price recd. per M.....$12.58"		

Copy of *Exhibit E 15:*

"Cash account 1889.

Jan. 1, 1889. Cash on hand, ...	173.01
" recd sales of 1888, ...	2,709.11
" recd sales of 1889, ...	9,116.18

Jan. 1, 1889. Cash recd loans, ..		8,150.00	
" " sundry items, ...		210.74	
			20,359.10
Cash sales, ...			193.86
			20,552.96
Cash paid.			
Cash paid const. acct. 1888, ...		496.71	
Cash paid Manf. acct. 1888, ...		2,505.04	
			3,001.75
Const. acct. 1889, ...			2,539.70
Int. on loans "			1,069.94
Loading sand "			83.52
Manf. acct. "			10,014.44
Loans repaid, ...			3,300.00
			20,009.35

(In pencil)

Jan. 1-90 Cash on hand 181.24."

Copy of *Exhibit E 16:*

"1889"

	Best	Stand	Pav.	Hard	Salm.	Clinker	Shapes
Jan.		4250	8000		600		
Feb.		650					
Mch.	31000	460		250		1200	
Apr.	126725	900	8500	2750	2800	1100	
May	60240	600	800	5450	5800	1725	
June	41282	3000	425	3700	500	700	2352
July	87270	40550	500	20300	11000	15680	9027
Aug.	37825	5450	250	1100	7100	3435	800
Sept.	35300	20	4000	950		200	1000
Oct.	55000	10250	3600	6000	19000		
Nov.	20200	32600	3600	7200	54000	300	250
Dec.	12500	12000		12900	49000		
	507342	110730	29675	60600	149800	24340	13429

(In Pencil)

"895,916."

Cross-examination by Mr. Martin:

Q. Do these represent the actual cost and sale prices for the year?

A. Yes, sir; taken from the books.

Q. Is it correct?

A. Well, I went over it carefully; I recollect making this statement at that time, and I went over the cash book, and took out the various items that applied to the different accounts and totaled it, and I think it contains all the items from the cash book for that year.

Q. You think it is correct?

A. Yes, sir.

Q. Was that ever sent to the directors?

A. I cannot say that; I handed it to my father, I think, in the house, and I don't know what became of it after that; I found it among my papers.

Q. Was any statement of that kind made every year?

A. I recollect making several statements at the end of a year, but I cannot say that every year I made up a statement of that kind.

Q. Can you recall what the result of the several statements was that you made?

A. I have a sort of impression that the profit for one of the years was less than a dollar; that is all I can remember about it.

Mr. Kirkpatrick:

Q. One dollar on a thousand brick?

A. Yes, sir; the impression I have is that the profit was less than one dollar per thousand.

Mr. Martin:

Q. Do you recall whether you made more than that one statement, or not?

A. No, sir; I recall that I made one or two statements, but I cannot tell you how many I did make.

Edward M. Paxson, being recalled for further cross-examination, saith:

Cross-examined by Mr. Kirkpatrick:

Q. Do you remember, Judge Paxson, that I asked you with reference to a letter, whether a letter was received by you from Judge Green, about August 23d, 1898, addressed to you, containing an enclosure of a report of a firm of auditors, and wherein anything was said with regard to the payment of assessments, or moneys for the purpose of clearing up or paying off the liabilities of the company?

A. I do not remember now.

Q. You stated, in reply to my request as to whether you had such a letter, that you would make a search—did you make a search for such a letter?

A. No, sir; no; I entirely forgot it; it escaped my memory entirely; I am sorry for it, but I have entirely overlooked it.

Q. You did not make any search for it?

A. No; none at all.

Q. Do you remember a letter received at or about that time of which the letter now shown you is a copy, or alleged to be a copy, containing the matters set forth in this letter?

A. I have no recollection of ever receiving any letter like that. I do not say that I did not receive it, but I have no recollection of it.

No cross-examination.

It is admitted that the envelope heretofore marked *E 11* for identification is in the handwriting of Judge Green. Envelope being offered in evidence, is marked *Exhibit E 11*, and reads as follows:

"Aug. 23, 1898, mailed a copy of the enclosed letter together with a copy of accountant's statement, to Hon. Edward M. Paxson, Holicong, Bucks Co., Pa."

Frederick Green, being recalled in behalf of the complainant in rebuttal, saith:

Examined by Mr. Kirkpatrick:

Q. Look at this letter, marked *E 17* for identification, and the envelope in which it is enclosed, marked *Exhibit E 11*, and state whether you found these among your papers, and what papers you found them among?

A. I found this envelope, with the letter enclosed in it, among the papers of the American Brick and Tile Co. in the office of that company.

Q. And they are both in the handwriting of your father?

A. Both of them are in the handwriting of my father, both the letter and the endorsement on the envelope.

Mr. Kirkpatrick—I offer this letter in evidence; the envelope is already in evidence.

Mr. Dickson—I object to the offer as not binding upon Judge Paxson.

Court—I will receive it so far as it relates to Judge Green.

The handwriting of the letter is admitted to be that of Judge Green. Marked *Exhibit E 17*, and reads as follows:

"The Supreme Court of Pennsylvania.

EASTON, Aug. 23, 1898.

Hon. Edward M. Paxson,

Dr. Sir—In accordance with your request I enclose copy of statement of the affairs of our Brick Co. made by the accountant employed for that purpose. The Easton Bank has given notice that they require payment of their notes and will doubtless soon receive similar notices from the other creditors. As we have never paid in but a trifling part of the capital stock ($6.67 per share on a par of $100 per share and a small assessment partly paid), and made the very grave mistake of borrowing money to pay in part for the construction of the plant, and for carrying

on the business entirely. I know of no response we can make to the demands of our creditors, except to raise the money and pay them. This is what we are clearly bound to do, both in law and in honor, and what we will certainly be compelled to do if we do not do it voluntarily.

Yours truly,

H. GREEN."

John Lewis Hendricks, a witness produced in behalf of the complainant in rebuttal, being duly sworn according to law, on his oath saith:

(Examined by Mr. Shipman.)

Q. Where are you employed?

A. In the Department of State.

Q. In the Secretary of State's office?

A. Yes, sir.

Q. Have you made a search for the certificate of incorporation of the American Brick and Tile Co.?

A. Yes, sir; I have made a thorough search of all the records in the office of the Secretary of State.

Q. And what did you find?

A. I found only the original certificate of organization.

No cross-examination.

John I. Firth, a witness produced in behalf of the complainant in rebuttal, being duly sworn according to law, on his oath saith:

(Examined by Mr. Shipman.)

Q. You live in Phillipsburg?

A. Yes, sir.

Q. And conduct the clerk's office of Warren county as deputy clerk?

A. Yes, sir.

Q. How long have you held that position?

A. Four years.

Q. Have you made a search in the clerk's office in the county of Warren for the certificate of incorporation of the American Brick and Tile Co.?

A. I have; yes, sir.

Q. What did you find?

A. I found one certificate of incorporation.

Q. And that is the original certificate of incorporation?

A. Yes, sir.

No cross-examination.

Mr. Shipman—In the record of the evidence in this cause I find this admission: "It is admitted that the facts stated in the answer of Charles A. Mayer shall be taken as proof"—and he goes on and reads a portion of the answer as follows: "He avers that he never subscribed for any stock in said corporation. Respondent avers that he became the holder of one hundred shares of the capital stock of said company by a bona fide purchase from Henry Green, who at the time of the purchase was president of the company; that he paid for said certificate of stock twenty-five hundred dollars in cash, which was received by Henry Green at the time said certificate of stock was issued to respondent; that at the time the sale of said stock was made to respondent Henry Green represented that it was a good-paying stock, would be a profitable investment, and that respondent would incur no liability by reason of the purchase of said stock, as it was non-assessable, and no personal liability would be incurred."

Now, what I want to prove is that the stock was issued to Charles A. Mayer direct from the company, and there is no evidence from the stock book that it was ever transferred to him from Henry Green, but, on the contrary, that it was issued directly from the company to Mr. Mayer.

Court—Do the books show that?

Mr. Shipman—Yes, the books show that, but at the same time I want to prove and I make the offer to prove that fact.

Mr. Dickson—In behalf of Judge Mayer, I want it to go on the record that it appears in the handwriting of Judge Green that this stock did come from Judge Green to Mr. Mayer.

Mr. Kirkpatrick—I also desire to offer in evidence a certificate from the United States patent office, under the seal of that office, by the examiner of patents, showing the existence of an English patent, covering the process—that is, a previous prior English patent covering the process claimed to be patented in the Dickson patent.

Court—Does it say that it does cover it?

Mr. Kirkpatrick—No, but take the two patents and compare one with the other, it shows that it is the same process exactly. It is a certificate which is on file containing the entire specifications of the patent of the Thompson Evans patent, which was granted in England about the 1st of August, 1878.

Mr. Dickson—I object to the offer.

Court—I will receive the paper, it may be marked in evidence.

Marked *Exhibit E 18.*

Mr. Dickson—In connection with this last offer, I wish to offer in evidence an opinion of counsel in regard to the patent. I understand my friends on the other side have such an opinion, and I will ask them to produce it, and I will offer it in evidence.

Mr. Kirkpatrick—If we can find such a paper, we will produce it, and it can then be put in evidence.

Court—We will leave it in that way, then. If Judge Kirkpatrick does not produce the paper on the day set for the argument of the

cause, then you can put that evidence in, if you desire.

Mr. Kirkpatrick—Whatever papers have been marked for identification, we desire now that they should be offered in evidence and marked as exhibits in the cause.

Mr. Shipman—I offer in evidence a certified copy from the Clerk's office of the county of Warren, at Belvidere, of the certificate of organization of the American Brick and Tile Company; it is dated March 30th, 1886; recorded April 6th, 1886, in Book 2, at page 116.

Marked *Exhibit E 19.*

Case closed.

To be argued December 27th, 1904, at Trenton.

IN CHANCERY OF NEW JERSEY.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendant.
} On Bill, &c.

Proceedings of February 2d, 1905, at Trenton, N. J.

APPEARANCES.

Mr. George M. Shipman, for William M. Davis, receiver.

Mr. W. S. Kirkpatrick, of the Northampton County Bar, Pa., for Easton National Bank, a creditor.

Mr. R. V. Lindabury and Mr. Samuel Dickson, of Penna., for Edward M. Paxson, Charles A. Mayer, and E. P. Wilbur, individually, defendants.

Mr. R. C. Stewart, of the Northampton County Bar, Pa., for Fredrick Green, individually, and as executor of the estate of Henry Green, deceased.

Mr. W. H. Walters and Mr. E. J. Fox, of the Penna. Bar, for Easton Trust Company, Mary B. Knight, executrix, and Samuel W., William H., Elizabeth, Fletcher H., and R. S. Knight.

Mr. J. H. T. Martin, for Henry A. Potter.

Mr. James Buchanan, for E. P. Wilbur Trust Co., and Lehigh Valley National Bank.

Mr. H. M. Hagerman, for Henry Short, a creditor.

Counsel for the receiver offered in evidence the copy of a letter purporting to be written by Judge Green to Judge Paxson. There being no proof of mailing.

It is admitted that Judge Paxson would testify, if present, that he has made search for the original of the letter, and is unable to find it among his papers.

Argument.

EXHIBIT E 5.

$414.03

EASTON, Aug. 15 1886

Ninety days after date The American Brick & Tile Company promises to pay to the order of E. M. Teel Four Hundred and fourteen $^{03}/_{100}$ Dollars for value rec'd at the Phillipsburg National Bank N. J.

THE AMERICAN BRICK & TILE CO.
per H. GREEN, *President.*

[Endorsed.]

E. M. Teel.

EXHIBIT E 6.

[Stamped]
Discounted.

$181.80 EASTON, Sep. 17, 1892.

Sixty days after date we promise to pay one hundred and eighty one $^{80}/$ dollars to the order of Jos. Crossley at The Easton National Bank without defalcation for value received.

THE AMERICAN BRICK AND TILE COMPANY,
4264 Nov 19 per H. GREEN *Presdt.*

[Endorsed.]

Jos. Crossley.

[Stamp.]
For Collection for Account of the
Broad Street Nat'l Bank,
Of Trenton, N. J.
Robt. J. Brace, Cashier.

Pay to Order of
J. A. Bochman, Cas.
For Collection for Account of
on Nat'l Bank, Phila.
W. H. Carpenter, Cashier.

Phillipsburg Nat'l Bank,
Paid
Nov. 19, 1892.
Phillipsburg, N. J.

EXHIBIT E 7.

$102.06.

EASTON, July 2d, 1891.

Thirty days after date the American Brick and Tile Company promises to pay to the order of F. F. Drinkhouse at The Easton National Bank One Hundred and Two $^{06}/_{100}$ Dollars without defalcation for value rec'd.

THE AMERICAN BRICK AND TILE COMPANY,
per H. GREEN, *Presdt.*

[Endorsed.]

F. F. Drinkhouse.

EXHIBIT E 8.

176 Apl 18

$250— EASTON, Dec. 15 1890.

Four months after date the American Brick & Tile Co. promises to pay to the order of W. L. Gregg at The Easton National Bank at Easton Pa. To Hundred and Fifty dollars without defalcation for value rec'd.

THE AMERICAN BRICK AND TILE COMPANY,
per H. GREEN, *Presd't.*

[Endorsed.]

W. L. Gregg.

[Stamp.]
For Collection
The Nat'l Bank of the Republic
J. P. Mumford, Cashier.

Paid
Apr. 18, 1891
First Nat'l Bank,
Easton, Pa.

EXHIBIT E 9.

$2,000 EASTON, Dec. 28, 1889.

Four months after date the American Brick and Tile Company promises to pay to the order of Henry Green Two Thousand Dollars without defalcation for value received at The Easton National Bank.

THE AMERICAN BRICK AND TILE COMPANY,
Credit the Drawer per H. GREEN, *Presdt.*
H. GREEN.
Due May 1.

[Endorsed.]

H. Green,
Edward M. Paxson.

[Stamp.]
For Collection for
Account of the
Tradesmen's Nat. Bank.
Philadelphia.
Frank G. Rogers, Cashier.

EXHIBIT E 11.

W. A. Wilbur, Esq.,
South Bethlehem, Pa.

DEAR SIR,

Pursuant to your instructions we have made an audit of the accounts of The American Brick and Tile Co., and submit the following statements:

Resources of the Company from April 6, 1886 to May 9 1896, inclusive with their disposition.

Stock certificates outstanding May 9, 1898.

Cash receipts on account of capital stock issued.

Receipts on account of an assessment of $4.00 per share upon the Capital stock, payable in four installments.

Notes of the Company outstanding May 9, 1898.

Advances to the Companay by Judge Henry Green, May 9, 1898.

Advances to the Company by Mr. Fred Green, May 9, 1898.

In submitting these statements it is proper to say that the accounts of the company have not been kept in the manner customery among manufacturing concerns nor in such a way as to give information in detail. The cash book was not added or balanced, so that it was necessary to verify the receipts of money by the bank pass books. For many payments there are receipted bills on file, but not for all payments neither are bills arranged in the order of their dates. To arrange these bills in their order and verify all the payments by such bills in so far as the same might be found available, would involve perhaps two months work; as we understood that it was your wish that we should not go to the necessary expense for such an accurate statement of the accounts of the company we have contented ourselves with accounting for all moneys received in a general way and with showing the disposition of such moneys as far as possible. The classification of the disbursements given in our statements is only approvimately correct

as between the items of Construction and of Material and Labor, although the totals of these three entries should be accurate. In a general way also these disbursements were verified by the stubs of the check book, although this verification could not be had in every case.

Referring to the statement of stock outstanding, there were no records of such stock issued except the stubs of the stock certificate book. Such stubs for certificate Nos. 16 to 21 inculsive are blank. The certificates for these blank stubs are missing, but we learned verbally that certificates Nos. 17 to 21 inculsive were issued to the following parties.

No. 17	Samuel Knight, ...	34	
18	Wm. H. Knight, ...	100	
19	Elizabeth Knight, ...	100	
20	F. H. Knight, ...	33	
21	R. S. Knight, ...	33	
			300

We have accordingly included such issues in our accompanying statement. These certificates are stated to have been issued in lieu of that of John T. Knight, whose certificate No. 13 is endorsed in blank by him. This leaves certificate No. 16 unaccounted for. Certificate No. 7 is in the name of Lennox Ximpson for 1669 shares, and this certificate is pasted on the stub, the latter being marked "not issued." Certificate No. 4 is marked as issued to Lennox Simpson for 1669 shares; showing apparently that certificate No. 4 should have been filled for stub No. 4 while certificate No. 7 should have been marked "void" as not issued. Certificate No. 4 may have been torn up as it is not in the Certificate Book. It is probable that all stock certificates outstanding are marked on the face thereof "Issued for property purchasses" excepting certificates Nos. 351 and 352 which are not so marked.

We are unable to ascertain when the subscriptions to the Company's capital stock were due and payable, and

were likewise unable to get similar information as to the times when the installments of the assessments upon the capital stock were due and payable. If your committee were called upon to make and calculations regarding the capital stock of the assessments, it would be necessary, if you desired to put all stockholders on a parity to charge or credit interest, as the case might be, to or from an agreed date in the case of each subscriber or stockholder. From the statement attached you will notice that certain stockholders did not pay all of the assessments charged against them. In the case of Judge Green we have charged his unpaid assessments against his running account; in like manner his subscription to the capital stock is charged to the same account.

Mr. Fred Green has not received any sllary; at least there is no evidence of payment to him of this character. The moneys due him are for actual advances, the same as those due his father Judge Henry Green. If an exact settlement of these accounts should be decided upon by your committee we suggest that Judge Green and his son be allowed 6% interest on moneys advanced by them less 6% interest on such moneys as may have been repaid them. Otherwise these gentlemen would not be on a parity with the stockholders or with the financial institutions that hold the Company's notes. The statement of notes outstanding we believe to be correct, although the records are very uncertain. We depended somewhat for this information upon Mr. Fred Green.

The present indebtedness of the Company outside of the capital stock liability of $822,400 par value consists of:

Notes payable, not including interest on note of 1892,		$34,800.00
Due Judge Green, not including interest,		22,800.88
Due F. G.,		3,824.00
Overdraft Easton Nat. Bank,	126.23	
Less cash Phillipsburg Nat. Bank,	23.25	
		102.78

The only assets are: The engine, boiler etceters (which passed through fire), unpaid instalments of the assessments upon capital stock; the interest due on deferred subscriptions to the capital stock and on the deferred payments of the assessment; the lot which cost $2,500 and which Judge Green we understand is willing to take back at that price and the balance $225 due from Gibney for old material.

These statements with the explanation given are submitted for your consideration.

Yours very truly,

THE AUDIT CO. OF NEW YORK,

Attest: THOS L. GREEN, *Manager.*

E. E. PIERCE, *Secy.*

New York, May 11, 1898.

Resources.

April 6, 1886 to May 9, 1898, inclusive.

From subscriptions to capital stock, per statement,		$40,000.00
Assessment of $4 per share on stock,	$32,896	
Less still due,	6,500	
		26,398.00
Henry Green,		22,800.86
F. G.,		3,824.00
Sales of brick and coal,		31,065.99
Slae of lot to Hudson River R. R.,		1,515.75
Notes discounted as per list,		24,800.00
Nicholas Gibney for old material,		250.00
Overdraft Easton Nat Bank,	126.23	
In Phillipsburg Bank,	23.25	
		102.78
Discrepancy,		87.07
		$210,842.47

New Jersey State Library

Disposition of Resources.

For	Construction, Buildings, machinery, tools &c.,	$40,197.11
	Labor,	77,459.08
	Material purchased and repairs (expense other than labor, freight, coal, interest, taxes, insurance &c.,	40,981.13
	Freight,	14,372.66
	Coal,	11,256.69
10	Interest and discount,	19,831.41
	Legal Expenses,	1,489.12
	Insurance and Taxes,	2,059.57
	Real estate purchased,	2,950.00
	Organization Expenses,	245.50
		$210,842.50

Stock certificates soutstanding, May 9, 1898.

	Certificate.	*Name.*	*Shares.*	*Date.*
	1.	Edward M. Paxson,	1400	Sept. 27, '87.
	2.	E. P. Wilbur,	1400	" " "
20	8.	H. A. Potter,	1500	Nov. 20, "
	9.	R. P. Linderman,	500	" " "
	10.	W. A. Wilbur,	500	" " "
	11.	C. A. Mayer,	100	Jan. 20, '88.
	12.	P. W. Sheafer,	200	June 11, "
	14.	Henry Green,	1750	July 11, "
	15	" "	374	
	17.	Samuel Knight,	34	
	18.	Wm. H. Knight,	100	
	19.	Elizabeth Knight,	100	
30	20.	R. S. Knight,	33	
	21.	F. H. Knight,	33	
	351.	Edward M. Paxson,	100	Sept. 27, '87.
	352.	E. P. Wilbur,	100	" " "
			8284	shares.

Certificates 22 to 350 inclusive are still in certificate Book unissued.

Cash receipts on account of Capital Stock.

1896.			
Apr. 6, E. P. Wilbur,	$2,500		
June 2, " "	2,500		
1897.			
Sept. 17, " "	2,500		
Oct. 27, " "	1,250		
Nov. 9, " "	1,250		10
		$10,000	
1886.			
Apr. 6, H. A. Potter,	$2,500		
June 4, " "	2,500		
1888.			
Jan. 27, " "	700		
Feb. 1, " "	1,000		
Feb. 17, " "	1,000		
Mar. 31, " "	500		
Apr. 14, " "	250		20
Aug. 10, " "	1,550		
		10,000	
1886.			
May, 12, Edward M. Paxson,	$2,500		
June 25, " "	1,000		
July 3, " "	1,500		
1887.			
Oct. 1, " "	2,500		
Dec. 2, " "	2,500		
		10,000	30
Judge Henry Green, chargeable in his account with,		10,000	
Total,		$40,000	

May 9, 1898. Notes outstanding all endorsed by Judge Green.

Easton National Bank,	Dated	May 9, '98	1 mo. 6%	$5000
"	"	Apl. 28, "	2 mo. "	5500
"	"	Feb. 28, "	3 mo. "	900
"	"	Mch. 21, "	90 d. "	2800
L. V. National Bank,	"	May 9, "	60 d. "	800
E. P. Wilbur Trust Co.	"	Apr. 24, "	90 d. "	1000
"	"	Feb. 14, "	90 d. "	5000
"	"	Apl. 11, "	1 mo. "	3000
"	"	" 18, "	" "	3500
Phillipsburg Nat. Bank	"	Apr. 4, "	3 " "	5000
Henry Short	"	Feb. 13, 1892	1 yr. " (original note)	2000
J. W. Penfield & Son,	"	May 2, '98	3 mos. 6%	300
				$34800

In addition to above Mr. Fred Green holds the Company's notes which are past due, for the Company's indebtedness to him and advances. We understand that these are not endorsed, but one note for $3,000 is a joint note of the Company and Judge Henry Green.

Receipts on account of Assessment of $4 per share in 4 Installments.

1891.				
May 1.	E. M. Paxson,	1st installment,	..... $1,500	
Aug. 4.	" "	2d "	 1,500	
1892.				
Jan. 20.	" "	3d "	 1,500	
				$4,500
		Unpaid, ...		$1,500
1891.				
May	E. P. Wilbur,	1st installment,	..... $1,500	
July 13.	" "	2d "	 1,500	
Nov. 3.	" "	3d "	 1,500	
1893.				
Oct. 28.	" "	"	 500	
Jan 15, '94	" "	4th "	 1,000	
				6,000

All paid.

1891.					
Nov. 25.	H. A. Potter on acct., ...	$1,000			
1896.					
Mar. 24.	" " "	500			
Apr. 27.	" " "	300			
			1,800		
	Unpaid, ...			4,200	
1891.					
May 25.	H. Green, 1st installment,.....	$2,124			
July 27.	" " 2d "	2,124			10
Dec. 21.	" " "	400			
Dec. 24.	" " 3d "	1,724			
			6,372		
	Chargeable to his account, ...			2,124	
1891.					
May 4.	W. A. Wilbur, 1st installment,.....	$500			
Oct. 24.	" " 2d "	500			
1892.					
June 4.	" " 3d "	500			
1894.					20
Feb. 26.	" " 4th "	500			
			2,000		
	All paid.				
1891.					
May 5.	J. T. Knight, 1st installment, ...	$300			
1892.					
June 11.	" " 2d & 3d "	600			
			900		
	Unpaid, ...			300	
1891.					30
May 16.	R. P. Linderman, 1st installment,....	$500			
Sept. 26.	" " 2d "	500			
1892.					
Feb. 17.	" " 3d "	500			
1894.					
Feb. 15.	" " 4th "	500			
			2,000		
	All paid.				
1891.	Estate of				
June 2.	P. W. Sheafer, 1st installment, ...	$200			40
1893.					
Feb. 1.	P. W. Sheafer, 2d & 3d installments,..	400			
			600		
	Unpaid, ...			200	
1891.					
July 8.	C. A. Mayer, 1st installment, ...	$100	100		
	Unpaid, ...			300	
			$24,272	$8,624	

Cash assessments paid,	$24,272	Total, ...	$8,624
Charged Judge Green,	2,124	Less charge H. Green,	2,124
Unpaid, ...	6,500		
		Total unpaid, ...	$6,500
Total assessments,	$32,896		

1886.			
Aug. 14.	Cash advanced,	.....	$500 00
Oct. 23.	" "	.....	250 00
Nov. 13.	" "	.....	1,000 00
1887.			
Mar. 12.	" "	.....	500 00
April 4.	" "	.....	2,000 00
" 18.	" "	.....	700 00
May 12.	" "	.....	2,000 00
June 14.	" "	.....	550 00
June 18.	" "	.....	700 00
July 16.	" "	.....	200 00
Aug. 13.	" "	.....	1,200 00
" 20.	" "	.....	380 00
Sept. 17.	" "	.....	450 00
1888.			
Mar. 24.	" "	.....	100 00
June 16.	" "	.....	800 00
1889.			
April 13.	" "	.....	500 00
May 20.	" "	.....	500 00
June 15.	" "	.....	800 00
" 22.	" "	.....	300 00
July 13.	" "	.....	800 00
Oct. 28.	" "	.....	50 00
Dec. 30.	" "	.....	3,000 00
1890.			
May 3.	" "	.....	1,000 00
Oct. 13.	" "	.....	500 00
Nov. 15.	" "	.....	600 00

1892.				
Mar. 22.	Cash advanced,	.....	$500	00
May 21.	" "	.....	500	00
Sept. 29.	" "	.....	400	00
Nov. 12.	" "	.....	100	00
Nov. 18.	" "	.....	500	00
1893.				
Jan. 9.	" "	.....	500	00
Feb. 18.	" "	.....	250	00
April 1.	" "	.....	47	00 10
June 30.	" "	.....	500	00
Aug. 18.	" "	.....	300	00
Sept. 11.	" "	.....	400	00
" 29.	" "	.....	600	00
1894.				
Mar. 13.	" "	.....	500	00
April 2.	" "	.....	1,000	00
April 14.	" "	.....	400	00
May 2.	" "	.....	300	00
" 12.	" "	.....	900	00 20
June 6.	" "	.....	500	00
June 20.	" "	.....	500	00
July 30.	" "	.....	300	00
Aug. 11.	" "	.....	300	00
Aug. 29.	" "	.....	500	00
Sept. 12.	" "	.....	500	00
Sept. 26.	" "	.....	1,000	00
Oct. 22.	" "	.....	500	00
Dec. 6.	" "	.....	1,000	00
1895.				30
Jan. 3.	" "	.....	500	00
Jan. 28.	" "	.....	400	00
Mar. 1.	" "	.....	300	00
" 26.	" "	.....	300	00
April 29.	" "	.....	200	00
May 20.	" "	.....	200	00
June 10.	" "	.....	150	00
" 20.	" "	.....	300	00
July 15.	" "	.....	300	00

Aug. 29.	Cash advanced,		$300 00
Dec. 11.	"	"	300 00
Dec. 31.	"	"	300 00
1896.			
Jan. 18.	"	"	300 00
Mar. 6.	"	"	200 00
July 1.	"	"	1,800 00
" 22.	"	"	300 00
Oct. 10.	"	"	250 00
Nov. 16.	"	"	250 00
Nov. 30.	"	"	200 00
Dec. 23.	"	"	200 00
1897.			
Jan. 2.	"	"	150 00
Feb. 6.	"	"	200 00
Mar. 1.	"	"	150 00
" 16.	"	"	200 00
April 3.	"	"	1,000 00
" 23.	"	"	150 00
May 20.	"	"	200 00
June 18.	"	"	150 00
July 20.	"	"	500 00
Nov. 15.	"	"	250 00
1898.			
Jan. 4.	"	"	200 00
" 10.	"	"	200 00
Mar. 20.	"	"	300 00
Jan. 11.	"	"	1,500 00
	Total cash,		$44,377 00
1887.			
Sept. 17.	For lot,		2,500 00
1886.			
Dec. 1.	Net proceeds of moulding sane from lot,		1,841 10
			$48,718 10

Less:			
1886.			
Sept. 25.	Cash repaid, ...	$500 00	
Dec. 7.	" "	1,250 00	
1887.			
Sept. 30.	" "	1,000 00	
Oct. 3.	" "	1,000 00	
1888.			
Oct. 23.	Cash repaid, ...	$500 00	
1889.			
Dec. 30.	" "	1,000 00	
" 31.	Brick, ...	433 72	
1890.			
Dec. 30.	"	8 40	
1891.			
May 25.	Cash repaid, ...	2,124 00	
May 27.	" "	3,000 00	
July 27.	" "	2,524 00	
Aug. 4.	" "	300 00	
1893.			
April 6.	Subscription, ...	10,000 00	
	4th Assessment, ..	2,124 00	
1888.			
Feb. & Mar.	Coal, ...	106 10	
			23,817 23
			$22,800 38

Mr. Fred Green's Advances to May 9, 1898.

1886	Oct.	23,	Cash advanced..	$700 00
1887	Jan.	26,	" " ..	300 00
	Mar.	19,	" " ..	300 00
1889	May	11,	" " ..	200 00
1890	Aug.	15,	" " ..	400 00
	Oct.	13,	" " ..	400 00
1891	May	27,	" " ..	3000 00
1892	Mar.	22,	" " ..	300 00
				$5,650 00

	Less:					
1886	Dec.	7,	Cash	advanced..	$750 00	
1888	Oct.	17,	"	" ..	250 00	
	Feb.	3,	"	" ..	200 00	
1889	Jan.	31,	"	" ..	50 00	
	May	25,	"	" ..	200 00	
	Dec.	10,	"	" ..	50 00	
1890	Jan.	15,	"	" ..	50 00	
1891	Oct.	31,	"	" ..	28 00	
	Nov.	27,	"	" ..	90 00	
	Dec.	31,	"	" ..	28 00	
1895	July	17,	"	" ..	35 00	
1896	June	1,	"	" ..	20 00	
	Aug.	8,	"	" ..	50 00	
1898	Jan.	31,	"	" ..	25 00	
						1,826 00

Balance due him (without interest) $3,824 00

(Envelope.)

THE SUPREME COURT OF PENNSYLVANIA.

Aug. 23 1898 mailed a copy of the enclosed letter together with a copy of Accountant's statement, to Hon. Edward M. Paxson, Holicong, Bucks Co., Pa.

EXHIBIT E 13.

PHILAD. April 30/91

Frederick Green
Treasurer
Easton Pa.

I enclose check for $1,500. Instalment due to-morrow.

Yours,
EDWARD M. PAXSON.

EXHIBIT E 14.

Manufacturing Account.

Sales 1889	895,916
Manufactured 1889,	
Best Pressed	631,900
Standards	155,300
Common	181,000
	968,200

Cost of Manf.

Cash Pd Labor and Material ac.,	10,014 44	
Add Coal	869 67	
Old Bangor Slate Co. Bal	41 43	
R. D. Wilson, Bal. Sal	246 28	
	$11,171 82	
Add Dec. Pay. Pd. Jan. 90	93 32	
" Bal. Common, Neuer	50 00	
	143 32	
	11,315 14	
Average Cost per sM. $11.69.		
Cash recd. Sales of 1889,	9,116 18	
Add Cash recd. in Trade,	199 46	
" Accts due	1,295 08	
" Cash Sales	193 86	
" due from Ritter,	35 48	
" Sales to H. Green,	433 72	
	$11,273 78	

Average price recd per M. $12.58.

EXHIBIT E 16.

1889.

	Best.	Stand.	Pav.	Hard.	Salm.	Clinker.	Shapes.
Jan, ...	.....	4250	8000	.....	600	.....	.....
Feb. ...	.....	650	.....	.....	.....	.....	.....
Mch. ..	31000	460	.....	250	.....	1200	.....
Apr. ..	126725	900	8500	2750	2800	1100	.....
May ..	60240	600	800	5450	5800	1725	.....
June ..	41282	3000	425	3700	500	700	2352
July ..	87270	40550	500	20300	11000	15680	9027
Aug. ..	37825	5450	250	1100	7100	3435	800
Sept. ..	35300	20	4000	950	.....	200	1000
Oct. ...	55000	10250	3600	6000	19000	.....	.....
Nov. ..	20200	32600	3600	7200	54000	300	250
Dec. ..	12500	12000	.....	12900	49000	.....	.....
	507342	110730	29675	60600	149800	24340	13429

895,916

EXHIBIT E 17.

The Supreme Court of Pennsylvania.

Easton, Aug. 23, 1898.

Hon. Edward M. Paxson

Dr Sir

In accordance with your request I enclose copy of statement of the affairs of our Brick Co. made by the accountant employed for that purpose. The Easton Bank has given notice that they require payment of their notes and we will doubtless soon receive similar notices from the other creditors. As we have never paid in but a trifling part of the capital stock ($6.67 per share on a par of $100 per share and a small assessment

partly paid) and made the very grave mistake of borrowing money to pay in part for the construction of the plant and for carrying on the business, entirely. I know of no response we can make to the demands of our creditors except to raise the money and pay them. This is what we are clearly bound to do both in law and in honor, and what we will certainly be compelled to do if we do not do it voluntarily.

Yours truly,

H. GREEN.

EXHIBIT E 18.

2—390.

UNITED STATES OF AMERICA.
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, GREETING:

This is to certify That the annexed is a true copy from the Bound Volumes of the Library of this Office of the Provisional and Complete Specifications in the matter of the English Letters Patent to Thomas Evans, Dated February 1, 1878, Number 431, for "Improvements in the Manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and Similar Articles Used for Building Purposes, and also in Articles Usually Made in Earthenware." Said Patent having been received in the Library January 14, 1879.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington [SEAL.] this eighteenth day of November, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States of America the one hundred and twenty-ninth.

F. I. ALLEN,
Commissioner of Patents.

A. D. 1878, 1st February. No. 431.
Manufacture of Bricks, Pipes, Mouldings, &c.

LETTERS PATENT to Thomas Evans, of Abergwili, in the County of Carmarthen, Manager of Slate Quarries, for the Invention of "Improvements in the Manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and Similar Articles Used for Building Purposes, and Also in Articles Usually Made in Earthenware."

Sealed the 30th July, 1878, and dated the 1st February 1878.

PROVISIONAL SPECIFICATION left by the said Thomas Evans at the Office of the Commissioners of Patents on the 1st February 1878.

Thomas Evans, of Abergwili, in the County of Carmarthen, Manager of Slate Quarries. "Improvements in the Manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and Similar Articles Used for Building Purposes, and Also in Articles Usually Made in Earthenware."

The object of my Invention is to make use of the slate refuse, large quantities of which may be seen at every slate quarry, and I propose to use it for the manufacture of all kinds of bricks, tiles, quarries, pipes, mouldings, and other articles of a like nature used for building purposes, such as cornices, lintels of doors and windows, chimney jambs, and also for the commoner kinds of domestic utensils, which are usually made of brown earthenware.

Many attempts have been made to utilize this slate refuse in various ways, and usually with the admixture of some cementitious substance, but hitherto without any practical result.

In carrying out my Invention I take the slate refuse and grind it up to a suitable fine state, which will depend upon the nature of the article to be made; thus, for common bricks and tiles the grinding need not be carried to such a degree of fineness as will be necessary for mould-

ings or domestic utensils. The ground slate is then mixed with sufficient water to render it plastic, and is well worked up and moulded into bricks or other articles, either by hand or in a suitable machine.

The articles when made by hand are allowed to dry for a short time, and are then placed in a kiln where they are burned in the usual way, but the machine-made articles may be placed at once in the kiln.

The articles for domestic use may be glazed in the usual way.

The bricks and other articles made from this substance are very hard and present a very good face, besides which they are less absorbent and more weather resisting than ordinary bricks, and consequently may be used with great advantage in exposed situations.

If desired the articles may be colored by mixing with the ground slate suitable pigments.

SPECIFICATION in pursuance of the conditions of the Letters Patent filed by the said Thomas Evans in the Great Seal Patent Office on the 1st August 1878.

Thomas Evans, of Abergwili, in the County of Carmarthen, Manager of Slate Quarries. "Improvements in the Manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and Similar Articles Used for Building Purposes, and Also in Articles Usually Made in Earthenware."

The object of my Invention is to make use of the refuse slate, large quantities of which may be seen at every slate quarry, and I propose to use it for the manufacture of all kinds of bricks, tiles, quarries, pipes, mouldings, and other articles of a like nature used for building purposes, such as cornices, lintels of doors and windows, chimney jambs, and also for the commoner kinds of domestic utensils, which are usually made of brown earthenware.

I am aware that many attempts have been made to utilize in various ways this refuse slate, which has usually been mixed with some cementitious substance to as-

sist in binding the mass together, but hitherto no practical results have been obtained.

In carrying out my Invention I take the refuse slate and grind it up to a suitable fine state under edge runner rollers, crushers, stampers, or other suitable crushing apparatus. The degree of fineness to which the slate should be ground will depend upon the nature of the article to be made; thus, for common bricks and tiles and rough work, the grinding need not be carried to such an extent as will be necessary for work such as mouldings or domestic utensils. The ground slate is then mixed with a sufficient quantity of water to render it plastic, and the mass is well worked up and moulded into bricks or other articles, either by hand or in a suitable machine.

The articles when they have been made by hand are placed in a stove or other suitable drying apparatus, where they should remain, say, from three to twelve hours, until they are sufficiently dry to be placed in a kiln, where they are burned in the usual way. The actual length of time necessary for the drying operation will depend upon the particular construction of the stove or drying apparatus used, and should be left to the judgment of the attendant. The machine-made articles will not require drying but are placed at once in the kiln. The time allowed for burning will depend somewhat upon the construction of the kiln and the quality of the fuel employed, but it may be set down at from twenty to sixty hours.

The bricks and other articles made from this substance are very hard and present a very good face, besides which they are less absorbent and more weather resisting than ordinary bricks, and consequently may be used with great advantage in exposed situations.

If desired the articles may be colored by mixing with the ground slate suitable pigments, and the appearance of those articles intended for domestic use may be improved by glazing or enamelling in any approved manner.

Having now set forth the nature of my invention for "Improvements in the Manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and similar Articles Used for Building Purposes, and also in Articles usually Made in Earthenware," and having explained the manner of carrying the same into effect, I wish it to be understood that under the above in part recited Letters Patent I claim, manufacturing bricks, tiles, quarries, pipes, mouldings, and similar articles used for building purposes, and also articles usually made in earthenware from slate refuse, in the manner above set forth.

In witness whereof, I, the said Thomas Evans, have hereunto set my hand and seal, the Twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

THOMAS EVANS. (L. S.)

EXHIBIT D 3.

WHEREAS, Henry Dickson of the City of Pittsburgh, County of Allegheny and State of Pennsylvania, did obtain from the Patent Office of the United States, by serial number 140,286, allowance of application, filed Aug. 11, 1884, for a patent for an improvement in Brick, Tiles, Drain Pipes, &c., dated September 18, 1884; and whereas, said Henry Dickson, above named, did transfer and assign to Samuel N. Lightner, of the City, County and State of New York, the undivided three-eighths (3/8) of said allowance of Patent; and whereas, Morris P. Canfield, of McKeesport, said County of Allegheny and State of Pennsylvania, is desirous of acquiring an interest in the said undivided interest of said Lightner;

Now therefore, to all whom it may concern, be it known, that for and in consideration of the sum of one dollar, to me in hand paid, the receipt of which is hereby acknowledged, I, the said Saml. N. Lightner, have sold, assigned and transferred, and on these presents do sell,

assign and transfer unto the said Morris P. Canfield, the undivided one-fourth (¼) part of my whole right, title and interest in and to the said invention, and in and to the letters patent therefor; the said undivided one-fourth (¼) part of my interest therein to be held and enjoyed by the said Morris P. Canfield, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are, or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, I have hereunto set my hand and seal at Pittsburgh, in the County of Allegheny and State of Pennsylvania, the 2d day of March, A. D. 1885.

SAML. N. LIGHTNER. (SEAL.)

Witness
A. PATTERSON.

(2—178.)

Received for record Mar. 23, 1885, and recorded in Liber P 32, page 266, of Transfers of Patents.

In testimony whereof, I have caused the [SEAL.] seal of the Patent Office to be hereunto affixed.

R. G. DYRENFORTH,
Acting Commissioner.

Exd E. L. L.

(Endorsed.)
Assignment
S. N. Lightner
to
M. P. Canfield.
For ¼ Dickson
Patent
(Stamp.)
Pat. Office
5805 1 1885.
Div. D.
Fee $1 pd.
Patent Office
Mar. 23, 1885
U. S. A.

EXHIBIT D 4.

THE UNITED STATES OF AMERICA.
No. 313,480.

To all to whom these presents shall come:

WHEREAS, Henry Dickson, of Pittsburg, Pennsylvania, has presented to the Commissioner of Patents a petition praying for the grant of Letters Patent for an alleged new and useful improvement in Brick, Tile, Drain-Pipe, &c., a description of which invention is contained in the Specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of Law in such cases made and provided; and

WHEREAS upon due examination made the said claimant is adjudged to be justly entitled to a Patent under the Law.

Now therefore these Letters Patent are to grant unto the said Henry Dickson, his heirs or assigns for the term of seventeen years from the tenth day of March one thousand eight hundred and eighty-five the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this tenth day of March in the year of our Lord one thousand eight hundred and eighty-five and of the Independence of the United States of America the one hundred and ninth.

[SEAL.]

W. L. JOSLYN,
Acting Secretary of the Interior.

Countersigned

R. G. DYRENFORTH,
Acting Commissioner of Patents.

(Specimens.)

H. DICKSON.

BRICK, TILE, DRAIN PIPE, &c.

No. 313,480. Patented Mar. 10, 1885.

Fig. 1.

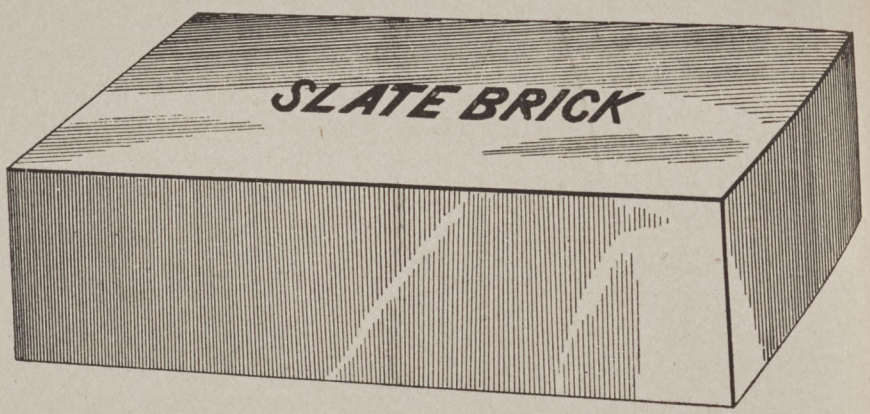
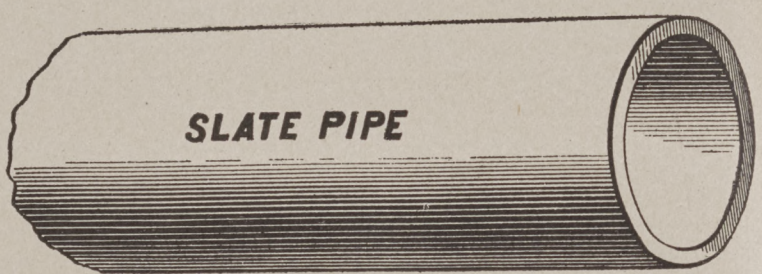


Fig. 2.



Witnesses.
A. RUPPERT.
R. E. GRANT.

Inventor.
HENRY DICKSON,
Per
LENOX SIMPSON,
Attorney.

UNITED STATES PATENT OFFICE.

HENRY DICKSON, OF PITTSBURG, PENNSYLVANIA.

BRICK, TILE, DRAIN-PIPE, &c.

SPECIFICATION *forming part of Letters Patent No. 313,480, dated March 10, 1885.*

Application filed August 11, 1884. (Specimens.)

To all whom it may concern:

Be it known that I, HENRY DICKSON, a citizen of the United States, residing at Pittsburg, in the county of Allegheny and State of Pennsylvania, have invented certain new and useful Improvements in Brick, Tile, Drain-Pipe, and Kindred Articles, of which the following is a full, clear, and exact description.

The object of my invention is twofold—first, to utilize the waste of slate quarries; and, second, to produce a brick, tile, drain-pipe, or similar article of finer grain, greater consistency and superior durability to those now in use.

I accomplish this object by the means hereinafter fully set forth.

Figure 1 of the drawings is a view in perspective of a brick, and Fig. 2 of a pipe.

It is a well-known fact that the waste from slate-quarries, accumulated in immense banks, forms a serious and oftentimes insurmountable obstacle to the continued successful working of the quarry. Through a series of experiments I have discovered that this waste slate, when properly pulverized, tempered, and burned, forms a material from which brick, tile, drain-pipe, and kindred articles may be manufactured of greatly superior quality and durability than that now obtained from aluminous clay. Articles manufactured from said slate are about two-fifths greater in weight, and of corresponding consistency and strength.

In the practice of my invention I grind the refuse of slate-quarries in any manner well known to the trade. The quality of the product (in hardness, smoothness, and strength) of course largely depends upon the degree of fineness to which the slate is pulverized. During the progress of the grinding the material is tempered with water in the ordinary manner, and after grinding the slate is molded to the desired configuration and baked in kilns or ovens in the manner now practiced with brick, tile, drain-pipe, or similar articles, as the case may be.

What I claim as my invention is—

1. A brick, tile, or pipe made of slate.

2. A method of treating slate in making brick, tile, or piping, which consists, first, in pulverizing; secondly, tempering; thirdly, molding; and, finally, burning it, substantially as described.

HENRY DICKSON.

Witnesses:
LENOX SIMPSON,
J. A. KURTZ.

EXHIBIT W 3.

ARTICLES OF AGREEMENT made and concluded the ninth day of May A.D. eighteen hundred and eighty-eight between The American Brick and Tile Company of New Jersey of the first part and Charles H. Salmon of the City of Philadelphia of the second part witness. That the said The American Brick and Tile Company hereby grants bargains and sells to the said Charles H. Salmon his executors administrators and assigns the full free exclusive and absolute right liberty and privilege to manufacture and sell bricks made from pulverized slate under the patent originally granted by the United States government to Henry Dickson numbered 313,480 which patent has been conveyed to and is now owned by the said The American Brick and Tile Company, the said right and privilege hereby conveyed to

said Salmon being limited to the States of New Hampshire Vermont Massachusetts Rhode Island and Connecticut and that part of the State of New York which lies east of the Hudson River and Lake Champlain and extending as far south as the southern line of Massachusetts and this agreement not to be operative as to either the manufacture or sale of said bricks outside of the limits above designated. And in consideration of the grant of the said right and privilege the said Charles H. Salmon agrees for himself his heirs executors administrators and assigns that he will pay to the said The American Brick and Tile Company its successors and assigns the price or sum of one dollar per thousand for each and every one thousand bricks manufactured as aforesaid during the continuance of this agreement the said royalty to be ascertained and paid within thirty days from the end of each month after the manufacture thereof shall have been commenced and a monthly return of the number of bricks manufactured as aforesaid shall be made to said company with the full right and privilege on the part of said company to verify the correctness of the said return by such examination of the books and accounts of the said Salmon and his assigns as may be necessary for that purpose.

And the said Salmon further agrees for himself his executors administrators and assigns that he will erect or cause to be erected during the year eighteen hundred and eighty eight within the territory above mentioned works for the manufacture of bricks from pulverized slate which shall be capable of producing at least twenty thousand bricks per day and will commence and carry on the manufacture of such bricks as soon as practicable after the completion of said works. And the said Salmon further agrees for himself his executors administrators and assigns that he and they will manufacture bricks under this agreement subject to the conditions and qualifications hereinafter mentioned to the extent of at least twenty five thousand bricks per day for each working day in the months of March April

May and June in the year eighteen hundred and eighty nine, and at least fifty thousand bricks per day for each working day in the months of July August September and October in the same year (1889), and that from and after the first day of January in the year eighteen hundred and ninety he and they will manufacture bricks under this agreement and subject to conditions and qualifications as aforesaid to the extent of at least one hundred thousand bricks per day for each and every working day between the first day of March and the first day of November of each year during the term of this agreement. And the said Salmon also further agrees that he will guarantee and secure the performance of this agreement on his part by entering into a bond with one or more sureties in the sum of twenty five thousand dollars to be approved by said company its successors or assigns.

And it is further agreed that this agreement shall continue during the term of fourteen years from the tenth day of March A.D. 1888 less so much thereof as shall have transpired prior to the date hereof. And the said company further agrees that the said Salmon and his assigns shall have the right and privilege to use any and all patents or patent rights which the said company now has or may hereafter require relating to the manufacture of bricks out of pulverized slate.

It is further agreed that if during the continuance of this agreement the manufacturing operations of the said Salmon or his assigns shall be suspended by reason of strikes fire tempest riot or other uncontrollable agency and without the consent of the said Salmon or his assigns the minimum manufacture and royalty aforesaid shall not be exacted during the continuance of such suspension. It is also agreed that the minimum production and the payment of the full royalty above mentioned shall not be exacted during any period when the state of the business shall be such that the manufacture and sale of bricks under this agreement can only be conducted at a pecuniary loss, it being understood how-

ever that the question whether the business can not be conducted except at a loss, if the parties hereto or their assigns cannot agree respecting it, shall be conclusively determined by a committee of three disinterested persons one to be chosen by each of the parties in interest and the third by the two thus chosen, and the persons thus selected shall also determine what proportion of the said royalty shall be abated in order to enable the said Salmon or his assigns to conduct the said business without loss. It is further agreed that there shall be a rebate of fifty per centum of the royalty allowed on all brick manufactured as aforesaid and used in the erection of buildings required for the manufacture of bricks under this agreement. It is also further agreed that when the said Charles H. Salmon his executors or administrators shall have assigned his right title and interest in this agreement to one or more corporations who shall accept the same and assume all the obligations of said Salmon under this agreement and who shall be accepted by the said The American Brick and Tile Company or their successors then the said Charles H. Salmon his executors and administrators shall be discharged from all individual liability under this agreement. This agreement may be modified or changed by the material agreement of the parties at any time.

Witness the signatures of the said parties the day and year first above written.

THE AMERICAN BRICK
AND TILE COMPANY
per HENRY GREEN *President*
CHAS H. SALMON

[Endorsed.]
Agreement
Between
The American Brick
and Tile Company
and
Charles H. Salmon

EXHIBIT OFFERED BY RECEIVER.

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

Specifications of Inventions (Patent Office) 1878 No. 431.

[SEAL.]

[Revenue Stamp.]
One Shilling.

1 Feb 1878
431
5 Shilling Public Record Stamp, Cancelled 5 Dec. 1904.

4 1 Shilling Public Record Stamps Cancelled 5 Dec. 1904.

6 Shilling Public Record Stamp, Canceled 5 Dec. 1904.
G. F. H.

G. F. H.

I Thomas Evans of Abergwili in the County of Carmathen, Manager of Slate Quarries do hereby declare the nature of the said invention for Improvements in the manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings, and similar articles used for building purposes, and also in articles usually made in earthenware, to be as follows:

The object of my invention is to make use of the slate refuse, large quantities of which may be seen at every slate quarry and I propose to use it for the manufacture of all kinds of bricks, tiles, quarries, pipes, mouldings, and other articles of a like nature used for Building purposes such as cornices, lintels of of doors and windows, chimney jambs, and also for the commoner kinds of domestic utensils, which are usually made of brown earthernware

 Many

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

Many attempts have been made to utilize this slate refuse in various ways and usually with the admixture of some cementitious substance, but hitherto without any practical results.

In carrying out my invention, I take the slate refuse, and grind it up to a suitable fine slate, which will depend upon the nature of the article to be made; thus for common bricks and tiles, the grinding need not be carried to such a degree of fineness as will be necessary for mouldings or domestic utensils.

The ground slate is then mixed with sufficient water to render it plastic, and is well worked up and moulded into bricks or other articles either by hand or in a suitable machine.

The articles, when made by hand for

G. F. H.

are allowed to dry a short time, and are then placed in a kiln, where they are burned in the usual way, but the machine made articles may be

 placed

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

placed at once in the kiln.

The articles for domestic use may be glazed in the usual way.

The bricks and other articles made from this substance are very hard, and present a very good face besides which they are less absorbent and more weather resisting than ordinary bricks, and consequently may be used with great advantage in exposed situations.

If desired, the articles may be colored by mixing with the ground slate suitable pigments.

Dated this 1st day of February 1878.

NEWTON & SON
Agents for the Petitioner

[Endorsed] NEWTON & SON
66 Chancery Lane.

To

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

431^{78} Filed 1 August 1878.

To all to whom these Presents
£5 shall come. I Thomas Evans
of Abergwile in the County of Carmarthen
Manager of Slate Quarries send Greeting.
Whereas Her Most Excellent
Majesty Queen Victoria by Her
Letters Patent bearing date the first
day of February in the year of our Lord
One thousand eight hundred and
seventy-eight in the Forty first year
No. 431^{78} of Her Reign did for Herself Her Heirs
and Successors give and grant unto
me the said Thomas Evans Her
special license that I the said Thomas
Evans my executors, administrators
and assigns, or such others as I the
said Thomas Evans my executors
administrators and assigns should
at any time agree with and no others
from time to time and at all times
thereafter during the term therein
expressed should and lawfully
might make, use, exercise and vend

4. within

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

within the United Kingdom of Great Britain and Ireland the Channel Islands, and Isle of Man, an Invention for "Improvements in the manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings and similar articles used for building purposes, and also in articles usually made in earthenware" upon the condition (amongst others) that I the said Thomas Evans my executors or administrators by an Instrument in writing under————or their or one of their hands and seals should particularly describe and ascertain the nature of the said Invention and in what manner the same was to be performed and cause the same to be filed in the Great Seal Patent Office within Six Calendar Months next and immediately after the date of the said Letters Patent. Now know ye that I the said Thomas Evans Do hereby declare the nature of my

5 said

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

said Invention and in what manner the same is to be performed to be particularly described and ascertained in and by the following Statement (that is to say) The object of my Invention is to make use of the refuse slate, large quantities of which may be seen at every slate quarry, and I propose to use it for the manufacture of all kinds of bricks, tiles, quarries, pipes, mouldings, and other articles of a like nature and for Building purposes such as cornices, lintels of doors and windows, chimney jambs, and also for the commoner kinds of domestic utensils which are usually made of brown earthenware I am aware that many attempts have been made to utilize in various ways this refuse slate, which has usually been mixed with some cementitious substance to assist in binding the mass together, but hitherto no practical results have been obtained.

In carrying out my invention I

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

take the refuse slate, and grind
it up to a suitable fine state under
edge runner rollers, crushers, stampers,
or other suitable crushing apparatus.
The degree of fineness to which the
slate should be ground will depend
upon the nature of the article to be
made; thus for common bricks and
tiles and rough work, the grinding
need not be carried to such an extent
as will be necessary for work such
as mouldings or domestic utensils.
The ground slate is then mixed
sufficient
with a quantity of water to render
it plastic, and the mass is well
worked up and moulded into bricks
articles
or other utensils, either by hand or
in a suitable machine.

The articles, when they have been
made by hand, are placed into
a stove or other suitable drying
apparatus, where they should remain
say from three to twelve hours,
until they are sufficiently dry to

 be

Public Record Office Copy.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

be placed in a kiln, where they are burned in the usual way. The actual length of time necessary for the drying operation will depend upon the particular construction of the stove or drying apparatus used, and should be left to the judgment of the attendant. The machine made articles will not require drying, but are placed at once in the kiln. The time allowed for burning will depend somewhat upon the construction of the kiln and the quality of the fuel employed but it may be set down at from twenty to sixty hours.

The bricks and other articles made from this substance are very hard. and present a very good face, besides which they are less aborbent and more weather resisting than ordinary bricks, and consequently may be used with great advantage in exposed situations.

If desired the articles may be colored

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

by mixing with the ground slate suitable pigments, and the appearance of those articles intended for domestic use may be improved by glazing or enamelling in any approved manner. Having now set forth the nature of my Invention for "Improvements in the manufacture of Bricks, Tiles, Quarries, Pipes, Mouldings and similar articles used for building purposes, and also in articles usually made in earthenware," and having explained the manner of carrying the same into effect, I wish it to be understood that under the above in part recited Letters Patent I claim: Manufacturing bricks, tiles, quaries, pipes, mouldings and similar articles used for building purposes and also articles usually made in earthenware, from slate refuse in the manner above set forth.

In witness whereof I the said Thomas Evans have hereunto set my hand and seal the Twenty-

9. seventh

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict., c. 94.)

seventh day of July in the year of
Our Lord One thousand eight hundred
and seventy eight.

THOMAS EVANS. [SEAL.]

I certify that the foregoing is a
true and authentic copy.

G. F. HANCOCK,

[L. S.] *Assistant Keeper of the Public Records.* 10
2d December 1904.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
FOR GREAT BRITAIN AND IRELAND, AT LONDON.

I, Henry Clay Evans, Consul-General of the United States of America for Great Britain and Ireland at Londan, do hereby make known and certify to all whom it may concern, that the signature "G. F. Hancock," subscribed to the annexed ceitificate, is of the true and proper handwriting of Gustavus Frederick Hancock, Assistant Keeper of the Public Records, London, England, that the seal affixed to the said Certificate is the seal 20
of the Public Record Office, London, England, and that to all acts signed as the annexed full faith and credit are and ought to be given in Judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Consulate-General
[SEAL.] of the United States at London, aforesaid, this 5th day of December, 1904.

H. CLAY EVANS,
Consul-General.

IN CHANCERY OF NEW JERSEY.

Between
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TITLE COMPANY,
Defendant.

On Bill, &c.

CONCLUSIONS.

(Filed February 16, 1905.)

Mr. George M. Shipman, for William M. Davis, receiver.

Mr. W. S. Kirkpatrick, of the Northampton County Bar, Pa., for Easton National Bank, a creditor.

Mr. R. V. Lindabury and Mr. Samuel Dickson, of Pennsylvania, for Edward M. Paxson, Charles A. Mayer and E. P. Wilbur, individually, defendants.

Mr. R. C. Stewart, of the Northampton County Bar, Pa., for Frederick Green, indivdually, and as executor of the estate of Henry Green, deceased.

Mr. W. H. Walters and Mr. E. J. Fox, of the Pennsylvania Bar, for Easton Trust Company, Mary B. Knight, executrix, and Samuel W., William H., Elizabeth, Fletcher H. and R. S. Knight.

Mr. J. H. T. Martin, for Henry A. Potter.

Mr. James Buchanan, for E. P. Wilbur Trust Company and Lehigh Valley National Bank.

Mr. H. M. Hagerman, for Henry Short, a creditor.

BERGEN, *V. C.*—Upon the filing of the original bill in this cause, the defendant was decreed to be an insolvent corporation, and William M. Davis was there-

upon appointed receiver of the same under the law of this State, and qualifying, gave the proper notice to creditors; sundry claims were presented, and finding no assets of the company, other than the obligations of the subscribers to the capital stock of the defendant corporation for alleged unpaid subscriptions, he filed his petition, praying that an order be made, directing an assessment against the holders of such stock, to the extent required for the satisfaction of the debts of the company. All stockholders were duly notified, and have answered the petition denying their liability, and have also appealed from the order of the receiver allowing the claims of the creditors. The evidence on the hearing disclosed the fact that all the stock was issued by the company as full paid, and had stamped upon it the statement that it was issued for property purchased. I am satisfied that the stock, in the form in which it was issued, constituted a contract between the company and its stockholders, which would prevent an assessment until that contract was set aside as an agreement in fraud of creditors; also that no such order can be properly made under these proceedings, and that the proper course is by bill to have the contract set aside, and the delinquent stockholders decreed to pay a sufficient proportion of all unpaid subscriptions, to satisfy the liabilities of the company, but, as all the evidence necessary to settle the questions that would be raised by such a bill has been taken, and counsel for all parties having, on the hearing, expressed their desire to have the controversy determined, I shall permit the petitioner to amend his petition, making it a bill of complaint, and thus present the issues raised, to which the testimony, which is quite voluminous, was directed and the answers filed, will be taken as answers to that bill of complaint.

The corporation was organized under the *Corporation Act of 1875, Rev. 1877, 174,* by the terms of which, stock was issuable for the purchase of property, to the "amount and value thereof," and when so issued, "shall

be declared and taken to be full paid stock, and not liable to any further call; neither shall the holder thereof be liable for any further payments, under any of the provisions of this act, and said stock shall have legibly stamped upon the face thereof the words "issued for property purchased."

It will be observed that this differs from the law of 1896, in that the later act does not require stock issued for property to have stamped upon it the statement that is was issued for that purpose, but makes the judgment of the directors conclusive as to value in the absence of actual fraud. This change has no other effect than, expressing what our courts have already determined in construing the earlier legislation, for in *Bickley* v. *Schlag, 1 Dick. 533,* the Court of Appeals held, that if the transaction was not fraudulent, the difference in value between the property and the stock had no legal significance, and cited with approval *Coit* v. *Gold Amalgamating Co., 119 U. S. 345,* where the court said: "But where full paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account." The question now presented is, did these defendants, in issuing the whole capital stock of the company, representing at par $1,000,000, in payment for patents assigned to the company, commit an actual fraud upon the subsequent creditors of the corporation? The expression "actual fraud," as used in the cases last mentioned, must be interpreted to mean and include any device by which the stock of a corporation passes to a stockholder, without payment in full, either in cash or by property purchased, "to the amount of the value thereof," and that an intentional overvaluation of property, upon the understanding that a portion of the stock issued should be returned for distribution among the directors voting for the purchase, without payment by them, is such a device and falls within the

definition of "actual fraud," as intended by the Court of Appeals.

The minutes of this corporation contain no record of the determination of the board of directors to purchase the patents, and to issue all of the capital stock in payment therefor, and it is sought by the testimony of witnesses to show such action, but the effort resulted in an utter failure, no proof sufficient to warrant a judicial finding of such a fact being offered. Chief Justice Paxson, in undertaking to state his recollection on this point said, "a certain amount of this stock was to be issued to the patentees and the balance of the stock was to be issued to those gentlemen who agreed to put in some money for the purpose of operating under the patents." Elisha P. Wilbur said, "I can only remember that a certain amount of stock was to be given to these gentlemen for their patents," but he was unable to state how much was to be issued for patents, and how much for cash. Henry A. Potter does not recall where the meeting was held nor anything more than the purport of the resolution, which was to issue the stock "for the possible value of the patents."

These are all the parties testifying to this resolution—a resolution disposing of $1,000,000 of property, the contents and purport of which depend upon the recollection of busy men engaged in large and most important enterprises, given nearly seventeen years after its adoption; none of them being able to state where this meeting was held, and their recollection of the persons present is very indistinct and unsatisfactory. This evidence does not satisfy me that there was distinct official action by the directors fixing the value of the property and determining that all of the capital stock should be issued to the patentees in payment for their patents. On the contrary, I am of the opinion that no official action was taken, and that, with the exception of informal meetings, and perhaps general conversations with Judge Green, the carrying out of the negotiations with the patentees was

confided entirely to Judge Green; that the expectation of the parties was that he would in some way arrange matters so that for the $10,000 each had advanced stock would be issued to them, which at par would be greatly in excess of that sum, and that they never expected that if all of the stock was issued for patents it would be retained by the patentees, for, under the view insisted upon, that all of the stock was to be issued for the patents, nothing would remain for those who had contributed towards the incorporation of this company, and this belief finds support in the fact that at the time Judge Green held a contract with the patentees as to the distribution of this stock, to which I shall hereafter refer.

If we should accept the claim of these defendants, that there was a meeting of the Board of Directors at which it was voted to issue all of the stock for the patents, I am yet of the opinion that the proceeding was a device to issue to these directors stock, for which they had not and did not expect to pay in "money or money's worth," and that to accomplish this there was an intentional overvaluation of the patents, which, as against creditors, was such a fraud as a court of equity should discountenance.

There is, however, another view to be taken of this case, which is equally fatal to the defence interposed, and that is that it was never intended to issue all of the capital stock in payment for the patents. It clearly appears that prior to the organization of the company Judge Green had entered into a written contract with the patentees, bearing date March 12th, 1886, in which, after reciting that Lenox Simpson and M. P. Canfield, having acquired the ownership of letters patent for making bricks from slate refuse, it was proposed to form a corporation for the purpose of putting the patent to use, and that Judge Green was willing to undertake the placing of the stock upon such terms as might be agreed upon between him and the purchasers thereof, it was agreed that such corporation should be formed with a capital of not less than $1,000,000; that upon the pay-

ment by Judge Green into the treasury of the company of $20,000, and to Simpson & Canfield $5,000, he should be entitled to six-tenths, and Simpson & Canfield, upon transferring to the corporation their patents, should have the remaining four-tenths. It was further stipulated that Simpson & Canfield should pay into the treasury of the company stock of the par value of $55,000, to be used for sale to raise working capital, and that Judge Green should deliver to them $20,000 at par of the stock retained by him. It nowhere appears that the part of the agreement relating to the deposit of stock was ever carried out; on the contrary, when the stock was issued, Simpson & Canfield, by a release in writing, dated September 29th, 1887, discharged Judge Green from further compliance with the contract in consideration of the issue to them of 4,200 shares of stock, and the payment by Green of $5,000 into the treasury of the company; so that the actual price paid by Judge Green for the patents was 4,200 shares of stock, more than one-half of which afterward came into the hands of Judge Green, the reason or consideration therefor not appearing.

The reason for the basis upon which the stock was issued by Judge Green to his associates was not shown, but the fact that each was assigned 1,500 shares, just one-fourth of the six-tenths allowed to Judge Green, under the contract, justifies the inference that he was giving to each an equal proportion of the benefit of his contract with the patentees, and this is supported by the statement of Mr. Potter, who testifies, "I was to be equal with Judge Green," and also that he knew of the contract and its terms. The conclusion to be drawn from the evidence is irresistible that these incorporators knew that 60 per cent. of the capital stock was to be issued to them in equal portions, representing a par value of $150,000 each, for which they paid only $10,000; nor was the formality of issuing the stock to Judge Green observed, the record showing that the first issue was to the incorporators, from which it is fair to infer that Judge Green

was the agent of the parties, and that they had full knowledge of the situation. I am therefore of the opinion that the issue of this stock as full paid, while good as between the parties to it, was a contract made by the company with its stockholders in derogation of the rights of creditors, which should be set aside, and the holders of the stock decreed to pay on account of their holdings, in addition to what they have paid in cash, a sum sufficient to liquidate the debts of the company.

The conclusions I have reached disposes of the rights and settles the liabilities of the original subscribers, but the receiver insists that those stockholders who purchased shares of this stock from Judge Green are equally liable with those who subscribed and to whom the stock was first issued, and seeks to maintain the doctrine that the transferee of stock issued in payment for property at an intentional over-valuation is liable to make good the subscription to the extent required to satisfy creditors, even where the stock certificate contains a statement that the stock was issued for property purchased and is full paid, the purchaser having in good faith relied upon such statement without notice of the conditions under which the stock was issued, or of any fact which should put him on inquiry.

The defendants affected by this question are Samuel, William H., Fletcher H., Elizabeth, and R. S. Knight, legatees of John T. Knight, deceased; estate of R. P. Lindermann, W. A. Wilbur, C. A. Mayer, and the estate of P. W. Sheafer.

By a statement of the capital stock account in the handwriting of Judge Green, the president of the corporation, no stock ledger having been kept, other than this statement, it appears that all the shares held by the above persons were transferred to them by Judge Green, presumably from stock originally issued to the patentees for property purchased, which in some way not disclosed came to Judge Green, who sold the stock to

the foregoing parties and applied the proceeds of the sales to his own use, for the cash account of the corporation contains no entry showing that it ever passed into the treasury of the company. The books of this company contain very little information upon which we may safely rely, but the presumption that the sales were made from stock other than originally issued to Judge Green is justified by the fact that the original amount of stock, 1,750 shares, issued to him still stands in his name. The stock sold and transferred by Judge Green was issued as full paid, stamped with the statement that it was issued for property purchased, and there is no evidence in the cause showing any knowledge upon the part of these transferees that it was not what it purported to be—full paid, and, under the law permitting its issue, free from any liability to further assessment. It was urged on the argument that these parties having recognized an assessment of four dollars per share by paying, some of them in full and others in part, thereby admitted that the stock was not full paid, from which it is fair to assume they knew when they purchased that their stock was under paid, but I am satisfied from the evidence that these payments were voluntary—made for the purpose of providing additional funds for the company, and that the assessment was a plan adopted for the purpose of equitably distributing the burden, rather than the assertion of a right, for the resolution provides that if the payments are not made treasury stock shares be sold to raise the shortage, and it is quite clear that the money was needed to protect their investments.

The liability of transferees for assessments on account of unpaid stock has been the subject of much consideration by the courts of this country, resulting in radical differences of opinion, but in my judgment the weight of authority, and sound reason support the view, that a *bona fide* transferee of stock, the certificate for which recites that it is full paid, is not liable to make good the

contract of the original subscriber, if the transferee has no knowledge that the subscriber has not paid in full, nor notice of any fact, from which knowledge may be inferred, or which requires him to inquire, as to the truth of such statement.

The right to hold a stockholder for an unpaid subscription, in the interest of creditors, rests upon the doctrine that the capital stock is a trust fund for the payment of the obligations of the company, and that the subscription creates a debt due to the corporation upon which a creditor may rely and which the company can not remit to his injury. The contract between the corporation and the subscriber is that for the stock issued he will make full payment, and any attempt to avoid this, by waiver or other device, will not excuse the subscriber to the injury of the creditor, but there is no equitable reason why the creditor should be allowed to shift the right he holds against the contractor to a *bona fide* transferee without knowledge of the infirmity, and to imply that he has assumed a contract of which he has no knowledge, and which he would not have made had he been informed regarding it.

In *Sanger* v. *Upton, 91 U. S. 56-60,* the Court said, in speaking of the capital stock of a company: "The creditors have a lien upon it in equity. If diverted they may follow it so far as it can be traced and subject it to the payment of their claims, *except as against holders who have taken it bona fide for a valuable consideration and without notice.*"

In *Steacy* v. *Little Rock R. R., 5 Dillon 348,* it was held that transferees of stock, which was not full paid, although represented so to be, could not be held liable, the Court saying: "If the representation thus made is true they are under no liability to pay again. If the shares had been represented to have been unpaid, *non constat,* they would have purchased * * *. Again we ask in what consists the superior equity of the creditor over the obvious equities which exist in favor of

such a purchaser of the company's shares? The creditor trusted that the company's officers would not violate their duty; the purchaser trusted that they had not violated their duty."

In *Brant* v. *Ehlen, 59 Md. 1-23*, it was held that where shares are issued as full paid and sold by the subscriber as such, a promise cannot be implied on the part of a purchaser without notice, that he will be answerable to the company, or its creditor, should the representation prove false, for he could not be held liable on the ground of contract, because he never agreed to purchase any other than full-paid shares; and if the shares were fraudulently issued he would not be liable for the fraud, because he was no party to it. In *Rood* v. *Whorton, 67 Fed. 434*, where the transferee had no knowledge of the facts which governed the issue of the stock, and there was nothing on the face of the stock from which notice could be inferred that the stock was not paid up, or of any infirmity in the issue, it was held he was not liable, and the Court declared that this class of cases were not within the ruling in the Upton cases, *91 U. S. 45-72*, and that "the decisions exempt the holder of such stock, who purchases, or takes as a creditor, *bona fide*, and clearly so in the absence of recitals or circumstances to give notice. * * * While the certificates are not strictly negotiable paper, 'they approximate to it as nearly as possible, *11 Wall. 377*,' and the cases above cited recognize that they possess so much of the attributes of negotiability that purchasers in the open market may accept as true the clear representation on their face that they were fully paid."

The cases above referred to contain many citations in support of the rule announced—a rule which appeals to me as wise and just, and, being so persuaded, shall adopt it in this case, with the result that in my judgment the transferees of the stock above mentioned are not liable to further payments on account of stock purchased by them.

The next question to be considered is, which of these creditors, if any, are entitled to relief against the original subscribers? The claims presented are as follows: Henry A. Potter, $6,210.13; E. P. Wilbur Trust Company, $16,515.58; Lehigh Valley National Bank, $1,002.31; Easton National Bank, $18,185.75; Henry Short, $2,000; estate of Henry Green, $22,947.88; estate of Henry Green, $30,100; Frederick Green, $6,655.00.

As to the claims of the Easton National Bank and Henry Short, no substantial defence was interposed; as the claim of the Lehigh Valley National Bank was not proven, and is not now in position to be passed upon, I will hold it for future consideration. The claim for $30,100 on behalf of the estate of Henry Green was withdrawn before argument, leaving the claims of Henry A. Potter, Frederick Green, the E. P. Wilbur Trust Company and the remaining claim of the estate of Henry Green to be dealt with. Henry Green, on behalf of whose estate a large claim is made; Elisha P. Wilbur, president, at the time the stock was issued, of the E. P. Wilbur Trust Company, and Henry Potter were directors of the defendant corporation, and Frederick Green was its secretary and treasurer at the time the stock found to be unpaid was issued, and each, at the time they became creditors, knew the exact condition of the company, and that the stock they now seek to impress with their claims was not issued for property at its value. Their right to hold subscribers for unpaid balances on account of stock issued depends entirely upon the fact that it was issued fraudulently, as to creditors; if it was so issued it was by the act of the directors, and within the knowledge of the treasurer, and they each extended credit with notice that the stock was not full paid, and that the company had entered into a contract with its stockholders; that no further payments would be required. The E. P. Wilbur Trust Company is chargeable with knowledge of all facts possessed by its president, E. P. Wilbur, one of the offending directors. He had notice

of the conditions under which the stock was issued, which it was not against his interest to communicate to the Trust Company, and the presumption is that he did.

It is not every creditor who can call upon a stockholder to pay an unpaid subscription in satisfaction of his debt, or institute an inquiry as to the value or amount of the consideration given for stock. It is only those creditors who can fairly allege that they have relied, or whom the law presumes to have relied, upon the amount of the capital stock. The doctrine that the capital stock is a trust fund for creditors, which the company may not dissipate, cannot be invoked when the creditor has knowledge of the arrangement under which the stock was issued as full paid. *First National Bank, Deadwood,* v. *Gustin Mining Company, 42 Minn. 327; Cook on Stockholders, Sec. 39; Hoopes* v. *Car Co., 48 Minn. 174.*

It therefore follows that these last named claimants are not in a position to call upon the delinquent subscribers to contribute towards the payment of their claims. I will advise a decree setting aside the contract under which the stock was issued to the original subscribers as full paid, and they will be required to pay to the receiver such proportionate amounts of their unpaid subscriptions as may be sufficient to satisfy the claims of the Easton National Bank and Henry Short; and also the expenses of the receiver's administration, together with the cost of this proceeding. As these amounts are readily ascertainable, an order of reference will not be required.

IN CHANCERY OF NEW JERSEY.

Between
THE EASTON NATIONAL BANK,
Complainant.
and
THE AMERICAN BRICK AND TILE COMPANY ET AL., *Defendants.*

FINAL DECREE.

(*Filed March 21, 1905.*)

This cause being opened to the Court by George M. Shipman, of counsel with the receiver, William M. Davis, and coming on to be heard in the presence of the counsel of the receiver and W. S. Kirkpatrick, Esquire, of counsel with the Easton National Bank; Richard V. Lindabury, Esquire, and Samuel Dickson, Esquire, of counsel with Edward M. Paxson, Charles A. Mayer and E. P. Wilbur and Warren Wilbur, defendants, and of Russell C. Stewart, Esquire, of counsel with Frederick Green, individually and as executor of Henry Green, deceased, and of William H. Walters, Esquire, and E. J. Fox, Esquire, of counsel with the Easton Trust Company and Mary B. Knight, executors of Fletcher Knight, deceased, Samuel W. Knight, J. H. T. Martin, Esquire, of counsel with Henry A. Potter, James Buchanan, Esquire, solicitor for the E. P. Wilbur Trust Company, and H. M. Hagerman, Esquire, solicitor for Henry Short, and it appearing that the petition of the receiver was filed in this cause praying for the direction of the court, and that an order be made by this Court directing the receiver to make an assessment against the defendants who held the capital stock of the said corporation for and on account of subscriptions to the said stock which had never been paid, in

order that the receiver might pay the claims of the creditors of the said corporation, which have been presented to and accepted and allowed by him, as well as the costs and expenses of said receivership, and an order to show cause why the prayer of the petition should not be granted, having been allowed and duly served with a copy of the petition, upon all the defendants and stockholders of the said corporation, and all the defendants having answered the petition, and it appearing that appeals were taken to this Court from the order of the receiving allowing the claim of the Easton National Bank for eighteen thousand one hundred and eighty-five dollars and seventy-five cents ($18,185.75), and the claim of Henry Short for the sum of two thousand dollars ($2,000), and of Frederick Green, executor of the estate of Henry Green, deceased, for the sum of twenty-two thousand nine hundred and forty-seven dollars and eighty-eight cents ($22,947.88), and of Frederick Green, executor of the estate of Henry Green, deceased, for the sum of thirty thousand and one hundred dollars ($30,100), and of Frederick Green, as an individual, for the sum of six thousand six hundred and sixty-five dollars ($6,665), as good and sufficient claims against the said insolvent defendant corporation, and the claims of The E. P. Wilbur Trust Company, for the sum of sixteen thousand five hundred and fifteen dollars and fifty-eight cents ($16,515.58); of Henry A. Potter for six thousand two hundred and ten dollars and thirteen cents ($6,210.13), having been presented to the receiver in open court and allowed by him, and an appeal having been taken from his order allowing the same, and the Court having read the pleadings and heard the arguments of counsel, and having considered the matter, from which it appears that the capital stock of said corporation was the sum of one million dollars, divided into ten thousand shares of the par value of one hundred dollars ($100), and that all the stock of said corporation which was issued, except two certificates issued to

Edward M. Paxson and Elisha P. Wilbur, for one hundred shares each, were issued by the company to the persons subscribing for the same, as full paid, and had stamped upon the certificates that they were issued for property purchased, and the Court being of opinion that such stock, in the form in which it was issued, constituted a contract between the company and its stockholders which would prevent an assessment until the said contract was set aside, and that the said receiver should proceed by bill to set aside said contract as fraudulent and void as to creditors, and as incidental to such relief to have the delinquent stockholders decreed to pay a sufficient proportion of all unpaid subscriptions to satisfy the liabilities of the company, and as all the evidence necessary to settle the questions that would be raised by such a bill, including the appeals from the determination of the receiver had been taken, and counsel for all parties having on the hearing expressed their desire and consent to have the whole controversy determined, it was proper that the petitioner amend his petition, making it a bill of complaint, and thus present the issue raised, it was ordered that the said receiver have leave to amend his petition making it a bill of complaint with a prayer for the relief sought, and that the petition of said receiver so amended and filed in this court stand as a bill of complaint, and also that the answers of defendants filed in this cause should be taken as answers to the said bill of complaint.

And it further appearing that of the capital stock there was issued to Edward M. Paxson and Elisha P. Wilbur each one hundred shares, for which they each paid in money ten thousand dollars ($10,000), the full par value thereof, and that the residue of such stock was issued as full paid for property purchased to the persons and in the amounts following, viz: to Edward M. Paxson and Elisha P. Wilbur, each fourteen hundred shares; to Henry A. Potter, fifteen hundred shares; to Henry Green, twenty-one hundred and twenty-four shares, and

that on account of this class of stock there was paid or advanced the sums following: by Edward M. Paxson, forty-two hundred dollars ($4,200); by Elisha P. Wilbur, six thousand dollars ($6,000); by Henry A. Potter, eleven thousand eight hundred dollars ($11,800); by Henry Green, ten thousand dollars ($10,000). And it further appearing that each of said last-mentioned certificates of stock issued to the said four defendants above named was stamped "Issued for property purchased," and that such capital stock of said company was not really issued for the purchase of property of the amount and value thereof, but that said property was taken at an excessive valuation, and that the issue of the said stock, as full paid for property purchased, was fraudulent, and in derogation of the rights of creditors, and that the defendants, aforesaid holders of the stock, should be decreed to pay on account of such stock held by them, in addition to what they have paid in cash, a sufficient sum of money to liquidate the debts of the company.

And it appearing that the defendants, Samuel Knight, William H. Knight, and Robert S. Knight and The Easton Trust Company, and Mary B. Knight, executors of Fletcher H. Knight, deceased, Warren A. Wilbur, Charles A. Mayer and Ruth M. Linderman, executrix of Robert P. Linderman, deceased, Arthur Sheafer, William Leslie Sheafer and Henry Sheafer, executors of Peter W. Sheafer, deceased, each hold their stock in said corporation by transfer from original subscribers, and was transferred to them as full paid, without notice of any liability for unpaid subscriptions on behalf of the original subscribers therefor, and that they are not liable to creditors upon the said shares of stock held by them.

And it further appearing that the aforesaid claims of Henry A. Potter, The E. P. Wilbur Trust Company, Frederick Green, executor of Henry Green, deceased, and Frederick Green, as an individual, are not properly chargeable against the delinquent subscribers to the

stock, and the Court being of opinion that payment thereof should not be charged against them, and that the claims of the Easton National Bank, and of Henry Short are good and valid claims against said corporation which should be paid by the said above named original subscribers to the capital stock of said corporation,

It is, on this twenty-first day of March, in the year nineteen hundred and five, ordered, adjudged and decreed by William J. Magie, Chancellor of the State of New Jersey, and the said Chancellor doth order, adjudge and decree that the bill of complaint and petition be dismissed against Samuel Knight, William H. Knight, Elizabeth Knight and Robert S. Knight, The Easton Trust Company and Mary B. Knight, executors of Fletcher H. Knight, deceased; Warren A. Wilbur, Charles A. Mayer, Ruth May Linderman, executrix of Robert P. Linderman, deceased, and Arthur W. Sheafer, William L. Sheafer and Henry Sheafer, executors of Peter W. Sheafer, deceased, without costs.

And it is further ordered, adjudged and decreed that the following creditors are not entitled to be paid their claims by the defendants hereinafter decreed to pay as delinquent subscribers to the capital stock of The American Brick and Tile Company, and that as to the debts of these creditors the receiver is not entitled to relief, viz: Frederick Green, as executor of Henry Green; Frederick Green, as an individual; The E. P. Wilbur Trust Company and Henry A. Potter.

And it is further ordered, adjudged and decreed that the claims of the Easton National Bank, for the sum of eighteen thousand one hundred and eighty-five dollars and seventy-five cents ($18,185.75), with the interest from the fifth day of April, one thousand nine hundred and four, to the date of this decree, amounting to nineteen thousand two hundred and thirty-four dollars and forty-six cents ($19,234.46), and the claim of Henry Short for two thousand dollars ($2,000), with interest from the fifth day of May, one thousand nine hundred

and four, to the date of this decree, amounting to two thousand one hundred and five dollars and thirty-three cents ($2,105.33), against the said The American Brick and Tile Company are good and valid claims against said company, and that said claims be, and hereby are, decreed to be good and sufficient claims against the said company, and entitled to be paid out of and from the moneys due and to be raised from unpaid subscriptions to the capital stock of the said company, and it is further ordered, adjudged and decreed that the contract between the said The American Brick and Tile Company, on the one part, and Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter and Henry Green, on the other part, by which the stock of the said company was issued to them as full paid for property purchased, be and the same is hereby decreed and declared to be fraudulent and void as to the Easton National Bank and Henry Short, creditors of the said The American Brick and Tile Company, and the same is hereby set aside and declared to be null and void.

It is further ordered, adjudged and decreed that the defendants, Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter and Frederick Green, as executor of the estate of Henry Green, deceased, are liable to pay to the receiver of the defendant corporation, for the benefit of the Easton National Bank and Henry Short, creditors of the defendant corporation, on account of their subscription to the capital stock of the American Brick and Tile Company, so much of the difference between the par value of the shares of such capital stock as was issued to them as full paid, for property purchased and held by them respectively, and the amounts which they have already paid on account thereof as may be required to discharge the claims of the two creditors aforesaid, together with the expenses of the receiver in the administration of the assets of the company and the costs of this suit to be taxed, and that the said defendants,

Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter and Frederick Green, executor of the estate of Henry Green, deceased, do pay on account of the amount still unpaid upon their holdings of said stock to William M. Davis, receiver aforesaid, the sum of twenty-one thousand three hundred and thirty-nine dollars and seventy-nine cents ($21,339.79), being the total amount of the claims of the Easton National Bank and Henry Short, with interest to the date of this decree, and the sum of four thousand dollars for the expenses of the receiver in the administration of the assets of the said company, making in all the sum of twenty-five thousand three hundred and thirty-nine dollars and seventy-nine cents ($25,339.79), and that each of said defendants last named are decreed to be severally liable to pay to said receiver the said last-named sum of money and costs of this suit to be taxed.

It is further ordered, adjudged and decreed that the said several defendants last above named do pay to the said William M. Davis, receiver of the American Brick and Tile Company, within fifteen days after service upon them of a copy of this decree, said aggregate sum of money and costs of this suit to be taxed, so as aforesaid decreed to be severally due from them, and that he have execution therefor according to the rules and practice of this court to recover said aggregate sum of money, with costs, and further, that any of the parties to this cause may hereafter apply to the Court for such other or further relief under the proceedings in this cause, or this decree, as occasion may require.

W. J. MAGIE, *C.*

Respectfully advised,

J. J. BERGEN,

V. C.

IN CHANCERY OF NEW JERSEY.

Between
THE EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY ET AL.,
Defendants.

NOTICE OF APPEAL.

(*Filed May 9, 1905.*)

Frederick Green, one of the defendants in the above-stated cause, hereby appeals from so much of the final decree made in this court in the above-stated cause as declares that he is not entitled to be paid his claim against The American Brick and Tile Company by the defendants who are decreed to pay as delinquent subscribers to the capital stock of the said The American Brick and Tile Company the debts of the creditors of the said company, and that as to his said debt the receiver is not entitled to relief, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 4, A. D. 1905.

SMITH & BRADY,
Sol'rs of Deft. Frederick Green.
S. C. SMITH,
Of Counsel.

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

S. C. SMITH,
Of Counsel with Deft. Frederick Green.

In Chancery of New Jersey.

Between
The Easton National Bank,
Complainant,
and
The American Brick and Tile Company et al.,
Defendants.

NOTICE OF APPEAL.

(*Filed May 9, 1905.*)

The defendant Frederick Green, executor of Henry Green, deceased, hereby appeals from so much of the final decree made in this court in the above-stated cause as declares that this defendant is not entitled to be paid the claim of the estate of the said Henry Green, deceased, against The American Brick and Tile Company by the defendants who were decreed to pay as delinquent subscribers to the capital stock of The American Brick and Tile Company the debts of the creditors of the said company, and that as to the claim of the said estate the receiver is not entitled to relief, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 4, A. D. 1905.

Smith & Brady,
Sol'rs of Deft. Frederick Green, Executor of Henry Green, Deceased.

S. C. Smith,
Of Counsel.

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

S. C. Smith,
Of Counsel with the Deft. Frederick Green, Executor of Henry Green, Deceased.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant and Appellee,
and
THE AMERICAN BRICK AND TILE COMPANY ET AL.,
Defendants and Appellants.

On Petition of William M. Davis, Receiver, etc.

PETITION OF APPEAL OF ELISHA P. WILBUR AND EDWARD M. PAXSON FROM FINAL DECREE.

(*Filed May 24, 1905.*)

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

The petition of Elisha P. Wilbur and Edward M. Paxson, appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the twenty-first day of March, in the year one thousand nine hundred and five, in a cause wherein the said The Easton National Bank was complainant and the said The American Brick and Tile Company and your petitioners and others were defendants, in this respect, to wit, that the said decree adjudges and decrees that the claim of the said The Easton National Bank for the sum of $18,185.75, with interest from the fifth day of April, 1904, to the date of said decree, amounting to $19,234.46, and the claim of Henry Short for $2,000, with interest from the fifth day of May, 1904, to the date of the said decree, amounting to $2,105.33, against the said defendant The American

Brick and Tile Company, are good and valid claims against the said company, and are entitled to be paid out of and from the moneys due and to be raised from unpaid subscriptions to the capital stock of the said company. And in the following respect, to wit, that the said decree adjudges and decrees that the contract between the said The American Brick and Tile Company on the one part, and your petitioners and Henry A. Potter and Henry Green on the other part, by which the stock of the said company was issued to your petitioners and the said Henry A. Potter and Henry Green as full paid for property purchased, is fraudulent and void as to the said The Easton National Bank and Henry Short, creditors of the said The American Brick and Tile Company, and in that the said decree adjudges and decrees that the said contract be set aside and declared to be null and void.

Your petitioners also find themselves aggrieved by the said final decree in this respect, to wit, that the said decree orders and adjudges that your petitioners are liable to pay to the receiver of the said The American Brick and Tile Company, for the benefit of the said The Easton National Bank and Henry Short, as creditors of the said The American Brick and Tile Company, on account of their subscriptions to the capital stock of said company, so much of the difference between the par value of the shares of the capital stock of the said company as was issued to them as full paid for property purchased and held by them respectively and the amounts they have already paid on account thereof as may be required to discharge the claims of the said The Easton National Bank and Henry Short, together with the expenses of the receiver in the administration of the assets of the said The American Brick and Tile Company, and the costs of the said suit to be taxed. And in the following respect, to wit, that the said decree orders and adjudges that your petitioners do pay, on account of the amount still unpaid on their holdings of the said stock, to William M. Davis, receiver of the American Brick and Tile

Company, the sum of $21,339.79, being the total amount of the claims of the said The Easton National Bank and Henry Short, with interest to the date of said decree, and the sum of $4,000 for the expenses of the said receiver in the administration of the assets of the said company, making in all the sum of $25,339.79, and that your petitioners are severally liable to pay to the said receiver the said last-named sum of money and the costs of the said suit to be taxed. And in the following respect, to wit, that the said decree orders and adjudges that your petitioners do pay to the said William M. Davis, as receiver of the said The American Brick and Tile Company, within fifteen days after the service upon them of a copy of the said decree, said aggregate sum of money and the costs of the said suit to be taxed, and that the said receiver have execution therefor according to the rules and practice of the said Court of Chancery to recover said aggregate sum of money, with costs.

And your petitioners humbly appeal from that part of the said decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the said decree should have adjudged and decreed that the petition of the said William M. Davis, receiver as aforesaid, be dismissed, with costs to your petitioners.

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

LINDABURY, DEPUE & FAULKS,
Solicitor for and of Counsel With Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

EASTON NATIONAL BANK,
Complainant,
and
THE AMERICAN BRICK AND TILE COMPANY,
Defendants.

On Petition of William M. Davis, Receiver, Appellee.

PETITION OF APPEAL OF HENRY A. POTTER.

(Filed May 24, 1905.)

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

The petition of Henry A. Potter, one of the respondents and the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by the final decree made in the above entitled cause, in the Court of Chancery, by his Honor William J. Magie, Chancellor of the State of New Jersey, bearing date the twenty-first day of March, nineteen hundred and five, on the petition of William M. Davis, as receiver of the defendant, the American Brick and Tile Company, praying relief against Edward M. Paxson, this appellant and others, respondents, in these respects, namely:

1. That said decree orders, adjudges and decrees that the claim of the Easton National Bank for the sum of eighteen thousand one hundred and eighty-five dollars and seventy-five cents, with interest from the fifth day of April, nineteen hundred and four, to the date of said decree, amounting to nineteen thousand two hundred and thirty-four dollars and forty-six cents, and the claim of Henry Short, for two thousand dollars, with interest from the fifth day of May, nineteen hundred and four, to

the date of said decree, amounting to two thousand one hundred and five dollars and thirty-three cents, against the defendant, the American Brick and Tile Company, are good and valid claims against said company, and are entitled to be paid out of and from the moneys due and to be raised from unpaid subscriptions to the capital stock of the said company, and orders, adjudges and decrees that the contract between the said the American Brick and Tile Company, on the one part, and Edward M. Paxson, Elisha P. Wilbur, Henry A. Potter and Henry Green, on the other part, by which the stock of the said company was issued to them as full paid for property purchased, is fraudulent and void, as to the said the Easton National Bank and Henry Short, creditors of the said the American Brick and Tile Company, and adjudges and decrees that the same be set aside and declared to be null and void.

2. And that said decree orders, adjudges and decrees that this appellant is liable to pay to the receiver of the said defendant corporation, for the benefit of the said the Easton National Bank and Henry Short, as creditors of the said defendant corporation, on account of his subscription to the capital stock of the said the American Brick and Tile Company, so much of the difference between the par value of the shares of such capital stock of said company as was issued to him as full paid for property purchased and held by him, and the amounts which he is recited to have already paid on account thereof, as may be required to discharge the claims of the said the Easton National Bank and Henry Short, together with the expenses of the receiver, in the administration of the assets of the said the American Brick and Tile Company and the costs of said suit to be taxed.

3. And that said decree orders, adjudges and decrees that this appellant do pay on account of the amount decreed as still unpaid upon his holdings of said stock to William M. Davis, receiver aforesaid of the American

Brick and Tile Company, the sum of twenty-one thousand three hundred and thirty-nine dollars and seventy-nine cents, being the total amount of the claims of the said the Easton National Bank and Henry Short, with interest to the date of said decree, and the sum of four thousand dollars, for the expenses of the said receiver in the administration of the assets of the said company, making in all the sum of twenty-five thousand three hundred and thirty-nine dollars and seventy-nine cents, and decrees that this appellant is liable to pay to said receiver the said last named sum of money and the costs of said suit to be taxed.

4. And that said decree orders, adjudges and decrees that this appellant do pay to the said William M. Davis, as receiver of the American Brick and Tile Company, within fifteen days after service upon him of a copy of said decree, said aggregate sum of money and costs of the said suit to be taxed, and that said receiver have execution therefor according to the rules and practice of the said court to recover said aggregate sum of money, with costs.

And your petitioner humbly appeals from the said final decree and each and every part thereof above mentioned, upon the ground that the same is erroneous, for that the said Chancellor should not have ordered, adjudged and decreed, as hereinbefore set forth, but should have granted the prayer of this appellant as respondent in said suit, and should have dismissed the said petition of said receiver as against this appellant, and dismissed this appellant from said court in said suit with his costs of suit.

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

GUILD & MARTIN,

Solicitors for and of Counsel with Henry A. Potter, Respondent and Appellant.

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant and Respondent,
and
THE AMERICAN BRICK AND TILE COMPANY ET AL.,
Defendants;
FREDERICK GREEN ET AL.,
Defendants and Appellants.

On Appeal from Decree of Chancellor.

PETITION OF APPEAL OF FREDERICK GREEN.

(Filed May 27, 1905.)

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

The humble petition of Frederick Green, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date on the twenty-first day of March, nineteen hundred and five, wherein the said The Easton National Bank was complainant and the said Frederick Green and others were defendants, in this respect, to wit, that the said decree adjudges that the defendant, Frederick Green, as an individual creditor of said The American Brick and Tile Company, is not entitled to be paid his claim by the defendants, who were thereinafter decreed to pay debts of The American Brick and Tile Company as delinquent subscribers to the stock of said company, and that as to the debt of the said Frederick Green the receiver is not entitled to relief.

And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the said claim of the said Frederick Green is a just and valid claim against the said company and the said defendant stockholders decreed as aforesaid to pay other debts of said company are liable to pay to the receiver of the defendant corporation, for the benefit of this appellant, Frederick Green, on account of their subscriptions to the capital stock of the said The American Brick and Tile Company, so much of the difference between the par value of the shares of such stock as was issued to them as fully paid for property purchased and held by them respectively and the amounts which they have already paid on account thereof as may be required to discharge the claim of the said Frederick Green as aforesaid, together with costs to be taxed.

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

SMITH & BRADY,
Solicitors of Frederick Green, Appellant.
S. C. SMITH,
Of Counsel With Frederick Green, Appellant.

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

Between

THE EASTON NATIONAL BANK,
Complainant and Respondent,
and
THE AMERICAN BRICK AND TILE COMPANY ET AL.,
Defendants;
FREDERICK GREEN, EXECUTOR OF HENRY GREEN, DECEASED, ET AL.,
Defendants and Appellants.

On Appeal from Decree of Chancellor.

PETITION OF APPEAL OF FREDERICK GREEN, EXECUTOR.

(Filed May 27, 1905.)

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

The humble petition of Frederick Green, executor of Henry Green, deceased, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor William J. Magie, Chancellor of the State of New Jersey, bearing date on the twenty-first day of March, nineteen hundred and five, wherein the said the Easton National Bank was complainant, and the said Frederick Green, executor of Henry Green, deceased, and others, were defendants, in this respect, to wit: That the said decrees adjudges that the defendant, Frederick Green, executor of Henry Green, deceased, as a creditor of the said the American Brick and Tile Company, is not entitled to be paid his claim by the defendants who were thereinafter decreed to pay debts

of the American Brick and Tile Company as delinquent subscribers to the stock of said company, and that as to the debt of the said Frederick Green, executor of Henry Green, deceased, the receiver is not entitled to relief.

And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the said claim of the said Frederick Green, executor of Henry Green, deceased, is a just and valid claim against the said company, and the said defendant stockholders decreed as aforesaid to pay other debts of said company, are liable to pay to the receiver of the defendant corporation for the benefit of this appellant, Frederick Green, executor of Henry Green, deceased, on account of their subscriptions to the capital stock of the said the American Brick and Tile Company, so much of the difference between the par value of the shares of such stock as was issued to them as fully paid for property purchased and held by them respectively, and the amounts which they have already paid on account thereof, as may be required to discharge the claim of the said Frederick Green, executor of Henry Green, deceased, as aforesaid, together with costs to be taxed.

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

SMITH & BRADY,

Solicitors of Frederick Green, Executor of Henry Green, Deceased, Appellant.

S. C. SMITH,

Of Counsel with Frederick Green, Executor of Henry Green, Deceased, Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant and Respondent,
and
THE AMERICAN BRICK AND TILE COMPANY ET AL.,
Defendants;
FREDERICK GREEN ET AL.,
Defendants and Appellants.

On Appeal from Decree of Chancellor.

ANSWER OF ELISHA P. WILBUR AND EDWARD M. PAXSON TO PETITION OF APPEAL OF FREDERICK GREEN.

The answer of Elisha P. Wilbur and Edward M. Paxson, respondents, to the petition of appeal of Frederick Green, one of the above named appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was, on the twenty-first day of March, in the year nineteen hundred and five, made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the portion of the said decree appealed from by the said appellants is agreeable to equity, and they pray that the said portion of the said decree may be affirmed, with costs to be adjudged to these respondents.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel With Elisha P. Wilbur and Edward M. Paxson, Respondents.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
THE EASTON NATIONAL BANK,
Complainant and Respondent,
and
THE AMERICAN BRICK AND TILE COMPANY ET AL.,
Defendants;
FREDERICK GREEN ET AL.,
Defendants and Appellants.

On Appeal from Decree of Chancellor.

ANSWER OF ELISHA P. WILBUR AND EDWARD M. PAXSON TO PETITION OF APPEAL OF FREDERICK GREEN, EXECUTOR OF HENRY GREEN.

The answer of Elisha P. Wilbur and Edward M. Paxson, respondents, to the petition of appeal of Frederick Green, executor of Henry Green, deceased, one of the above named appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was, on the twenty-first day of March, in the year nineteen hundred and five, 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 to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the portion of the said decree appealed from by the said appellants is agreeable to equity, and they pray that the said portion of the said decree may be affirmed, with costs to be adjudged to these respondents.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel With Elisha P. Wilbur and Edward M. Paxson, Respondents.

Answer to other Petitions in the usual form.