NEW JERSEY COURT OF ERRORS AND APPEALS.

Abraham Anderson,		
Complainant and Respondent,		On Bill, &c.
vs.		Defendant's
The Anderson Food Company,		Appeal.
Defendant and Appellant.		

Brief for Complainant and Respondent.

Complainant filed his bill for an injunction to restrain the defendant from removing out of the State certain personal property covered by complainant's mortgage, and pledging the same as security for loans. The defendant, by way of cross bill, set up fraud in the making of the mortgage, and insisted that the mortgage was intended to cover real estate only, and was not intended as a chattel mortgage on personal property.

After testimony had been taken and argument had, the defendant company became insolvent; after the insolvency Vice-Chancellor Grey made a decree dismissing both bill and cross bill.

From that part of the decree dismissing the bill no appeal has been taken, the insolvency having so changed the situation of affairs that no practicable benefit could inure to the complainant from a reversal of the decree dismissing the bill.

An appeal has been taken on behalf of the defendant dismissing the cross bill, and this appeal is now before the Court.

The complainant insists that there was neither fraud nor mistake in the drafting, execution or delivery of the mortgage, and that part of the decree of the Court of Chancery appealed from should be affirmed.

The mortgage in question is a purchase money mortgage and covers the identical property conveyed to the mortgagor.

The defendant's testimony in support of its cross bill commences on page 235 and ends on page 296. The complainant's testimony in reply commences on page 297 and closes on page 330. Defendant's rebuttal is to be found on pages 330 to 332.

It seems to complainant that the whole of the complainant's testimony on his original bill, from pages 56 to 92, and defendant's testimony in reply, from pages 93 to 234, may be disregarded as having no bearing upon the issue now before the Court.

History.

The complainant, Abraham Anderson, had built up a large and profitable business in the canning of fruits and vegetables, the manufacture of preserves, jellies, &c., in the city of Camden. Among others associated with

him was his son-in-law, John T. Cox. The business was carried on under the name of the Anderson Preserving Company, a corporation under the laws of New Jersey.

Mr. Anderson, failing in health, wished to withdraw from business, and Mr. Cox, being desirous of securing the same, conceived the idea of organizing a new company, which was afterwards done, and is known as the Anderson Food Co. An arrangement was entered into by which the Anderson Preserving Co. (the old company) should convey all of its property, machinery, good will, stock manufactured, book accounts, &c., in fact the entire plant, to the Anderson Food Co. (the new company), for certain considerations, including a purchase money mortgage of $100,000 on the property conveyed.

The Anderson Preserving Co. having thus parted with its property and business, and being the owner of the $100,000 mortgage, assigned the same to the complainant upon the surrender and cancellation of $100,000 of the capital stock of the Preserving Company. The balance of Mr. Anderson's stock in the Preserving Company was transferred to John T. Cox.

The agreements offered in evidence bearing upon this matter are between Abraham Anderson of the one part and John T. Cox of the other part. Neither the Preserving Company nor the Food Company are parties to these agreements, although Mr. Anderson was practically the owner of the Preserving Company, and Mr. Cox, by the transfer of stock to him, succeeded as such owner, and he, Mr. Cox, was also practically the owner of the Anderson Food Company.

No attack was made and no question has arisen as to these various proceedings. The sole matter in controversy was the right of the Food Company, after it commenced

business, to remove the stock manufactured by it out of the State, and pledge it for loans, and when this question was brought into the Courts, the defendant set up mistake or fraud in the execution of the mortgage, and asked to have it reformed by eliminating that part which operated as a chattel mortgage.

John T. Cox, who was the active spirit in these negotiations, was a stockholder and officer of the Anderson Preserving Co., and the promoter and organizer of the Anderson Food Co.

The Mortgage.

That part of the mortgage in question is as follows, after the description of the real estate by metes and bounds:

"Being the same premises conveyed by the said party "of the second part to the party of the first part by deed "bearing even date herewith.

"And also all moveable machinery, machines, tools, ket- "tles, pots, pans, jars, cups, belting, gearing, stock manu- "factured, unmanufactured, or in the process of manufac- "ture, office furniture and all appliances and appurtenances "of every kind and description used in connection with the "business of the party of the first part or otherwise. And "also including all personal property, and chattels which "may be brought upon the premises above conveyed, or "become the property of the party of the first part as in "substitution for, renewal of or addition to the personal "property above described: it, however, being particu- "larly understood and agreed that the party to the first "part may conduct its ordinary business and in so doing "dispose of any of the foregoing personal property.

"The above personal property is the same as was as- "signed to the said party of the first part by bill of sale

"from the party of the second part, bearing even date "herewith, and this mortgage is given to secure a part of "the purchase money of the sale of the said real estate and "personal property; together, &c." (See Exhibit C2, page 343, lines 1 to 22.)

The contention of the complainant below was that the words, "Conduct its ordinary business, and in so doing dispose of any of the foregoing personal property" did not empower the defendants to store its manufactured product in warehouses outside of the State, and pledge the same for loans upon warehouse receipts. However, this question is not now before the Court. In meeting this attack upon the conduct of the defendant in the management of its business, the defendant, by answer and cross bill, set up that the mortgage was signed by mistake as to want of knowledge as to its real contents, and praying that the mortgage be reformed by eliminating the part above quoted.

Accompanying the deed for the real estate and fixtures conveyed to the mortgagor, was a bill of sale of the movable property, to be found in the printed book, Exhibit D1, page 365, and by examination of the same, on page 366, line 10, it will be noted that the clause of the mortgage above quoted contains the same property as that conveyed by the bill of sale.

The deed and bill of sale to the mortgagor bear the same date as the bond and mortgage made by the mortgagor to secure part of the purchase money, and which bond and mortgage were executed and delivered at the same time, and immediately after the deed and bill of sale had been executed and delivered, and all papers were sent to the Register's office at the same time. The bond and mortgage was subsequently assigned to complainant.

The Agreements.

The defendant insists that the mortgage is not in accordance with the several agreements offered in evidence.

An examination of the agreements in question will show that this contention is not well founded.

The agreements are four in number, marked Cross Bill Exhibits C1, 2, 3 and 4, and are found on pages 349 to 357 inclusive.

Exhibit 4 is supplementary to Exhibit 1. Exhibits 2 and 3 are the same as Exhibit 1, embodying the provisions of Exhibit 4, with some minor modification as to extension of time of payment, &c. Those parts of the agreements which relate to the subject matter in dispute are the same.

As above stated, these agreements are between Abraham Anderson and John T. Cox in their individual capacity. They provide:

(1) For the sale by Anderson of his stock in the Anderson Preserving Co. to Cox.

(2) For the payment by Cox, for said stock, with $75,000 in cash and a mortgage "on the plant, appurtenances and equipments now owned by the Anderson Preserving Co." for $100,000, and notes for $58,000. In the first agreement these notes were made payable in two annual payments; in the second and third agreements this sum was made payable in three annual payments.

(3) The agreement further provided that Cox should sell to Anderson 250 shares of the Food Company stock at $77.77 a share. This was part of the above $75,000 cash.

Cross Bill, Exhibit C4, had two paragraphs in it, which are paragraphs 4 and 5 of Exhibits 2 and 3, and they relate simply to the management of the new Food Company, as to the order in which obligations given and assumed by it should be met, and a limitation put upon salaries, &c., in order that creditors might be protected, and so on.

The only paragraph in these agreements which bears upon the point in issue is the second paragraph, which is exactly alike in all, except that in Exhibits 2 and 3 the $58,000 is to be paid in three installments instead of in two, as provided in Exhibit 1.

The reason for these several agreements is the fact that when the time stated in the first agreement arrived for its consummation, the parties were not ready, so that the agreement, C1, with its supplement, C4, was renewed by agreement C2, and as this was not consummated, it was renewed in agreement C3, the one under which the transfer took place.

It is of the utmost significance to bear in mind that the first agreements in this matter were drawn by one of the counsel of the defendant company, Mr. Samuel W. Beldon. (See his testimony, page 265, line 25 to the bottom, and on the top of page 266.) The last agreement, which was simply a copy of the two former ones, so far as the significant feature is concerned, was copied in the office of Mr. John F. Harned, the solicitor for complainant.

After providing for the payment of $75,000 in cash (part of which was actually paid by the delivery of the stock under section 3 of the agreements, as above stated,) the agreements provide that Cox, in payment for the stock of the Anderson Preserving Co. to be transferred to him

by the complainant, is "to deliver to him a mortgage on the plant, appurtenances and equipments now owned by the said Anderson Preserving Co., securing the payment of $100,000 in ten years from the date thereof, with a net interest of five per centum per annum." (See Agreements: Cross Bill, Exhibit C1, page 350, lines 10 to 15; Cross Bill, Exhibit C2, page 352, lines 11 to 16; also Cross Bill Exhibit, Exhibit C3, page 355, lines 5 to 10.)

In the first place, it is urged that neither the Anderson Preserving Co., which was to sell to the Anderson Food Co., nor the latter company, which was to buy, is a party to these agreements, and that neither of them is bound thereby.

In the second place, it is insisted that a proper construction upon this phrase, "Plant, appurtenances and equipments now owned, &c.," carries necessarily the inference that the mortgage is to cover all that is sold; and,

In the third place, the attention of the Court is directed to the fact that these agreements between Anderson and Cox not only do not contain any agreement between the two companies, nor do these agreements embody the whole of the agreement that was consummated between the two companies, and which is unquestioned in all other particulars, except the one now in dispute.

The agreements state the rate of interest on the mortgage, but do not state when it is to be paid, yet the bond and mortgage, as a matter of course, contains that fact. These agreements say nothing about insurance, yet the mortgage has the formal insurance clause. These agreements do not state who was to pay taxes, and yet the mortgage has the usual tax clause. These agreements state nothing about the conditions under which there

should be a forfeiture, yet the mortgage distinctly states that upon non-payment of interest, or failure to exhibit tax receipts, &c., there shall be forfeiture. In all these and other particulars that might be pointed out the bond and mortgage stand unquestioned and unchallenged, and admitted to be correct.

In the fourth place, the attention of the Court is directed to the testimony of Samuel W. Beldon, one of the attorneys for the defendant company, in which he said that he represented the parties purchasing the Preserving Company, knew what was in their mind, what they intended to do, what they wanted to accomplish, and was authorized to act for them; in fact, as he puts it, he was their "engineer," and, therefore, when he drew the mortgage in question containing the clause now sought to be eliminated, he was inserting that which he knew the parties at the time intended as part of the transaction.

He says: "So far as the consummation of the matter "is concerned, I was practically its engineer, and in con- "sequence of that I drew the papers," &c. (Page 266, line 15.)

On cross-examination, on rebuttal (page 332, line 20) he also said, "I knew that it was a chattel mortgage; I "knew that it required the affidavit."

Resolutions to Purchase.

It is further contended by the defendant that the resolutions passed by its stockholders and directors did not authorize the execution of the mortgage in question containing the clause objected to.

In the first place, the complainant insists that he was not a party to these resolutions, or to this action on the part

of the purchasing company, and therefore not bound by it; that the Food Company as a corporation was passing the necessary resolutions to enable it to acquire the property of the Preserving Company.

In the second place, the complainant insists that the defendant, having executed the mortgage in question with the clause therein contained that is objected to, cannot now say to a third party holding the bond and mortgage, that it executed a paper in excess of the authority conferred.

It is an undisputed fact in the case that John T. Cox and his associate, Mr. Henderson, were practically the Food Company's stockholders and directors. John T. Cox is the one who individually entered into the above agreements with the complainant, and he was a stockholder, and formerly an officer of the Preserving Company.

A careful reading of the resolutions relied upon by the defendant will not sustain the construction attempted to be placed upon them.

The first resolution to which attention is directed is found in the printed book, on page 245, having been adopted at a meeting of the stockholders of the Food Company on the 5th day of September, 1901. (See page 244, line 25). The resolution is as follows:

"Upon motion, it was resolved and ordered, that the "Board of Directors be authorized to purchase from the "Anderson Preserving Company *its entire plant, includ-* "*ing all of its assets,* and subject to its liabilities for a con- "sideration of $1,000 in cash, $149,000 in capital stock "for this Anderson Food Company, and a bond and mort- "gage be given by this Anderson Food Company *upon*

"*said plant* for the sum of $100,000, payable at the ex-"piration of ten years, with interest at the rate of five per "cent. per annum."

The significant language in the above resolution is, "Its "entire plant, including all of its assets;" that is to say the words, "including all of its assets" define the expression "its entire plant," and it is upon the plant as thus defined that the bond and mortgage is to be given, or, in other words, the bond and mortgage is to be given on that which was conveyed.

The next resolution referred to is found on page 246, being a resolution adopted by the Board of Directors on the same day that the stockholders had adopted the foregoing resolution, and it is in these words: (See page 246, line 25.)

"It was moved and seconded, that this company pur-"chase the plant and assets of the Anderson Preserving "Company, and issue therefor $149,000 in capital stock, "and pay $1,000 in cash, and make the mortgage author-"ized by the stockholders of $1,000 to the Anderson Pre-"serving Company, and that the proper officers are author-"ized to execute the said bond and mortgage."

(The mortgage should be $100,000 instead of $1,000, in line 28.)

We find that the directors' resolution is broader and more comprehensive even than the stockholders' resolution, and is couched in different language. The language used above in the resolution of the directors to purchase is, "The plant and assets of the Anderson Preserving "Co.," and this is the property that the stockholders authorized to be purchased, and upon which a purchase money mortgage was to be given.

This resolution was rescinded by the directors on the 16th day of September (see page 247), and on the 20th day of September, the day that the transaction was consummated, the resolution is readopted, using the same language as above, "The plant and assets of the Ander-"son Preserving Company."

There is no other action on the part of the defendant company with reference to the purchase of anything from the Anderson Preserving Company, so that everything that was conveyed to the Food Company by the Preserving Company, by the deed and by the bill of sale is necessarily included within this language. This is the construction put upon it by the defendants themselves at the time of the purchase, otherwise they would have no right whatever to acquire title to the property covered by the clause of the mortgage in question.

Practically, as the parties themselves understood it at the time, the Food Company was buying everything that the Preserving Company owned, and was giving in part consideration of the purchase, a mortgage for $100,-000 on the property it purchased.

The stockholders of the Food Company and the directors were the same persons at that time.

The defendants purchased from the Preserving Company all that the latter company owned, their buildings, their land, their machinery, their stock on hand, their stock manufactured, their book accounts, their bank account, and everything that they possessed, for it appears over and over in the testimony that they acquired everything that the Preserving Company owned, and it is insisted that the words "including all its assets" included everything that was conveyed, and defines the word "plant" as conveyed as "its entire plant, including all of its assets."

RESOLUTION TO SELL.

The defendants are bound by the resolutions passed by the Preserving Company, directing the sale to be made to the defendant, and the consideration that was to be received for such sale and transfer, both because it is part of their title, and secondly because the minutes containing the resolutions in question were prepared by their attorney. (See page 329.)

Preceding the passage of any resolution by the Preserving Company was a written consent to the sale signed by all of the stockholders of the Preserving Company, including John T. Cox, who organized the defendant company, and that paper is witnessed by David A. Henderson, the other party associated with Mr. Cox in the Food Company's enterprise.

It must be borne in mind that John T. Cox and David A. Henderson are the only witnesses who attack the mortgage in question, and it will appear that both of them signed the following paper. (See bottom of page 302 and top of page 303.)

"We, the undersigned, all of the stockholders of the "Anderson Preserving Company, do hereby agree and "consent to a sale by The Anderson Preserving Company "*of all its personal property and real estate, buildings, im-*"*provements, good will, stock, fixtures, machinery and assets* to the Anderson Food Company, for the sum of "$250.000, and to receive back *in part payment therefor* "*a purchase money mortgage of $100,000 upon the An-*"*derson Food Company,* assuming all the indebtedness "and obligations of the Anderson Preserving Company.

"John T. Cox,
""V. S. Anderson,
"A. Anderson,
"L. W. Goldy,
"R. L. Anderson.

"Witness: David A. Henderson."

Following that written consent, signed by the shareholders, appears the following resolution on the minute book of the Preserving Company:

"Resolved, that this company sell to the Anderson "Food Company, *all its personal property and real estate, "buildings, improvements, good will, fixtures, machinery "and assets,* for the sum or price of two hundred and fifty "thousands dollars. *One hundred thousand dollars of "which is to be paid by a purchase money mortgage upon "the property above sold;* one thousand in cash, and one "hundred and forty-nine thousand dollars in stock of the "Anderson Food Company at par, upon the Anderson "Food Company assuming all the indebtedness and "obligations of the Anderson Preserving Company.

"Resolved, that the officers of this company be and "they are hereby directed to carry out the terms of this "resolution.

"Resolved, that the mortgage of $100,000, made by "the Anderson Food Company to the Anderson Pre-"serving Company when executed, be assigned to "Abraham Anderson, in payment to him for one thous-"and shares of the capital stock of this company by him "held and surrendered."

It will be noted that in the above consent to sell and also in the resolution adopted by the company, all of the property of the Preserving Company was to be sold, and the mortgage which was to be taken in part consideration was "a purchase money mortgage upon the property above sold."

Not only are the defendants charged with notice of these resolutions as part of their title, authorizing the conveyance by deed and bill of sale to be made to them, but they have actual notice in that John T. Cox signed

the resolution containing the provision that a purchase money mortgage was to be given on the property sold, and David A. Henderson witnessed the signature of Mr. Cox and the other shareholders of the Anderson Preserving Company. Both of them must certainly be bound by knowledge of the contents of this short paper.

The mortgage was drawn in exact conformity to the above consent and resolution.

Again, a special meeting of the stockholders of the Preserving Company was held on the 13th day of September, 1901, and action taken upon this consent and the above resolution.

At this meeting, among others present, was John T. Cox. (See minutes of meeting, page 325, line 20.) This minute contains the consent written out at length in the language heretofore quoted, and a resolution offered by one of the signers to the consent, L. W. Goldy, a stockholder, which contains the language heretofore quoted, that the property sold "is to be paid for "by a purchase money mortgage upon the property "above sold, &c." (See page 326.)

These minutes, just above recited, being an important matter, the acting secretary took his memorandum on small sheets to Mr. Woodhull, who was the attorney of the Preserving Company at that time, and who drew the first of the agreements that preceded those now offered in evidence, and who, since the organization of the Food Company, has been its solicitor and acted with Mr. Beldon at the time of the transfer for the parties purchasing the property of the Preserving Company and organizing the Food Company. The secretary states, on page 329, that Mr. Woodhull dictated minutes for him to write out from the notes which he

had, and the minute book shows the minute ending as he testifies, as appears at the bottom of page 326.

From the resolutions to sell, and the knowledge which the defendants or those who are stockholders and directors of the defendant company had, it is clear that there is no mistake whatever in the mortgage in following the language of the bill of sale, and including within the scope of the mortgage, not only the real estate covered by the deed, but the personal property covered by the bill of sale.

Oral Testimony.

The Court is referred for a full and clear statement of the facts connected with the execution and delivery of this bond and mortgage to the testimony of John F. Harned, found on pages 297-312. He is corroborated by Abraham Anderson, page 312; by Robert Anderson, page 318, and Voorhees S. Anderson, page 321. The only testimony (outside of that of Mr. Cox and Mr. Henderson, who testify rather as to what was understood was agreed upon than as to what actually took place) is that of Mr. Beldon, who was acting for Messrs. Cox and Henderson, along with Schuyler Woodhull, in this transaction.

Mr. Beldon, in his testimony, does not attempt to recall the circumstances; in the most important particulars he corroborates the testimony of Mr. Harned; where he fails to do that, he does not contradict Mr. Harned but simply had no recollection as to certain particular matters. His testimony is found on pages 263 to 275.

Mr. Harned explains about the different agreements and the delays in their being carried out, and says, at the bottom of page 301, "that after the final arrangement had been made Mr. Beldon was to prepare the necessary papers, that is, the deed, the bill of sale, the bond and mortgage, &c." Mr. Harned says, on page 302, that he prepared the assent signed by the shareholders and the resolution which accompanied it. These being the same papers which Mr. Woodhull afterwards put in shape in the minutes which he dictated for the secretary of the meeting." (Page 329.)

On page 305 Mr. Harned says, that before the papers were executed he went to Mr. Beldon's office to look over the papers, compared the description, called his attention to the fact that the mortgage must be a purchase money mortgage, and as no money was passing between the parties, only property, that it must cover the property actually being transferred; he says Mr. Beldon "understood that to be the intention "of the parties and called a stenographer, picked up "the bill of sale which he had lying with other papers, "and read over the bill of sale and description of the "personal property in the bill of sale and directed that "that be inserted in the mortgage. He then said that "a mortgage of that kind would interfere with the man-"agement of the business unless they were authorized in "some way to dispose of it. I said that that seemed "reasonable, and then he added the form authorizing "the disposal of the property in the ordinary course of "business and remarking at the time that he had some "kind of a form of his own that he used in those cases." (See bottom of page 305 and top of page 306.)

Mr. Beldon, on page 263, line 30, admits that this part of the mortgage was dictated by him after a conference with Mr. Harned.

Mr. Harned further states, on page 307, that on the day the papers were to be executed, he went over it to see if the mortgage had been properly drawn; that Mr. Beldon, in his presence, read to Mr. Henderson the clause in question; at the bottom of the same page he says, that when the parties met at his office to execute and deliver the papers he found there was no affidavit to the mortgage, which was necessary on account of its being a chattel mortgage as well as a real estate mortgage; he thereupon, in the presence of the parties selling and the parties buying, and their respective counsel, dictated [illegible] now appears on the mortgage, which was written out and affixed to the mortgage—Mr. Beldon volunteering to attach it to the mortgage in the manner in which it now appears on the paper—differing somewhat from the method in which Mr. Harned was about to employ. (See page 308.)

Mr. Beldon, in cross-examination on rebuttal, page 332, says he knew that it was pasted there; that he knew that it was a chattel mortgage; he knew that it required an affidavit, and "*I did not need the declaration of the requirement of the affidavit to inform me that it was a chattel mortgage.*"

Mr. Harned then says, on page 309, that he took the papers up in order, told the parties what they were; they were executed and delivered. None of the papers, however, were read in full. The word "aloud," at the end of the first paragraph on page 309, should be "in full."

Mr. Harned then says, on page 311, that after the papers were executed, and in the presence of all the parties,

ANDERSON vs. ANDERSON FOOD COMPANY.

I wish to add to the brief the following:—

The defendant practically abandons all charge of fraud and contents himself with saying that there was a mistake or a misunderstanding.

The mortgage in question was drawn by their own solicitor, and drawn in accordance with what he understood was the agreement between the parties. In view of this fact, no allegation of fraud can be sustained.

The mere fact that one of the parties to the agreement now comes in and says that he did not understand that there was to be a chattel mortgage will not avail him; there must be a mutual understanding, or the parties must be restored to their original position.

To allow the defendant now to say that he did not understand there was to be a chattel mortgage would be to permit it to make the bargain. The complainant said in his testimony, page 314, line 10, &c., that he never had any intention at any time to accept anything else than a mortgage which would cover the whole of the property conveyed by the Anderson Preserving Company, and that there was at no time any conversation, agreement, or discussion about his accepting anything but a mortgage on the whole property to be conveyed.

He cannot be restored to his original position. The defendant company is insolvent and prior to the insolvency it had parted with the larger part of the personal property transferred to it.

The value of the personal property transferred by the bill of sale was about $100,000. Mr. Anderson, in his testimony, page 71, line 12, said that at the time they turned the business over to the Food Company there was $60,000 worth of tomato soup piled up in the factory. In addition to this were all other canned goods, vegetables, preserves, stock unmanufactured, as well as cans, jars, etc., at the factory. There was also $25,000 worth of manufactured product in warehouses outside of the State of New Jersey (see page 84, line 15). There was also $3,000 in bank to the credit of the preserving company, which was transferred (see page 184, line 12).

Mr. John T. Cox admits in his examination that the property covered by the bill of sale represented merchandise and unmanufactured goods, and goods in the warehouse, to an amount in the neighborhood of $100,000 (page 290, top of the page.)

The value of this property also accounts for the complainant taking a chattel mortgage as well as a mortgage upon the real estate conveyed. Had he not taken a chattel mortgage, he was parting with $100,000 in quick assets, readily convertible, and he would have had a grossly inadequate security.

JOSEPH H. GASKILL,
Counsel for Complainant.

he handed the mortgage to his clerk to take to the office of the Register of Deeds to have it recorded as a real and chattel mortgage. These instructions were given in the presence of all the parties.

Mr. Abraham Anderson states that Mr. Beldon said to him in the presence of Mr. Henderson and Mr. Cox, in answer to the question as to whether the chattel mortgage would be separate from the real estate mortgage, that they were usually made in one. On page 317 he corroborated Mr. Harned as to the drawing up of the affidavit to the chattel mortgage and to its being sent for record.

Robert Anderson, on page 320, remembers the dictation of the affidavit, and its being pasted on the mortgage, and on page 321, the instructions given to the office boy to take the paper for record.

Mr. Voorhees S. Anderson, on page 322, corrborates the other witnesses.

None of this testimony is contradicted either by Mr. Henderson or Mr. Beldon, who are called in sur rebuttal; Mr. Cox not being called in sur rebuttal.

Mr. Beldon's direct examination is of a very negative character, simply that he does not recollect certain transactions (pages 263-264.) His cross-examination commences on page 265, and, as above stated, corroborates the testimony of Mr. Harned so far as he has any recollection whatever of the transaction. On page 266 he states that he drew the first of the agreements that were offered in evidence, and that he was the engineer of the matter, and drew the papers. On the same page he says that he drew the deed, the bond and the mortgage; and on the next page he also states he drew the bill of sale.

In answer to the Vice Chancellor, on page 266, he says that these papers, after having been drawn in his office, were left by him with Mr. Henderson at his office.

At the bottom of page 269, in answer to the Vice Chancellor, he said the parties failed to come to an agreement on one occasion when they met at Mr. Henderson's office prior to the day when the matter was consummated.

At the top of the next page, the Vice Chancellor asks this question:

"Ques. Did that disagreement touch the frame or form in which the mortgage of the complainant was expressed?"

"Ans. *My recollection is that it had no reference to the form of the mortgage at all but was a question of terms altogether.*"

The rest of the Vice Chancellor's questioning on that and the following page is interesting.

On page 272, line 30, Mr. Beldon admits the interview with Mr. Harned on the morning of the consummation of the deal and the talk as to the chattel mortgage feature, and on the next page he says, "I think "that after a conversation with Mr. Harned I took the "bill of sale and dictated the portion to be included in "the mortgage; whether it was in Mr. Harned's pres- "ence or not I do not know."

By the Vice Chancellor:

"Ques. Will you state what was the portion you so "dictated to be included in the mortgage?"

"Ans. *It had reference to the personal property.*"

"Ques. Was it that portion which has been hereto-
"fore read to you?"

"Ans. I presume it was that or a portion of it."

Further, on page 274, he says, *"I said to Mr. Harned that I had a regular clause for including property; it might come into the premises afterwards and that I would use that clause."* And further he says, on page 275, "I "don't think it is possible that papers of this importance "could have gone out of my office without having been "read by me, either every word or substantially "through."

Conclusion.

The presumption is in favor of the mortgage. The parties were experienced business men and had the assistance of able counsel. The mortgage in question was drawn by the counsel of the defendant. The agreements, the resolution and the oral testimony all show that it was intended to be just what it is—a mortgage upon the personal as well as the real property conveyed.

The property in question, real and personal, has all been sold by the receiver of the defendant company, and the proceeds of the personal property now in dispute, amounting to $20,000, has been paid by the receiver, by order of Vice Chancellor Grey, to the complainant; the complainant having executed and delivered to the receiver a bond conditioned for the repayment of that amount if this Court reverses the judgment below.

The facts are so clear, not only as to the intention of the parties, but also as to what they actually and knowingly did, that it is unnecessary to quote any authorities as to the meaning to be attached to "its entire plant, in-"cluding all of its assets," as in the purchasing company's resolution, or "plant, appurtenances and equipments now "owned by the said Anderson Preserving Company," as in the agreements.

Both the expression in the resolution, and that in the agreements were understood by the parties at the time to mean the same thing, and to mean the same as that which was inserted in the bill of sale and in the mortgage.

The mortgage is a purchase money mortgage on the property sold and transferred.

The decision of the Vice Chancellor should be affirmed, and this appeal dismissed with costs.

Dated March 10th, 1904.

JOSEPH H. GASKILL,

Of Counsel with the Complainant and Respondent.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,
Complainant,

AND

ANDERSON FOOD COMPANY,
Defendant.

ON BILL.

ANSWER AND PROOFS.

OPINION.

The original bill of complaint in this cause was filed by Mr. Anderson, who is the holder of a real estate and chattel mortgage against the property of the defendant company to restrain that company from removing any of the stock, fixtures or personal property referred to in that mortgage, except by selling the same in the conduct of its ordinary business, and also for a mandatory injunction requiring the defendant to return to its factory, in the city of Camden, 3,500 cases of canned tomato soup alleged to have been wrongfully removed therefrom.

The whole equity of the complainant's bill on which he claims a right to restrain the complainant mortgagor from disposing of the personal property is based upon a single clause in the mortgage.

The instrument in question was made on the twentieth day of September, 1901, between the Anderson Food Company (the defendant) and the Anderson Preserving Company. It is a mortgage to secure the payment of $100,000, with interest thereon, at the expiration of ten years from the

date thereof, and purports to be a lien upon certain real estate and personal property therein described; one of the items named being the "stock manufactured and unmanufactured, or in process of manufacture," &c. It contains the following clause:

"It, however, being particularly understood and agreed that the party of the first part may conduct its ordinary business, and in so doing dispose of any of the foregoing personal property."

The mortgage has been assigned by the mortgagee to the complainant in this suit.

The bill alleges that the defendant mortgagor has removed large quantities of tomato soup put up in small tin cans, and has caused the same to be stored outside of the State of New Jersey, and the complainant charges that this stock was not removed in the conduct of its ordinary business, but in violation of the chattel mortgage and for the purpose of repledging the same in order to raise money thereon, and that the defendant claims the right to remove and to repledge all of the said stock of said defendant company.

The bill was supported by affidavits, and an order to show cause was allowed why an injunction restraining the defendant company, in accordance with the prayer of the bill, should not be awarded the complainant.

On the coming in of the rule to show cause, the defendant filed its answer, admitting the execution of the mortgage in question and its assignment to the complainant; but alleging that it was signed and delivered by mistake and for want of knowledge of its real contents, contending that by the terms of the antecedent agreements, under which the mortgage was made, it should have been drawn as a security only upon the "plant, appurtenances and equipment" of the defendant company, and that unknown to the defendant, there was inserted in the mortgage the clause making it a lien upon its "stock manufactured and unmanufactured, and in process of manufacture;" and the defendant avers that immediately on its discovery of the inclusion of its stock in the mortgage, the

defendant protested to the complainant that an unfair advantage had been taken, and demanded the reformation of the instrument.

The answer admits the removal of the stock as mentioned in the bill, but insists that it was done without any fraudulent intent or purpose and in accordance with the usual custom of the trade in the ordinary course of business, for the purpose of raising loans; though it insists that no loan has as yet been made upon said goods, and that it has, under the terms of said mortgage, a lawful right to consign its said goods and obtain loans thereon; and that this course has been and is the daily practice of the defendant company and its usual manner of doing business.

In addition to its answer the defendant company filed a cross-bill, alleging that the mortgage in question was made pursuant to certain preliminary agreements which did not provide for the mortgaging of its stock of goods, &c., in the manner expressed in the chattel mortgage, and that it was never suggested by the complainant, or his attorney, or by any of the parties to the agreement, that the security should cover the stock, but on the contrary it was understood and intended that the proposed mortgage should be a lien on the "plant, appurtenances and equipment" only. That although it was executed at the office of the complainant's solicitor, in the presence of the president and secretary of the defendant company, in fact neither of those officers read over the mortgage, nor was it read over to them before executing, nor did the officer who took the deposition thereof make any declaration as to the contents of the mortgage. That the officers of the defendant company, supposing it to be a mortgage only on the "plant, appurtenances and equipment" of the defendant company, executed it in absolute ignorance of its real terms, and the defendant charges that the execution of the mortgage as a lien upon the stock of the defendant company was either a mistake or a grievous wrong and fraud upon the defendant company. The defendant avers that about three weeks after the mortgage was recorded, it casu-

ally discovered that it contained the clause making it a lien upon the defendant's stock of goods, &c. That the defendant's secretary then protested against the same to the complainant and to his attorney. That the secretary and Mr. Beldon, attorney for the defendant mortgagor, examined the record of the chattel mortgage and found that it did include the stock, &c., and that this was the first knowledge had thereof. The defendant claims that, in person and by letter, it has ever since protested against the inclusion in the mortgage of its stock of goods, and demanded a specific release of those goods from the operation of the mortgage.

The defendant company, under the allegation of its cross-bill, prays that it may be decreed that the mortgage as executed is not the act and deed of the defendant company, that the complainant may be compelled to deliver it up for cancellation; or that a decree may be made reforming it by striking out the word "stock manufactured and unmanufactured, and in the process of manufacture," or any other words of like import wherever they may occur in the mortgage, and that the record of the mortgage may be amended in accordance with such decree by again recording the same.

The answer of the defendant company was supported by affidavits. A hearing was had on the question whether, in accordance with the prayer of the complainant's bill, a preliminary injunction should go restraining the defendant from further disposing of the stock of canned goods. On that hearing a preliminary injunction was refused to the complainant.

The complainant has answered the defendant's cross-bill. He denies that the stock of goods of the defendant mortgagor was wrongfully inserted in the chattel mortgage, either by mistake or by any fraud or contrivance, and states that the mortgage was made to secure part of the purchase money to be paid for the conveyance of all the assets of the Anderson Preserving Company to the Anderson Food Company, part of which assets was the stock of goods, &c. The clause of the mortgage respecting the items to be included in the

mortgage, which the defendant mortgagor challenges, was drafted by Mr. S. W. Beldon, the attorney for the defendant mortgagor, and included the "stock manufactured, unmanufactured, or in process of manufacture," precisely as it is expressed in the chattel mortgage; that it was inserted in the chattel mortgage with the knowledge and assent of said attorney for the defendant mortgagor; that having been so inserted, it was read in full to Mr. Henderson, the secretary of the defendant mortgage, who replied that it was all right. That the mortgage as so drawn, remained in the possession of the attorney for the defendant mortgagor, and was by him brought unexecuted to the office of the attorney for the complainant for the purpose of execution and settlement. That there were present at that meeting, Mr. Beldon, the attorney for the defendant mortgagor; Mr. Cox, it's president; Mr. Henderson, it's secretary; the complainant and his attorney, Mr. Harned, and the complainant's two sons. That the mortgage containing the clause now challenged was produced by the attorney for the defendant mortgagor. That attention was openly called to the fact that it was a chattel mortgage, that an affidavit of consideration was in the presence of the parties dictated and was annexed to the mortgage by the attorney for the defendant mortgagor, and that it was then and there openly declared to all the parties present, that the instrument was a mortgage upon the real and personal property about to be transferred from the Anderson Preserving Company to the defendant mortgagor, to secure $100,000 of the purchase price of the property mortgaged, and that thereupon the officers of the defendant mortgagor executed the mortgage in question with full knowledge of its contents, and so delivered it.

On these pleadings the cause has come to final hearing.

Messrs. John F. Harned and Jos. H. Gaskill,
For Complainant.

Messrs. S. C. Woodhull, S. W. Beldon and
D. J. Pancoast,
For Defendant.

GREY, V. C.: The first question to be determined in this cause is that raised by the defendant's cross-bill seeking to cancel the chattel mortgage set up in the complainant's original bill of complaint, or to reform it by striking out the words "stock manufactured, unmanufactured and in the process of manufacture." If the defendant is entitled to this relief, it will so alter the chattel mortgage upon which the complainant bases his equity that he could not be entitled to any injunction which would restrain the defendant mortgagor company from removing and pledging the stock of canned goods, &c., now included within the chattel mortgage. Has the defendant mortgagor shown that its chattel mortgage, as it is now expressed, was made to include the clause affecting the stock of goods by either fraudulent contrivance or by such a mistake as is correctible by this Court?

I think it may be safely said that there is not a particle of evidence in this cause which either shows, or tends to show, that the mortgagee, the Anderson Preserving Company, or those who acted for it, either as its officers or attorneys, ever had any purpose, or even thought, of fraudulently introducing the clause in question into the chattel mortgage and obtaining it to be executed by the defendant mortgagor company, or those who acted for it, without its knowledge or consent. All of the evidence touching the execution of the instrument goes to show that it came into existence with the clause in question, not by the contrivance or planning of the mortgagee, or those who acted for it, but that the whole mortgage was a subject of conference and examination at first between the several attorneys of the mortgagor and the mortgagee, that the challenged clause was particularly referred to between those attorneys before it was inserted in the chattel mortgage, and the draft of that clause was actually made by the attorney for the defendant mortgagor. The instrument was thereafter, by the consent of all parties, retained in his possession unexecuted, with the most abundant opportunity for inspection, correction, change or rejection. It was yet unsigned, when brought to the place of meeting

for settlement, by the attorney for the mortgagor company, and although there is some contradiction as to the definite words used in making known the contents of the instrument at the time is was signed, acknowledged, proven and delivered, yet I am satisfied that its contents were in fact then and there declared and made known in good faith to the parties who, acting for the defendant mortgagor, executed it, and those who acted for the defendant mortgagee accepted it, as it is presently expressed.

So far as the cross-bill charges or intimates that the mortgagee of those who acted for it had any fraudulent intent to insert in that mortgage the clause which the defendant mortgagor now seeks to have excised, or that it was inserted by any fraudulent contrivance, the evidence entirely fails to sustain the allegation.

There is a prayer in the cross-bill which should be shortly noticed. It is asked as an alternative mode of relief, that the complainant may be compelled to deliver up the chattel mortgage for cancellation. A decree that the mortgage shall be cancelled is impossible under the circumstances of this case. This would require a restoration of the status of the parties which existed when the mortgage was delivered, which the cross-bill does not tender. There is nowhere in this case any offer to return to the mortgagee the property which the mortgage purchased. The evidence shows that this is probably impossible. All parties since the mortgage was given have irretrievably changed their positions touching the subject matter then dealt with. No claim has been made in argument that a cancellation of the mortgage is equitably possible, and this mode of relief must be rejected.

The cross-bill also asks that the chattel mortgage may be reformed by striking therefrom the clause "stock manufactured or unmanufactured and in the process of manufacture," or any other words of like import wherever they may occur in the mortgage, because it is alleged those words were inserted in the mortgage by a mistake.

The mortgage in question came to be made as follows: The complainant, Mr. Abraham Anderson, was the largest stockholder, so that he entirely controlled the Anderson Preserving Company, which, in the year 1901, was engaged in the packing of fruits and vegetables in cans, and the sale of the same. Mr. Anderson and Mr. John T. Cox, in the latter part of the summer of that year, entered into negotiations for the sale by Mr. Anderson of the Anderson Preserving Company to a company not yet incorporated, to be known as the Anderson Food Company, which would be controlled and managed by Mr. Cox.

Several written agreements were made between Mr. Anderson and Mr. Cox, which, because of disagreements between them, were abrogated and new contracts made in their stead.

Before the parties had come to an abiding agreement the Anderson Food Company was, on August 15th, 1901, incorporated by Mr. Cox, who subscribed for eight shares as an incorporator; Mr. David A. Henderson, who subscribed for one share, and Mr. Voorhees S. Anderson, who also subscribed for one share. The whole trend of the evidence in the cause shows, that the Anderson Food Company was incorporated and controlled by Mr. Cox for the purpose of taking over all of the assets of the Anderson Preserving Company. Mr. Cox elected himself president of the Anderson Food Company; Mr. Henderson, secretary, and Mr. Voorhees S. Anderson, treasurer.

There were several recessions and changes and, perhaps, temporary abandonments of the plan, but the negotiations were as often resumed between the parties.

The first action taken by the newly-organized Anderson Food Company, the mortgagor, looking towards the taking over of the property of the Preserving Company was by a resolution of the stockholders of the Anderson Food Company, adopted by them at a stockholders' meeting held on September 5th, 1901. The resolution is as follows:

"Upon motion it was resolved and ordered, that the board of directors be authorized to purchase from the Anderson Preserving Company *its entire plant, including all of its assets,* and subject to its liabilities, for a consideration of $1,000 in cash, $149,000 in capital stock for this Anderson Food Company, and a bond and mortgage be given by this Anderson Food Company *upon said plant* for the sum of $100,000, payable at the expiration of 10 years, with interest at the rate of 5% per annum."

It will be noted that this resolution, in speaking of the thing to be purchased, refers to the *entire plant of the Anderson Preserving Company, including all of the assets,* and to *a bond and mortgage to be given* by the Anderson Food Company *upon said plant.* It is the fair construction of this resolution that the stockholders of the Food Company in directing the making of the mortgage in question (obviously a purchase money mortgage), intended and expected that the mortgage which they directed to be given upon *"said plant,"* referred to the previously mentioned Preserving Company's *"entire plant, including all of its assets."* That accords with the recitals of the mortgage itself, which declare it to be "given to secure a part of the purchase money of the said real estate and personal property."

It should be observed that this resolution of the stockholders of the mortgagor company continued in force up to and at the time when the mortgage in question, including the clause now challenged, was executed and delivered.

On the same September 5th *the directors of* the Anderson Food Company adopted a resolution: That the Anderson Food Company purchase the plant and assets of the Anderson Preserving Company, and *"make the mortgage authorized by the stockholders,"* and authorized the proper officers of the Food Company to execute said bond and mortgage. On September 16th, 1901, the directors rescinded their resolution of September 5th, but the stockholders' resolution of the same date was never rescinded. Negotiations appear to have been again broken off and renewed between the par-

ties after the Food Company directors had rescinded their purchase resolution of September 5th, 1901, for there are several later agreements which were abandoned.

Finally, on the 20th of September, 1901 (the same day on which the purchase and giving of the mortgage were concluded), the board of directors of the Anderson Food Company re-adopted a resolution to purchase, under which the mortgage now criticised was made. The re-instating resolution of the directors is as follows:

"The president stated that this meeting was called to take action with a view of purchasing the plant of the Anderson Preserving Company, and upon motion is was ordered that the board of directors purchase the plant and assets of the Anderson Preserving Company and issue therefor $149,000 in capital stock, pay $1,000 in cash, and *make the mortgage authorized by the stockholders* of $100,000 to the Anderson Preserving Company, and the proper officers are authorized to execute said mortgage."

This was the final action of the board of directors respecting the matter of the purchase and execution of the mortgage. It should be noted that this directors' resolution, like the previous one, refers to the stockholders' resolution as fixing the character of the mortgage which was to be given; that is, as is above shown, *a mortgage upon the entire plant of the Anderson Preserving Company, including all its assets.*

These resolutions and agreements to purchase, &c., Mr. Cox and Mr. Anderson appear to have referred to their respective attorneys. Mr. Anderson's attorney was Mr. John F. Harned, who acted for him and the Preserving Company. Mr. Cox's attorney was Mr. Samuel W. Beldon. Mr. Henderson conducted the active part of the negotiations for Mr. Cox. Mr. Henderson testifies that Mr. Beldon was employed by the Anderson Food Company to draw all the papers.

Mr. Henderson and Mr. Cox, with Mr. S. W. Beldon as their counsel; Mr. Abraham Anderson, and Mr. John F.

Harned as his counsel, and Mr. Anderson's two sons, met, on the twentieth day of September, 1901, at Mr. Harned's office for the execution of the conveyances and mortgage in question, and the settlement to be made of the transaction. Previous to this meeting the deed and bill of sale from the Anderson Preserving Company to the Anderson Food Company, and the mortgage now criticised, had been drawn by or under the supervision of Mr. Beldon, the attorney for the Anderson Food Company, so as to be ready for execution on the twentieth of September, 1901. The bill of sale included all of the chattels and personal property belonging to the Anderson Preserving Company, and specially among other items the "stock manufactured or unmanufactured or in process of manufacture." The words "stock manufactured and unmanufactured, and in process of manufacture," Mr. Beldon says, were included in the mortgage after a conference with Mr. Harned, and he thinks, but cannot positively say, that there was some independent action of his own touching that clause. Mr. Beldon testifies that "so far as the consummation of the matter is concerned, I was practically its engineer, and in consequence of that I drew the papers." The mortgage, he says, was drawn in his office, under his supervision and direction, including that part of the mortgage which is now in dispute in this case. Mr. Beldon also says, that his impression is that the papers while yet unexecuted, were left with Mr. Henderson, but he cannot be sure that the mortgage was one of those papers. Mr. Beldon also testifies that after a conversation with Mr. Harned he (Mr. Beldon) took the bill of sale (which conveyed the personal property to the Anderson Food Company) and dictated the portion referring to the personal property which was to be included in the mortgage; and speaking of the papers in question which he had thus prepared, Mr. Beldon says, "I don't think it is possible that papers of this importance would have gone out of my office without having been read by me, either every word or substantially through."

Mr. Cox and Mr. Henderson, both, deny that the contents of the mortgage were made known at the time of its execution. Mr. Beldon says, regarding the mortgage, that he cannot say that he has any extremely distinct recollection of the execution of the mortgage, but that, according to the best of his recollection, it was not read to Messrs. Cox and Henderson by him, or in his presence, before its execution. Messrs. Cox and Henderson also say, that neither they nor any officer of the Anderson Food Company, to their knowledge, ever consented to the inclusion of the goods and chattels and the personal property of the company in the mortgage.

Mr. Cox testifies that the protest that he makes is, that the mortgage includes in it the stock manufactured and unmanufactured, or in process of manufacture, and that he thinks the mortgage in all other particulars to be correct. Mr. Henderson, however, seems to contend that the mortgage ought not to have included any chattels whatever. That is the tenor of his letter of November 11th, 1901, to Mr. Anderson, and of his present testimony.

These gentlemen representing the defendant company do not seem to agree as to what was actually intended and understood by them to have been included with the mortgage. Mr. Henderson appears to object at one time to including any chattels within the mortgage, and at another time, by his letter of March 10th, 1902, he only objects to the including the specific chattels, the stock, &c. Mr. Cox objects only to the inclusion of the stock, and makes no objection to the other chattels named in the mortgage.

Mr. Harned's testimony agrees with that of Mr. Beldon, that the deed, the bill of sale and the mortgage were prepared by Mr. Beldon. While they were in course of preparation he called on Mr. Beldon and the following conversation took place between them. Mr. Harned says:

"We took up the subject of inserting in the mortgage a description of the personal property. I told him (Beldon) that I understood that under a fair interpretation of the in-

tention of the parties it (the mortgage) was to cover the property that was being sold; that it was necessary to give any validity to the mortgage it would necessarily have to be a purchase money mortgage, as no money was passing between the parties, only property, and that it should cover the property that was actually being transferred. He agreed with me in that. He understood that to be the intention of the parties, and called a stenographer, picked up the bill of sale, which he had lying with the other papers, and read from the bill of sale a description of the personal property in the bill of sale, and directed that that be inserted in the mortgage. He then said that a mortgage of that kind would interfere with the management of the business unless they were authorized in some way to dispose of it. I said that seems reasonable, and then he added the form authorizing the disposal of the property in the ordinary course of business, remarking at the time that he had some kind of a form of his own that he used in those cases."

I do not understand Mr. Beldon's testimony to contradict this testimony of Mr. Harned as to the manner in which the clause which is now questioned came to be inserted in the mortgage. There are portions of it which Mr. Beldon says he does not recall.

Mr. Harned further narrates the manner in which these papers, having been prepared by Mr. Beldon, were executed. Mr. Harned testifies that in the presence of Mr. Cox, Mr. Henderson and Mr. Beldon, he held up the bond and mortgage and said that it was a purchase money bond and mortgage upon the real estate and personal property that had just been transferred by the Preserving Company to the Food Company. The mortgage was then proven by the affidavit of Mr. Henderson, as secretary of the Food Company; Mr. Harned taking his affidavit as Master.

I do not understand the testimony of Mr. Beldon to contradict this narrative of Mr. Harned as to the mode in which the chattel mortgage in question was executed. Mr. Bel-

don says he knew the paper was a chattel mortgage, knew that as such it required an affidavit.

The foregoing narrative of the evidence shows that the mortgage in question was drawn by the defendant company's own attorney as a purchase money chattel mortgage, and the very clause regarding the stock, &c., which the defendant now seeks to strike out was specially considered and inserted by that attorney, because he agreed that it was understood to be the intention of the parties. The mortgage, after it was so drawn and before it was executed, was in all probability left with Mr. Henderson, the defendant's acting business man, for examination and approval. Its contents were openly declared in the presence of all the parties and their attorneys at the time it was executed, and its execution was proven by the same Mr. Henderson by his sworn affidavit annexed to the mortgage.

Is it reasonable to declare that a paper so prepared, examined, considered and approved was executed in mistake?

There certainly was no mutuality in any mistake. Mr. Anderson declares he made no mistake. The Anderson Preserving Company got what it expected, a purchase money mortgage for a part only of the price, upon all the property which it conveyed. Mr. Anderson swears he never agreed to accept, nor would he have accepted, anything else than a mortgage which covered the whole of the property which was conveyed by the Preserving Company to the Food Company.

Before the Preserving Company's sale all its stockholders, including Mr. Cox as one, gave a written consent. Mr. Henderson witnessed it. It is in these words:

"We, the undersigned, all of the stockholders of the Anderson Preserving Company, do hereby agree and consent to a sale by The Anderson Preserving Company of all its personal property and real estate, buildings, improvements, good will, stock, fixtures, machinery and assets to the Anderson Food Company for the sum of $250,000, and to receive back in part payment therefor a purchase money mort-

gage of $100,000 upon the Anderson Food Company, assuming all the indebtedness and obligations of the Anderson Preserving Company.

"JOHN T. COX,
"V. S. ANDERSON,
"A. ANDERSON,
"L. W. GOLDY,
"R. L. ANDERSON.

"Witness, DAVID A. HENDERSON."

On obtaining the written consent of its stockholders, the Preserving Company adopted this resolution:

"Resolved, that this company sell to the Anderson Food Company all its personal property and real estate, buildings, improvements, good will, fixtures, machinery and assets for the sum or price of two hundred and fifty thousand dollars. One hundred thousand dollars of which is to be paid *by a purchase money mortgage upon the property* above sold; one thousand in cash, and one hundred and forty-nine thousand dollars in stock of the Anderson Food Company at par, upon the Anderson Food Company assuming all the indebtedness and obligations of the Anderson Preserving Company.

"Resolved, that the officers of this company be and they are hereby directed to carry out the terms of this resolution.

"Resolved, that the mortgage of $100,000 made by the Anderson Food Company to the Anderson Preserving Company, when executed, be assigned to Abraham Anderson, in payment to him for one thousand shares of the capital stock of this company by him held and surrendered."

It is very difficult to believe that Mr. Cox, who consented in writing that the Preserving Company should have a purchase money mortgage of $100,000 upon the Anderson Food Company was under a mistake in giving for the Food Company precisely such a mortgage to the Preserving Company. Yet that is what he presently claims was done.

The Preserving Company's sale, as is shown by its above-quoted resolution, was to be made on the terms that it was

to be paid in part *"by a purchase money mortgage upon the property above sold."*

The defendants make their claims of a mistake because in collateral agreements made between Mr. Anderson and Mr. Cox, not between the mortgagor and mortgagee companies, the reference to the mortgage to be made, did not specifically mention that it was to be a purchase money mortgage upon all the goods sold. These collateral agreements of the individual parties certainly cannot be permitted to alter the terms of the corporate contracts executed with all the formalities pursuant to written resolutions of the contracting companies.

In Aller vs. Crouter, 54 Alt. Rep., 426, Chancellor McGill declared that reformation of a conveyance will not be decreed, except on clear proof that by *mutual mistake of the parties thereto,* the conveyance expresses something which they did not intend, or omits to express something which they did intend.

In the present case there is scarcely a pretence that there was any mutuality in the alleged mistake. The above quoted resolutions of the respective acting companies show that both intended to make the mortgage what is presently is.

The defendant mortgagor has proven no such certainty of mistake or agreement of its own witnesses of what was intended to be done, as will support a decree of reformation. Courts of equity do not grant the high remedy of reformation upon a probability, or even upon a mere preponderance of evidence, but only upon a certainty of the error. 2 Pom. Eq. Jur. No. 859; 1 Story Eq. Jur. No. 157. The weight of the evidence tends to show that the instrument challenged does in fact, in the particular in which it is criticised, express that the parties thereto intended it should when it was made and delivered.

The cross-bill must therefore be dismissed.

The mortgage remaining unchanged and forceful as a lien upon the personal property of the defendant mortgagor, it is still to be considered, whether the complainant is, on his

original bill, entitled to restrain the defendant from removing any of that personal property, &c., according to the prayer of his bill.

The clause under which the defendant justifies its removal of the cases of tomato soup referred to in the bill of complaint is as follows:

"It, however, being particularly understood and agreed, that the party of the first part may conduct its ordinary business and in so doing dispose of any of the foregoing personal property."

Under this clause the defendant admits that it had deposited a portion of its manufactured goods in warehouses outside of the State of New Jersey, and that it intends to raise money thereon by using warehouse receipts as collateral to its commercial paper.

The question turns in great part upon the meaning of the words "conduct of its ordinary business." These do not relate, as has been argued for the complaint, to the business previously done on the same premises by the Anderson Preserving Company. The context shows that it is the business of the party of the first part, the Anderson Food Company, which is referred to. When the mortgage was made this company had never conducted any business. Therefore the permission authorizes the mortgagor to conduct such ordinary business as it might do in the future. Necessarily the character of the business to be done must be regulated by its nature, and the persons with whom and the places where, and the circumstances under which it must in the future be conducted.

It clearly appears that the quantity of canned goods produced by the mortgagor was so great that it was impossible that all, or even a major part of them could be sold or disposed of in this State. The places of sales of such products were practically the whole of the United States. In conducting such a business there would naturally and ordinarily be periods when sales would be very slow and prices low, and when at the same time cash money must necessarily be

instantly had. Such a condition of affairs would seem to invite the holder of a stock of such goods to store them and use the storage receipts as a means of temporarily raising the needed cash. When prices revived and sales again became brisk, the goods thus saved from compulsory sacrifice might be advantageously disposed of.

This was almost precisely the situation which has provoked the complainant's action. He insists that by the terms of the mortgage the defendant mortgagor can only dispose of the stock by an absolute sale. This course would much more effectually take the goods from the complainant's control than would a pledging of them. Under the circumstances above noted it might ruin the defendants business.

The proof is substantially undenied, that the course pursued by the defendant was free from any fraudulent intent to remove the goods. Only about one-tenth of the stock was stored. There was a sudden exigency and no cash. The course taken was the usual one among manufacturers who have more stock on hand than money at call.

It must be held that the disposal made of the cases of tomato soup by the defendant was in the conduct of its ordinary business. The complainant's original bill of complaint must therefore be dismissed.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ABRAHAM ANDERSON,
Complainant (Respondent),

AND

ANDERSON FOOD COMPANY,
Defendant (Appellant).

ON BILL, &c.

APPEAL.

BRIEF OF APPELLANT.

THE FACTS.

1. A. The form of the mortgage is clearly prescribed and uniform in all the agreements.

C1, p. 350.
C2, p. 352.
C3, p. 355.

That the mortgage was intended to be drawn under the agreement of September twentieth.

Admitted by complainant's answer to cross bill, paragraphs 2, 3, 5, 6, 19, 45, 46 and 49.

That the officers of defendant executed mortgage under the resolution of defendant pursuant to this agreement.

Complainant admits this. See answer, pp. 5, 46.

Henderson, pp. 245, 246, 247.
Cox, pp. 253, 255, 257, 258.
A. Anderson, pp. 297, 298.

The agreement, September twentieth, was final.

Cox, pp. 262, 263.

Complainant admits that mortgage was to be on plant.

Pp. 3. 45.

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2. That the instruction to the officers of defendant, as shown by directors' resolution, was specific in its character, and they had no right to leave the matter to their attorney, nor had the two attorneys any right to interpret the agreements as they saw fit.

3. *That by Mr. Harned's own testimony, it clearly appears that he was in doubt as to whether the personal property should be included.*

20 *That by interpretation he himself put a construction upon this final agreement and obtained Mr. Beldon's assent thereto, and thus was made an agreement variant from that of the parties.*

Harned, p. 288.
See also p. 249.

They should have drawn the mortgage to cover the plant alone. They had no more right to put in the stock and to put in the substitution clause than they would have had to put in another lot of real estate.

30 4. That the time at Harned's office for execution was short.

Henderson, pp. 221, 222.
Harned, pp. 291, 294.
Mr. Harned is mistaken as to his declaration respecting contents of mortgage made at 4.10, as the parties clearly left a little after three.
Henderson, pp. 221, 222.

5. The papers were not read on execution (p. 293) ; and neither Cox nor Henderson, the president and secretary of appellant and its agent in this behalf, had ever read the mortgage before its execution.

Henderson, pp. 230, 231.
See also pp. 227, 228.
Belden, p. 239.
Cox, appellants president, had never seen the mortgage, and had never read it until in the pleadings (p. 281).
Harned, p. 309.

6. As to the affidavit of consideration, appellants officers positively deny having heard statement of Harned related in his testimony respecting same.

Henderson, p. 233.
Robert Anderson said he did not hear the statement made by Harned respecting necessity for the affidavit (p. 303).

7. That the statement of defendant's officers relative to the circumstances surrounding the execution of the respondent's mortgage, is clear, direct and circumstantial.

Cox, p. 276 (generally).
Henderson, pp. 235, 275, 291.

8. Evidence respecting the execution shows beyond question that defendant's officers could have heard no declaration that it was intended to be a mortgage on chattels.

Henderson, p. 259.
Cox, pp. 277, 278, 279, 281.

There was no controversy or protest by Henderson or Cox as to the form of the mortgage. Everything passed without friction. Good humor and satisfaction was evidenced by all

at what seemed a happy termination of the long drawn out negotiations.

See comment of V. C., p. 310.

Mr. Henderson, although an insurance man of years experience, and knowing the effect of a mortgage in the chattel form upon insurance to be obtained upon the property of the defendant, made no protest, because he did not know it was to be a chattel mortgage.

Henderson, p. 291.

The circumstances of the original protest to Mr. Harned conclusively demonstrate that the appellant's officers did not know the form of the mortgage they had signed.

Henderson, pp. 251, 252.

Cox, 279.

Mr. Henderson, immediately after protest, goes to his attorney, Mr. Beldon, and they go together to the Register's office for the examination of the record, and consult their counsel.

Henderson, p. 279.

Mr. Harned confirms this protest practically as made and the circumstance which caused it.

Harned, p. 328.

9. *That the word "assets" in the stockholders' resolution of the Anderson Food Company of September fifth was evidently meant to include, and could well comprehend, manufactured stock as well as money in bank and book accounts. That manufactured stock in such a manufacturing business as that of defendant is an asset and it is regarded as capital.*

Abraham Anderson, p. 20.

And thus there is nothing which militates against the view that the words so employed, "plant and assets," might well comprehend the whole subject matter of the property and

business to be taken over by the defendant, and the word "plant" alone, exclusive of said assets, delimiting the portion of the property so taken, which should be subject to the mortgage to be made. The words "plant including all assets" in the resolution as to the sale means, undoubtedly, "plant" including with and added thereto, in the sale thereof, all assets, and it does not mean that the word "plant" is to be construed as meaning, by itself, all assets. The mortgage was to be on the plant, but the sale included the plant and all assets.

ARGUMENT.

I.

MORTGAGE A MISTAKE.

It is clear that the mortgage was executed in mistake, and that it is not the real instrument of the appellant company; and that it should be relieved against as to so much thereof as is not appellant's instrument. Whether the mistake was that of one of the parties or both of them, or an attorney for either, it is very clear that the minds of the contracting parties did not meet as to the whole form of the instrument endeavored to be executed, in pursuance of the agreements to that end, or the resolutions of the stockholders and directors of appellant company.

As said by Mr. Pollock, in his work on contracts: "Where the mistake is such as to exclude real consent and so prevent the formation of any contract, there the seeming agreement is void; or, where a mistake occurs in expressing the terms of a real consent, the mistake may be remedied by the equitable jurisdiction of the court." Sec. 394.

Jones on Mtgs., Sec. 97.
20 Am. & Eng. Enc., 713.

In Loss vs. Obry, 7 C. E. Gr., 52, the Court said: "To correct deeds for mistakes or fraud is one of the ancient and well established heads of equity jurisdiction, * * * * and such mistakes are more readily corrected where there is a preliminary agreement in writing by which to correct them."

Rowley vs. Flammelly, 3d Stew., 612.

In Stines vs. Hays, 9th Stewart, 368 (affirmed 11th Stewart, 654), which was a case very similar to this, Chancellor Runyon said: "Where an instrument is drawn and executed which professes or is intended to carry into execution an agreement previously entered into, but which by mistake of the draughtsman, either at the fact or law, does not fulfil that intention, but violates it, equity will correct the mistake so as to produce a conformity to the instrument."

Citing, Wintermute vs. Snyder, 2 Gr. Ch., 489.
Loss vs. Obry, supra.

Chancellor Runyon further said in the above case: "The jurisdiction to relieve against deeds drawn in mistake contrary to the intention of any one of the parties is of a very early date" * * * * "nor will the fact that defendant denies that there is a mistake prevent the Court from granting the relief *if it is satisfied that the deed is not in accordance with the agreement, but ought to be so.*"

Trusdale vs. Lehman, 2nd Dick., 221, and cases.
See also Freichnecht vs. Meyer, 12 Stew., 560, as to mutual mistake and wrong interpretations.
See McMillan vs. N. Y. Waterproof Paper Company, 2nd Stew., 610, where Wintermute vs. Snyder is followed, and the decree in Chancery was affirmed. Here, also, the question arose as to what, as between mortgagor and mortgagee, were chattels in a factory.

II.

MORTGAGE EXTRA VIRES.

But leaving the manifest mistake out of consideration for the moment, can the instrument be held valid under the proofs as mortgaging the goods of the appellant? Was not the execution of the instrument in such form *extra vires* and void?

The contract here stands *as to part thereof*, a contract not fully executed, and as such is as if it were an executory contract, concerning which it is competent for the Court to grant relief, if it shall appear by its terms to have been without the scope of the authorization of the officers who were designated to execute the same. As to the "goods unmanufactured and in process of manufacture," with substitution, etc., the contract of mortgage was *pro tanto* executory, and so *pro tanto* non-enforceable, if *ultra vires;* and not such, therefore, as coming within the rule that even if a contract be *extra vires*, it is enforceable if the contract be fully executed. As to the substitution clause in the mortgage, there was no authority from the stockholders whatever.

An executory contract *ultra vires* cannot be enforced.

C. & A. R. R. vs. Mays Landing R. R., 19th Vr., 530.
Ellerman vs. Chicago Junct. Ry., 4th Dick., 242.

Let us examine for a moment the scope of the power given the officers of the appellant. It was contained in the resolution of the appellant company's stockholders, of September 5, 1901, which was in these words: "Upon motion it was resolved and ordered, that the board of directors be authorized to purchase from the Anderson Preserving Company its entire plant, including all of its assets and subject to its liabilities, for the consideration of one thousand dollars in cash, one hundred and forty-nine thousand dollars in capital stock for this Anderson Food Company, and a bond and mortgage to be given by this Anderson Food Company upon

the said plant, for the sum of one hundred thousand dollars, payable at the expiration of ten years, with interest at the rate of five per cent. per annum."

The scope of the resolution was, as it naturally would be, just as wide as the covenants in the agreement of purchase, made on behalf of the company, but no wider; one covenanted a mortgage upon the "plant," the other directed the execution of such a mortgage.

There is no proof whatever by respondent that there was any change made, contemplated or even discussed, as to the form of the mortgage, as provided for in the agreement final of September 20th. This being true, nothing can save the respondent but proof of ratification by appellant of the terms of the mortgage as actually executed. But neither the change in the form of the power for execution of the mortgage, nor ratification of any such change is alleged in the answer of respondent to the cross-bill, nor is either attempted to be proved.

If the execution of the instrument here before the Court was not *ultra vires* in the primary sense, it is submitted that it was *extra vires* in a secondary sense, and void for that reason, because the officers executing it as to "goods manufactured, and to be manufactured," and the insertion of the substitution clause against and without the scope of the corporate resolution authorizing the same, were dealing with the corporate assets and dissipating them *pro tanto* without any consideration to the principal, and that such act constituted an alienation against the rights of the stockholders.

See Brice's *Ultra Vires*, 779, Sub. Div. 2.

III.

LACK OF AUTHORITY; WITH NOTICE.

But it is not necessary to invoke the doctrine of *ultra vires*. There is raised before the Court a question of agency.

1. Agency with knowledge in respondent that he was dealing with officers representing a corporate body, which took the place of a like corporate body, of which respondent was the head.

2. With knowledge in respondent that such action of officers must be sanctioned and directed by the appellant corporation itself, and

3. With knowledge and *full notice* to the respondent in the several agreements executed antecedent thereto, that the mortgage to be executed would be upon the plant, appurtenances and equipments of the appellant—that is, upon the land, buildings, fixtures and appurtenances of appellant.

"The powers of officers of corporations over its property are strictly those of agents."

5th Ward Savings Bk. vs. First National Bank, 19th Vr., 513.
Stokes vs. N. J. Pottery Co., 17th Vr., 237.

Of the nature of the authority conferred upon agents, Meachem says, 274: "If the power be an express one the extent of the authority conferred and the time, place and manner of its exercise may be expected to be clearly defined; and to the degree to which this is done the limits fixed are necessarily conclusive upon all parties who have notice of them."

Citing cases.

Again he says: "Parties dealing with an agent known by them to be acting under an express power, whether the authority conferred be general or special, are bound to take notice of the nature and extent of the authority conferred. They must be regarded as dealing with that power before them, and are bound at their peril to notice the limitations thereto prescribed either by its own terms or by construction of law. The authority, if it exists at all, must find its

source in the intention of the principal, either expressed or implied. If that intention cannot be shown, the authority cannot exist.

Id., Sec. 274.
Milne vs. Kleb, 17 Stew., 378.
Law vs. Stokes, 3d Vr., 249.
90 Am. Dec., 655.
See Morawitz Private Corps., Secs. 579, 589.

As between the appellant and the respondent there was no apparent authority, even, existing in appellant's agents to execute in the form made a mortgage upon its goods, and there was absolutely nothing to mislead the respondent respecting what their authority actually was.

The fundamental principle of agency (to which is entirely subordinated all distinction between them as general or special agents), as given by Mr. Parsons, is that, "A principal is responsible, (1) either where he has given to an agent sufficient authority, or (2) where he justifies a party dealing with his agent in believing that he has given this authority."

Vol. I, pp. 43, 44.

It is beyond controversy here that the appellant had given no authority to its officers to execute a mortgage upon its goods, either *in esse* or had in substitution, and equally beyond dispute, that nothing had been done by appellant, in the face of the clear written agreement, to induce the respondent to suppose that the mortgage to be executed would be drawn other than as determined by such agreement. With the possible misconception on the part of respondent that the word "plant" could include goods manufactured, and even goods not yet *in esse*, we have nothing to do, but from the proofs it is quite evident as to the employment of this language in the agreement that whenever the conception of the respondent may have been as to such a meaning of the words "plant, appurtenances and equipment," there was never as between the parties to the agreement any meeting of minds

consonant with such meaning, and consequently it must be upon the respondent affirmatively to show beyond dispute that the words, if technical words, clearly have such meaning, and if not technical words, then he, with the appellant, is bound by the determined meaning of the words employed in the antecedent agreement, and can offer no proof respecting the same.

"Corporations, like natural persons, are bound only by the acts and contracts of their officers and agents, done and made within the scope of their authority."

17th Enc. of Law, 157.

Not only was the act of the officers in the execution of the mortgage as signed without authority, but the respondent had full notice of the exact scope of their authority, which was clearly determined in the agreements made and entered into by respondent, in all three of which, as one superseded the other in the progress of negotiations of purchase, the form of the mortgage to be given and accepted by respondent was clearly covenanted in identical language to be upon the "plant, appurtenances and equipment" of the defendant.

So we have here clearly in the execution of the mortgage upon the goods of the appellant an act done by the officers without authority, and with no ground for reasonable presumption of authority whatever on the part of the respondent; but on the other hand, direct covenants to the contrary. And we have more. We have the clear, unqualified admission by respondent, in his answer to the cross-bill, in paragraphs 3, 5, 6 and 19 (p. 45), that "Said mortgage was signed and delivered by said defendant, under and by virtue of a resolution of the stockholders of the defendant company and in pursuance of the agreement of September 20th," and that in pursuance thereof, the board of directors thereof authorized the purchase, &c.

Now what is the real status of the mortgagor as to this instrument before the Court? Imagine for a moment the

corporate lips of the appellant to be opened respecting its situation. It is as if appellant should say: "This was my undertaking; not that of my officers. My officers acted for me, but I directed them. This action by cross-bill is instituted by me because of the form of my real undertaking. I stand as to that undertaking between my officers' acts and my shareholders. I am, though lawful, an intangible thing, but I am made up of and represent tangible entities, having vested interests, which I am bound to protect. In so far as I actually grant powers, these interested entities are bound, and in so far as I fail to grant such powers, persons dealing with my officers are bound to observe the scope of their powers, and, a *fortiori,* if such third persons have precedent knowledge of my undertaking."

See 7 Thomp. Corp., Sec. 8313, and cases.

It is submitted, that where, by an agreement of purchase, a certain form of mortgage is covenanted to be accepted by the seller as a part consideration, if the seller at the time of settlement has executed to him by the officers of the purchasing corporation, a mortgage containing an enlargement of the security over that determined on by the corporation, pursuant to such purchase, he, the seller, is put upon inquiry as to the authority of the officers to execute such other security; and as he has notice as to the principal's undertaking, unless the same is shown in some way to have been modified, he takes no security other than that authorized by the corporation under the terms of such agreement.

IV.

WHAT DOES "PLANT" INCLUDE?

That it is impossible that the words "plant, appurtenances and equipment," in the agreements, and "plant" in the resolution of the appellant, could include or be held to comprehend goods manufactured, to be manufactured and in pro-

cess of manufacture. *The word "plant" cannot comprehend the goods in a business, because the goods are the product produced by the mechanism set up in the buildings of the business established to make that product; and that mechanism alone can constitute the plant, with possibly (in modern parlance) the buildings, also.*

Now, let us see what the legal and uniform definition of the word "plant" is: "The fixtures and tools necessary to carry on any trade or mechanical business."

Cyclopedic Law Dict. (1901), p. 695.

"The fixtures and tools necessary to carry on any trade or business."

Bouvier's Law Dict. (1897), p. 676.

"The fixtures, tools, machinery and apparatus which are necessary to carry on a trade or business."

Wharton's Law Lexicon (1892).
Citing, Ogil. Imp. Tech. Dict.
See also Black's Law Dict., 901.
English Law Dict., 620 (1899).
18 Enc. L., 465.
Rapalje & Lawrence Law Dict., p. 965.
Century Dict.
Webster's Dict.

In Liberty Co. Land Co. vs. Barnes, 77th Ga., 748, 1886, it was held: "The stock of goods contained in a commissary store kept in connection with a saw mill, where a lease of both is given (and that with which it is replenished from time to time by the lessee), is no part of the "plant" of the machinery leased, within a covenant to make any addition to the present plant necessary for the conduct of the business of the said mill."

In Stone vs. Howard Ins. Co., 153d Mass., 475, April, 1891, the Court held: "Boots and shoes in a shoe factory do not constitute part of a manufacturing establishment, so that

the suspension of operation in the factory will defeat insurance on them under a policy, providing that it shall be void if the premises insured are a manufacturing establishment, and operations therein cease for more than thirty days, but machines, tools and furniture are to be recognized as part of the establishment under a similar policy." The Court in this case said: "In respect to the property insured by the third policy" (which was upon "boots and shoes manufactured, and in process of manufacture, and stock and materials") "in the opinion of the majority of the Court it cannot be held to constitute a part of the manufacturing establishment, or to operate or to be operated as such, &c., for the reason stated by Mr. Justice William Allen: "This property differs from the factory or the manufacturing establishment which operates upon them, as a thing operated upon differs from that which operates, or the tool from the material it works upon. A manufacturing establishment is an establishment for manufacturing raw materials; that is, for operating upon materials, and the idea of it excludes the material upon which it operates. Much less can the idea of the material include the manufacturing which operates upon it * * * the building and the machinery, fixtures and appliances constitute the manufacturing establishment. It is going far enough to hold that in an insurance of machinery the premises insured are the manufacturing establishment, of which the machinery constitutes a part."

V.

THE SUBSTITUTION CLAUSE.

As to property not yet *in esse*, it has been held that an agreement to convey by way of mortgage, a business plant or establishment of a corporation, must of necessity include merely that which is *in esse* in respect to the business so to be conveyed, unless there are specific words to extend the meaning of the words actually employed. Held, a mortgage by a

railroad company of its road, with its corporate privileges and property and appurtenances, does not cover property which had never been subject to the franchise of the corporation."

> Agnew, J., in Shamokin Valley R. R. Co. vs. Livermore, 47th Pa., 465.

Taking as true the declaration of Mr. Harned, respondent's attorney, made at the time of the execution of the mortgage, as to its form and contents, that it was a purchase money mortgage covering chattels as well as real estate, still such declaration could not possibly cover goods not yet *in esse;* and in no other way than by such declaration of the attorney was the insertion of this clause made known to the officers of appellants. But even if it had been, there was no authority whatever from the stockholders to give such a mortgage.

VI.

OPINION OF VICE CHANCELLOR.

The Vice Chancellor says that the agreements between the parties cannot be permitted to alter the terms of the corporate contracts.

This position might be true if the parties now before the Court were strangers to the agreements; but Mr. Anderson, in whose behalf this contention is made, was a party to all the agreements, and he is now the respondent in this Court, and he dealt in all the agreements for himself as holding all the stock of the Anderson Preserving Company. (The Vice Chancellor himself practically holds that Mr. Anderson was the Anderson Preserving Company in saying that he entirely controlled it.)

We contend that it is not a question of altering the mortgage (as between the original parties to the mortgage) to suit the agreement of September 20th, but the question is, whether Mr. Anderson, one of the parties to that agreement,

in a court of equity shall be permitted to keep a mortgage created under that agreement, which mortgage is clearly contrary to the terms of that very agreement, and which agreement prescribes the form of the mortgage he was to accept, and thus derive benefits in excess of this agreement?

The answer to the cross-bill, as we have seen, admits the mortgage was to be made according to these agreements, and the agreements were put in evidence without objection from the respondent.

And these agreements are the best evidence as between Mr. Anderson and the appellants in this Court as to what the mortgage was to cover, and they are and ought to be considered and deemed relevant.

"Courts of equity admit parol" (written or oral) "evidence to contradict or vary a writing where it is founded in a mistake of material facts, and it would be unconscientious or unjust to enforce it against either party, according to its expressed terms. Thus, if the plaintiff seeks a specific performance of the agreement, the defendant may show that such a decree would be against equity and justice by parol evidence of the circumstances, even though they contradict the writing. So if the agreement speaks by mistake a different language from what the parties intended, this may be shown in a bill to reform the writing and correct the mistake. In short, whenever the active agency of a court of equity is invoked to enforce an agreement specifically, it admits parol evidence to show that the claim is unjust, although such evidence contradicts that which is written."

Greenleaf, Sec. 296 A, Vol. I.

The form of the mortgage was controlled by the resolutions of the Anderson Food Company, and by the final agreement of September 20th.

This form was not controlled or modified, and could not be, by the antecedent resolutions of the Anderson Preserving Company, as between the parties here before the Court.

(a) There was nothing to charge the appellant with notice of the Anderson Preserve Company's resolution.

(b) The complainant is estopped from asserting that the resolution of the Anderson Preserve Company controlled the form of the mortgage.

(1) By the subsequent final agreement of September 20th, and

(2) By admission in the answer to cross-bill (p. 46, par. 5).

But the Vice Chancellor says, on page 9 of his opinion, that in the resolution of the Anderson Food Company the word "plant" includes all the assets.

This is not a fair deduction, because the words "including all of the assets" are supplementary and in addition to what is meant by the word "plant," and are not explanatory thereof.

And the mortgage was to be given on the "plant" alone, and not on the assets, otherwise these words, "including all the assets," would have been written the second time after the word "plant."

Moreover, the word "assets" is a broader term than the word "plant," and includes book accounts and claims and choses in action, none of which are even pretended by Mr. Anderson to have been included in the word "plant," when used in reference to the mortgage.

Therefore, it is clear that while the whole of the assets were to be purchased, the mortgage was only to cover the "plant."

But an examination of the whole case will show that this was clearly the intention of the parties anyhow.

Otherwise the agreements would have mentioned how the personal property, including the manufactured goods, was disposed of by the new company.

The clause inserted in the mortgage in reference to this matter was put there entirely by the attorneys and without consultation with their clients, and was made necessary by the unauthorized insertion in the mortgage of the chattel feature in reference to the stock of goods manufactured and unmanufactured.

And as to the *execution of the mortgage as a chattel mortgage, concerning which the Vice Chancellor comments, it is readily conceivable that the officers of the appellant company might readily suppose that such feature was to cover the chattels, such as unattached pots, kettles, pans, roasters, &c., connected with the factory, but not that the word "plant" should include goods manufactured and unmanufactured or other assets, such as book accounts and choses in action.*

MUTUALITY OF MISTAKE.

The Vice Chancellor says that there was no mutuality of mistake. He says, "Mr. Anderson declared he made no mistake" (p. 14 of opinion).

So we see at once that the Vice Chancellor has a misconception of what is a mutuality of mistake. It is easy for Mr. Anderson, after he gets the goods in his possession by reason of a mistake, to say that he made no mistake.

What Mr. Anderson declared or thought, cannot, and ought not, to govern the case.

Where the form of an undertaking has been prescribed by parties in apt words, as here, such words having in law a definite meaning, and so to be construed, a departure from that undertaking so prescribed, whether such departure be by act or omission of an attorney or some other person attempting to carry out such prescription, is a mistake. And parties having mutually agreed to a specific thing, if persons acting for them change that thing in mistake, there is mutuality in the mistake.

Where there is an antecedent writing, the test of the mutuality of the error, there being no fraud, is the form of the

mutual prescription by the parties as to what the undertaking should be and a departure from such prescribed form is mutual mistake.

No further mutuality is required in equity where there is a writing prescriptive.

See Runyon, C., in Stines vs. Hays, 9 Stew., supra.

The Vice Chancellor says, further (p. 14): "Mr. Anderson swears he never agreed to accept anything else than a mortgage which covered the whole of the property, &c."

If he means that Mr. Anderson repudiates the agreements which he, Anderson, signed, then the Vice Chancellor again begs the whole question, which is, whether Mr. Anderson can now go back on his written contract to take a mortgage as therein prescribed. But Mr. Anderson cannot now say what he would agree to or not agree to, because his written agreement has settled that.

But if the Vice Chancellor means that Mr. Anderson's understanding was that he was to have another kind of a mortgage than that prescribed in these agreements, then the reasoning of the opinion is not sound, because this would permit Mr. Anderson to interpret his own agreement, which is just what the Court must do, and not one of the interested parties thereto. ☆

Then again the Vice Chancellor (p. 14) cites a written consent of the Anderson Preserving Company; but it is not on this alleged consent that the mortgage in question is based, nor upon the resolution of this company cited on page 15 of the opinion, but on the resolutions of the Anderson Food Company, the party making the mortgage, which resolutions were passed a week later, pursuant to the agreements between Cox and Anderson. This is admitted in the answer of respondent. Par. 5, page 46 of case.

It must be borne in mind that Anderson is the respondent and also a party to these agreements, and it is not for him to say that Cox could not bind the Anderson Food Company by these agreements.

☆

But even if it were a purchase money mortgage, there is no proof that the parties themselves agreed that the mortgage should cover goods not even owned by Mr. Anderson and which were not yet *in esse*.

If this agency, or alleged agency, or authority of Cox in executing these agreements and acting for the Anderson Food Company was unauthorized, it is for Mr. Cox's principal, the Anderson Food Company, to complain, and not Mr. Anderson.

On page 16 of his opinion, the Vice Chancellor, referring to these agreements, says "they cannot be permitted to alter the terms of the corporate contracts."

But the respondent, in his answer (p. 45, par. 3), admits *"that the Anderson Food Company, as appears by the terms of said agreement of September twentieth* (which was the final agreement) *agreed to execute and deliver the mortgage,"* &c.

So Mr. Anderson's own answer answers the opinion of the Vice Chancellor, and shows that these agreements, in Mr. Anderson's opinion, *controlled and governed absolutely the form of the mortgage in question.*

The Vice Chancellor, on page 16 of his opinion, again begs the whole question, when he says, "There is scarcely a pretence that there was any mutuality in the alleged mistake."

To support this assertion he must exclude the very agreements which Mr. Anderson's own answer admits were the controlling factors in the whole transaction.

True it is, that Mr. Anderson, through the Vice Chancellor, now says there is no mutuality of mistake (p. 14 of opinion); but whether there was a mutual mistake or not is a question of interpretation of these agreements by the Court, and not by Mr. Anderson.

On page 16 of his opinion, the Vice Chancellor cites Allen vs. Crouter; but in this case there was no antecedent writing and the question was entirely one of parol evidence.

The case at bar is a question of interpretation of the antecedent agreements, and if the mortgage was executed in accordance therewith, then there was no mistake, otherwise there was a mistake, which necessarily was a mutual mistake.

But the mistake need not be mutual where there is an un-

derstanding or agreement which is antecedent and in variance from which the final contract is made.

Anson on Contracts (8th Ed.), p. 173.
Loss vs. Obry, 7 C. E. Gr., 52.
Webster vs. Cecil, 30 Beavan, 62.
Paget vs. Marshall, 28 Ch. Div., 255 (1884).

In Paget vs. Marshall (1884), cited above, there was a mistaken inclusion by the plaintiff of more of a building than he intended to lease. Defendant denied he executed lease under any mistake.

The Court said, after speaking of relief for common mistake where there was mutuality, said:

"The other class of cases is one of what is called mistake, and *there, if the Court is satisfied that the true intention of one of the parties was to do one thing, and he by mistake has signed an agreement to do another, that agreement will not be enforced* against him, but the parties will be restored to their original position *and the agreement will be treated as if it had never been entered into. This, I take, to be the clear conclusion to be drawn from the authorities.*"

"The old law, as to necessary mutuality, is very much as stated in the treatise of Mr. Kerr."

Harris vs. Pepperell, L. R. 5 Eq., p. 1.
See Girard vs. Frankel, 30 Beav., 445.

(The question of the status of the parties is discussed elsewhere in the brief.)

The concluding words of the opinion (p. 16), as to the relief on cross-bill, ignore the agreements in question, and the Vice Chancellor's conclusion is based on the parol evidence entirely.

This is at one stroke a final and absolute elimination of the written evidence in the case, which ordinarily should be and must be the best evidence.

And to do this the Vice Chancellor *ignored the admissions in the answer of Mr. Anderson to this very cross-bill, which admissions should bind the respondent and should have been held by the Vice Chancellor to close the respondent's mouth by way of a parol denial.*

CONCLUSIONS.

The agreements which were admitted in evidence, and that without objection, and which are also admitted by the answer to be controlling, show that the mortgage in question was to cover simply the plant, appurtenances and equipments. As we have shown, these words do not cover any personal property.

The Vice Chancellor, on page 7 of the opinion says, that under the circumstances a decree of cancellation is impossible, as this would require a restoration of the status of the parties.

This we frankly admit, and we rely on the alternative relief of reformation of the mortgage in question, *pro tanto*, so that the lien thereof shall not exceed the scope of the lien actually covenanted to be given and accepted, the contention being that, upon examination, the scope thereof appears clear and unequivocal.

Such decree of reformation calls for no restoration of status by appellant to respondent, because the relief granted thereby to appellant would do nothing but release stock and goods to the appellant company from a lien imposed in mistake, and (since the sale of such goods under the receivership) merely discharge, for the benefit of the creditors of appellant, the moneys arising from the sale of such stock, &c., from the mistaken hold of the respondent thereon.

If the question here were a question upon the reformation

of the agreements themselves, under which the status of the parties had been determined, then it is easily conceivable that the restoration of the status would have been impracticable. But no such question arises upon the relief by reformation. It might arise on cancellation of the mortgage or upon cancellation or reformation of the agreements, *but not upon reformation asked of the mortgage in question.*

If there has been any change in the status of these parties since the mortgage was executed, Mr. Anderson cannot be injured by a reformation of the mortgage, since the agreements have not been violated except in Mr. Anderson's favor.

The original agreements were with Mr. Anderson, who is a party to this suit.

The Anderson Preserving Company is not a party to, and has no interest in, this suit; and, therefore, the question need not arise as to any return of the property purchased from the Anderson Preserving Company.

The whole point is, that by these agreements a certain mortgage was to be given to Mr. Anderson, and *the fact that the mortgage was made directly to the Anderson Preserving Company* and assigned by them to Mr. Anderson, *does not affect the situation* at all, *because the contracts were with Mr. Anderson,* and he is the one with whom Mr. Cox was dealing, and the whole point now raised by the appellant here is that Mr. Anderson obtained a mortgage to which he was not entitled, namely, in that he obtained a mortgage not on the "plant, appurtenances and equipment," but on the plant and goods manufactured and unmanufactured, and also (p. 343, line 9), *"including all personal property and chattels which might be brought upon the premises or become the property of the party of the first part as in substitution for, renewal of, or addition to said personal property."*

This was not the mortgage which Mr. Anderson was to receive, and there is no proof in this case that Mr. Anderson will be injured in any way if this mortgage is reformed as now contended for by the appellants.

Counsel claim that the agreements did not embody all the terms of the mortgage, such as insurance, tax claims, etc., but these are all ordinary matters in every mortgage, while the substitution clause in question is an extraordinary matter, and entirely unauthorized by the parties.

The question is not, in any event, can Mr. Anderson have *his* status restored, because the injured party is not Mr. Anderson, but *the appellant,* because Mr. Anderson obtained something which his antecedent agreements say he was not to obtain, and therefore he is only entitled to be restored to that status which the agreements prescribed, because he obtained everything else he was to receive under these agreements, and this mortgage in addition thereto.

It will not be denied but that Mr. Anderson has (through the Receiver) obtained title to all the plant and fixtures, and as a matter of fact has had sold out a lot of the personal property, the proceeds of which ($20,000) he has been paid by the Receiver, and which is now the bone of contention between the parties in this Court.

Therefore the status of the parties has not been changed as far as the question to be discussed in this Court is concerned. If this Court decides in Mr. Anderson's favor, he keeps the $20,000, and if not, it goes to the general creditors.

The Anderson Preserving Company has no interest in this suit, and anything that they did or did not do by resolution or otherwise cannot affect or interest the parties now before the Court. The question involved *is not one of fraud, but of mistake.* And we need only look to the testimony of Mr. Harned, counsel for Mr. Anderson, to see how this mistake occurred. See testimony, p. 305, lines 24 to 27. This shows that there was a doubt in Mr. Harned's mind, and *he made an interpretation of the agreements* in question, which we claim was not a legal or proper interpretation and *which the attorneys, being the mere draftsmen, had no right to make. Their* duty was to ask their clients what was meant, and have it clearly understood; but when we turn to page 309, we find by the testimony of Mr. Harned, from his own statements, that the mortgage was not read, and that he simply made a statement that there was a bill of sale and a deed, and that the *mortgage was a purchase money*

mortgage upon the real and personal property just transferred. Why did not Mr. Harned explain to them then and there that there was a question of interpretation of the agreements, and that there was some doubt whether the stock ought to go in, and have the matter settled up right then and there? The loose way in which the papers were executed by him caused the mistake; and his own testimony of his interpretation of how he and the other attorney, without consultation with their clients, inserted a lot of matter in the mortgage, namely, the goods manufactured and otherwise, and the goods thereafter to come into the property, clearly proves the contention of the appellants.

This is taking the statement of Mr. Harned as true; but the statement of the other witnesses is that Mr. Harned did not tell them that the mortgage was to cover any personal property, and there was no declaration made in reference to the contents of the mortgage.

The attorneys had no right to change the agreements in any particular.

As we have shown, the Anderson Preserving Company resolution does not come into the case now, because they have no interest in this suit, and, in any event, no resolution that they might pass would bind Mr. Anderson or Mr. Cox or alter the agreement of September 20th, between Mr. Cox and Mr. Anderson, under and by virtue of which agreement Mr. Anderson now holds the mortgage and which agreement specified the kind of a mortgage Mr. Anderson was to obtain.

If this agreement had specified that there were three lots of land to be mortgaged, and the attorneys had gotten together and considered the agreements and interpretated them to suit themselves, and concluded that another lot of land was intended to be mortgaged because it was known that such a lot was owned by the mortgagor, it would have to be admitted on a bill to reform the mortgage, that the mistake was mutual, and that is exactly the case before us now.

Why did he not tell the parties that goods not then in ~~use~~ were to be mortgaged? This was much more than a mere purchase money mortgage.

In other words, the attorneys went beyond their authority, and Mr. Anderson was charged with notice as he was a party to the very agreement out of which the mortgage grew, and without which agreement no mortgage would have been made.

Neither does it matter so very much as to what Mr. Henderson or Mr. Cox understood—although their testimony is clear that there was no intention to include manufactured and unmanufactured goods. It does not matter so much what they say they intended, because their intention had been reduced to writing and put into the agreement of September 20th, and it is that agreement, and not the resolution of the Anderson Preserving Company, that the Court is now asked to interpret.

It is unfair to say that the mortgage, after it was first drawn and before execution, "was in all proabability left with Mr. Henderson," or that its contents were openly declared in the presence of the parties and their attorneys at the time of execution. There is not sufficient evidence to support such an inference.

The Vice Chancellor says there was no mutuality in mistake, because Mr. Anderson does not admit that there was any mistake.

Naturally, Mr. Anderson would not make such an admission now.

The Vice Chancellor says Mr. Anderson swears that he never agreed to accept, nor would he have accepted anything less than a mortgage that covers the whole property.

When the Vice Chancellor makes this assertion he begs the whole question, because we insist that the agreement of September 20th and the antecedent agreements were all signed by Mr. Anderson, and we claim that those agreements prove conclusively that *Mr. Anderson did agree to accept a mortgage* simply covering the plant and fixtures and appurtenances.

This brings us down, then, to the real question at issue, do these agreements, fairly interpreted, give any reason for

or do they *support* the mortgage *as it now exists* on the personal property and *including the goods manufactured and unmanufactured* and the *goods to be thereafter placed in and about the premises?* As before stated, it matters not what the Anderson Preserving Company did, or what its stockholders did, *previous to this agreement*, since the agreement of September 20th must control the situation. It was the *final* agreement between the parties, and any paper that the parties signed previous to that date, or any resolution passed previous to that date *was modified as between the parties here before the Court by this agreement* and must be controlled by the terms of this agreement.

The fact that Mr. Harned was in doubt about the interpretations of the agreement, and the fact that he and Mr. Beldon interpreted the same, without consultation with their clients, shows clearly that there was a mutual mistake, and this is further substantiated by the undisputed evidence that as soon as Mr. Cox and Mr. Henderson discovered the kind of a mortgage that had been executed, they protested.

Of course it is not to be expected that Mr. Anderson will now admit that there was any mistake, since he got a better bargain than the agreement called for.

Nor can it be claimed that the agreement does not govern because the Anderson Preserving Company is not a party to it, since the agreement of September 20th is the whole basis and foundation of the mortgage in question, and, as before stated, the Anderson Preserving Company is not a party to the suit and has no interest in this suit, and so the question can be considered by the Court now just as if the mortgage was about to be executed in this Court, and it were asked by the two attorneys to construe this agreement, and that is what

the appellants now ask the Court to do. And if this agreement be construed as of the date of the execution of the mortgage, Mr. Anderson, the present owner of the mortgage, cannot be injured in the slightest particular.

The question is not so much what the parties *now* say is their understanding as to what this mortgage is to cover, since that rests the appellant's case on parol evidence alone, while the strongest evidence in support of our contention is found in the written agreements.

It is not true as claimed by counsel that to reform this mortgage, as appellant prays, would be to permit the appellant to make a new bargain. We do not want a new bargain, but we object to Mr. Anderson keeping the fruits of the mistake admittedly made by the attorneys. All we want is the original bargain enforced.

The mistake occurred in the mortgage and not in the antecedent agreement, and the parties should be restored to the status as it existed under the agreement and not under the mortgage. In other words, Mr. Anderson should be forced to live up to this agreement and restore to the creditors of this Company the $20,000, the proceeds of the goods furnished by them after the agreement was executed.

A claim is made in complainant's brief that he parted with $100,000 of quick assets when the sale was made, but counsel fails to note that over $100,000 of debts was assumed and paid by the Anderson Food Co., which, if the sale had not been made, Mr. Anderson would have had to pay. He sold his plant, received some $75,000 in cash and $58,000 in notes, got rid of his debts, took a mortgage on the plant, bought it back, and now even claims the goods which were not then *in esse* as against creditors who are entitled to have him live up to his agreements.

Thus it will be seen that Mr. Anderson not only has his original plant back *clear of his debts*, but $75,000 in cash and notes for $58,000 (part of which were paid) besides, and he should not be permitted to take also this $20,000, the proceeds of goods which neither he nor the Anderson Preserving Co. ever owned, and which could not be covered by this mortgage even if we admit that it was to be a purchase money mortgage in the broadest sense. Undoubtedly the substitution clause in this mortgage was never authorized by the stockholders or directors of either company, and it is not even hinted at in the agreements. So, even if the chattel feature of the mortgage were allowed to stand, still this unauthorized substitution clause should be eliminated.

It would certainly appear that Mr. Anderson should not be allowed to hold, as against the creditors of the appellant, the moneys which represent the manufactured goods of appellant, which goods by a manifest mistake were included in the lien of Mr. Anderson's mortgage upon the plant of the appellant company. If the mortgage be reformed merely by striking out this unauthorized substitution clause as to goods not then *in esse*, the $20,000 in question can be paid to the creditors.

Respectfully submitted,

S. C. WOODHULL and
E. G. C. BLEAKLY,
Counsel for Appellant.

In Chancery of New Jersey.

To the Honorable William J. Magie, Chancellor of the State of New Jersey:

Humbly complaining shows unto your Honor, your orator, Abraham Anderson, of the city and county of Camden and State of New Jersey, that for a long time previous and up to the twentieth day of September, 1901, he was the president, and principal owner of the capital stock, of the Anderson Preserving Company; that on or about that time he entered into an agreement with one John T. Cox for the sale of his interest in said company, and transfer of said business; that in pursuance of said arrangement the said John T. Cox caused to be incorporated the company known as the Anderson Food Company, and the Anderson Preserving Company assigned, transferred and delivered unto the said Anderson Food Company all its property, real and personal, together with its stock, fixtures, franchises of whatsoever nature or kind, and that to better secure part of the purchase price therefor the said Anderson Food Company executed to the said Anderson Preserving Company a mortgage upon all its property, real and personal, a copy of which said mortgage is hereto annexed, reference thereto being had should the same be necessary; that the said mortgage was duly recorded in the Register of Deeds' office of Camden county in Book No. of Mortgages, page &c., and was also recorded in Book No. 10 of Chattel Mortgages, page No. 520, &c., on the twentieth day of September, 1901; that on the twentieth day of September, 1901, the Anderson Preserving Company, in consideration of the sum of one hundred thousand dollars, to it in hand paid by the said Abraham Anderson, assigned, transferred and set over

unto him all its right, title and interest to said mortgage; that said mortgage contains the following clause and is made a specific lien upon *all the stock manufactured, unmanufactured or in the process of manufacture:* "*Also all* moveable machinery, machines, tools, kettles, pots, pans, jars, cups, belting, gearing, stock manufactured and unmanufactured, or in the process of manufacture, office furniture and all appliances and appurtenances of every kind and description used in connection with the business of the party of the first part, or otherwise, and also including all personal property and chattels which may be brought upon the premises above conveyed or become the property of the party of the first part as in substitution for renewal of or addition to the personal property above described, it however being particularly understood and agreed, that the party of the first part may conduct its ordinary business, and in so doing dispose of any of the foregoing personal property." That immediately after the sale the Anderson Food Company took possession of said real estate, stock, good will and fixtures, and have been since that time operating the same; that among the stock of the said Anderson Food Company which was sold and delivered to it by the said Anderson Preserving Company, and is under and subject to the lien of said mortgage, is a large quantity of tomato soup put up in small tin cans and packed in wooden cases, which cases hold four dozen cans each; that on or about the seventh day of March, 1902, said Anderson Food Company, by its officers, removed 3,500 cases of said tomato soup out of the county of Camden, and stored the same in the city of Philadelphia and State of Pennsylvania, in the warehouse of the Pennsylvania Warehousing and Safe Deposit Company, on Delaware avenue, below Spruce street; that said 3,500 cases are part of the property referred to and mentioned in the foregoing mortgage mentioned; that the same was not removed in the conduct of its ordinary business, but were removed in violation of said chattel mortgage for the purpose of re-pledging the same in order to raise funds thereon.

And your orator further shows, that the said Anderson Food Company give out and pretend that they have a lawful right to remove any or all of the stock of said company beyond the county of Camden, and to re-pledge the same for the purpose of raising money thereon, and that they will from time to time remove more of the stock of the said company in the same manner.

Your orator charges that the removal of said 3,500 cases or the further removal of any of the stock of the said company, except in the delivery of the same to purchasers thereof in the ordinary course of said company's business, is a fraud upon your orator, and is in violation of his rights.

All of which things, doings and pretenses of the said defendant are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

In tender consideration whereof, and for as much as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable Court.

To the end therefore, that the said Anderson Food Company, and its confederates when found, may, without oath to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect, answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto, *whether they did not execute the chattel mortgage* as above mentioned and described, and whether they have not removed from their factory, in the city of Camden, beyond the county of Camden, 3,500 cases of tomato soup, or how many cases they have so removed, and what was the object of said removal, and whether they have not given out and pretended that they have the right to remove said goods, and whether they have not hypothecated the same or borrowed money thereon, and if so, how much, and that the said defendant company may be required by the mandatory

order or injunction of this Court, to return said tomato soup to the factory of said defendant, in the county of Camden, and that they may be restrained and enjoined from removing beyond the county of Camden any of the personal property mentioned in said mortgage, except in the conduct of its ordinary business, and that it may be enjoined and restrained from hypothecating any of the property which it has already removed.

And that your orator may have such other and further relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction, issuing out of and under the seal of this honorable Court, to be directed to the said Anderson Food Company, restraining it from removing any of the stock, fixtures or personal property referred to in that certain mortgage, made by the Anderson Food Company to the Anderson Preserving Company, dated the twentieth day of September, 1901, and recorded in Book No. 10 of Chattel Mortgages, page No. 520, &c., except in selling the same in the conduct of its ordinary business, *and also a mandatory injunction, requiring the* said defendant to return to its factory, in the city of Camden, the 3,500 cases of canned tomato soup, above referred to, but also the State's writ of subpoena, issuing out of and under the seal of this honorable Court, to be directed to the said Anderson Food Company, commanding it, 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 premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

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

JOHN F. HARNED,

Solicitor and of Counsel with Complainant.

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

ROBERT L. ANDERSON, being duly sworn, on his oath says that he is the son of Abraham Anderson, the complainant in the foregoing bill mentioned, and for this purpose is his agent; that the facts set forth in the foregoing bill of complaint are true; that on the twentieth day of September, 1901, the Anderson Food Company executed to the Anderson Preserving Company, a mortgage as set out in said bill of complaint; that said mortgage is upon the real estate, stock and fixtures of the Anderson Food Company, and is duly recorded in the Register of Deeds' office of Camden county in Book No. 10 of Chattel Mortgages, page 520, &c.; that said mortgage was a purchase money mortgage, and was duly assigned to the said complainant by deed of assignment, dated the twentieth day of September, 1901, for full consideration; that previous to the execution of said mortgage deponent was the secretary of the Anderson Preserving Company, was for many years connected with the company and its business and was familiar with its stock then on hand; that said mortgage contains the following clause: "Also all moveable machinery, machines, tools, kettles, pots, pans, jars, cups, belting, gearing, stock manufactured and unmanfactured, or in the process of manufacture, office furniture and all appliances and appurtenances of every kind and description used in connection with the business of the party of the first part, or otherwise, and also including all personal property and chattels which may be brought upon the premises above conveyed or become the property of the party of the first part as in substitution for renewal of or addition to the personal property above described, it however being particularly understood and agreed, that the party of the first part may conduct its ordinary business and in so doing dispose of any of the foregoing personal property." That among the stock or personal property referred to in said mortgage was about 20,000 cases of tomato soup, the

said soup is canned in small tin cans, which cans are packed in wooden boxes securely nailed and labelled; that just previous to the tenth day of March, 1902, the said Anderson Food Company removed from its factory, in the city and county of Camden, out of said county to the city of Philadelphia, 3,500 cases of said tomato soup, and placed it on storage in the premises of the Pennsylvania Warehousing and Safe Deposit Company, on Delaware avenue, below Spruce street, in the city of Philadelphia; that deponent saw and examined said packages while they were in the warehouse of the Anderson Preserving Company just previous to the execution of said chattel mortgage, and on the tenth day of March, 1902, saw the same packages, examined and counted them in the warehouse of the Pennsylvania Warehousing and Safe Deposit Company; *that the same are* there to the credit and in the name of the Anderson Food Company, and are part of the same property mentioned and described in said chattel mortgage; that the said Pennsylvania Warehousing and Safe Deposit Company is a company engaged in the storage of merchandise and the issuing thereon of warehouse receipts, which receipts are negotiatable at financial institutions; that said above mentioned 3,500 cases of canned goods were not disposed of in the ordinary business of the said defendant company, but were removed to Philadelphia and deposited in said warehouse for the purpose of obtaining advances thereon; that deponent is informed by persons now or lately in the employ of the said defendant company that more of said goods are about to be removed for the same purpose; that the warehouse of the said defendant company, in the city of Camden, is large and commodious and that there is no reason for the removal of the same other than that purpose of pledging them for the security for the loan of money.

ROBT. L. ANDERSON.

Sworn and subscribed this twelfth day of March, 1902.

PHILIP S. SCOVEL,
M. C. C. of N. J.

THIS INDENTURE, made the twentieth day of September, in the year of our Lord one thousand nine hundred and one, between Anderson Food Company, a corporation of the State of New Jersey, party of the first part, and Anderson Preserving Company, a like corporation, party of the second part,

Whereas, the said party of the first part in and by its certain obligation or writing obligatory under its seal duly executed, bearing even date herewith, stand bound unto the said party of the second part in the sum of two hundred thousand dollars, lawful money of the United States of America, conditioned to the payment in lawful money as aforesaid of the just sum of one hundred thousand dollars at the expiration of ten years from the date thereof and hereof (the said obligor being privileged, however, to pay the said sum within said period in instalments of not less than one thousand dollars each), together with interest thereon, payable semi-annually, at the rate of five per cent. per annum, and together *with all taxes or charges in nature thereof that may be laid or levied on said obligation or this indenture of* mortgage or the principal and interest moneys hereby secured immediately upon their assessment without any fraud or further delay, *and for the production to said obligee, its successors or assigns, on or before the thirty-first day of December of each and every year, of receipts for all taxes for the current year assessed upon the premises hereinafter described; provided, however,* and it was thereby expressly agreed, that if any time default should be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof should fall due, *or in the payment of any tax or charge as aforesaid for the space of ninety days after the same shall first become payable, or in such production of tax receipts as aforesaid, on or before the day aforesaid, then and in either such case the whole principal debt as aforesaid should, at the option of the obligee therein named, its successors or assigns, become due and payable*

immediately, and payment of said principal debt and all interest thereon should be enforced and recovered at once, anything therein contained to the contrary notwithstanding, as in and by the said recited obligation and the condition thereof relation to the same being had may more fully and at large appear.

Now, this indenture witnesseth, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of one hundred thousand dollars, and for the better securing the payment thereof unto the said party of the second part, its successors and assigns, in discharge of the said obligation above recited as for and in consideration of the further sum of one dollar in specie well and truly paid to the said party of the first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and confirm unto the said party of the second part, its successors and assigns, all that tract and parcel of land, situate, lying and being in the city and county of Camden and particularly described as follows, viz: Beginning at the northwest corner of Front and Arch streets, and extended thence (1) northwardly along the west side of Front street one hundred and thirty feet nine and five-eighths inches to land of the Camden and Philadelphia Steamboat Ferry Company; thence (2) westwardly along the same at right angles with Front street, three hundred feet to a corner; thence (3) southwardly parallel with said Front street, one hundred and fifty-eight feet eight and one-quarter inches to the north line of Arch street; thence (4) eastwardly along the north side of Arch street, three hundred and one feet and one-fourth of an inch to the place of beginning. Being the same premises conveyed by the said party of the second part to the party of the first part by deed bearing even date herewith; and also all moveable machinery, machine tools, kettles, pots, pans, jars, cups, belting, gearing, *stock, manufactured and unmanufactured or*

in the process of manufacture, office furniture, and all appliances and appurtenances of every kind and description used in connection with the business of the party of the first part, or otherwise, and also including all personal property and chattels which may be brought upon the premises above conveyed or become the property of the party of the first part as in substitution for renewal of or addition to the personal property above described; it, however, being particularly understood and agreed, that the *party of the first part may conduct its ordinary business, and in so doing dispose of any of the foregoing personal property;* the above personal property is the same as was assigned to the said party of the first part by bill of sale from the party of the second part, bearing even date herewith, and this mortgage is given to secure part of the purchase money of the sale of said real estate and personal property, together with all and singular the improvements, woods, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof. To have and to hold the said hereditaments and premises above granted or mentioned and intended so to be with the appurtenances unto the said party of the second part, its successors and assigns, to and for the only proper use and behoof of the said party of the second part, its successors and assigns, forever; provided, always nevertheless, that if the said party of the first part, its successors or assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, its successors or assigns, the aforesaid debt or principal sum of one hundred thousand dollars on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same in like money, and for all taxes and charges and production of tax receipts in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made for or in respect of any taxes, charges or assess-

ments whatsoever, that then and from thenceforth, as well this present indenture and the estate hereby granted as the said obligation above recited shall cease, determine and become absolutely null and void to all intents and purposes anything hereinbefore contained to the contrary thereof in anywise notwithstanding, and the said party of the first part, for itself, its successors and assigns, does covenant and grant to and with the said party of the second part, its successors and assigns, that the said party of the first part, its successors and assigns, shall not nor will apply for or claim any deduction by reason of this mortgage from the taxable value of the said lands and premises, and that the said party of the second part, its successors and assigns, shall and may from time to time and at all times after default shall be made in the performance of the proviso or condition herein contained peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hinderance or denial of the said party of the first part, its successors or assigns, or of any other person or persons whatsoever; and it is also further agreed by and between the parties of these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss and damage by fire in some safe and responsible insurance company or companies, to an amount not less than dollars, and assign the policy and certificate thereof to the said party of the second part, as collateral security for the payment of the principal and interest aforesaid, and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium or premiums paid for effecting the same shall be a lien on said mortgaged premises, added to the amount of said bond and obligation and secured by these presents and payable on demand, with legal interest.

In witness whereof, the said party of the first part here-

to has hereunto set its corporate seal, caused these presents to be signed by its president and to be attested by the secretary the day and year first above written.

JOHN T. COX,
President.

Sealed and delivered in the presence of and attested by

DAVID A. HENDERSON,
Secretary.

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

Be it remembered, that on this twentieth day of September, 1901, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Voorhees S. Anderson, who being by me duly sworn, on his oath says that he is the treasurer of the Anderson Preserving Company, the mortgagor named in the foregoing mortgage, and that the true consideration of the said mortgage is the sum of one hundred thousand dollars, part of the purchase price for the premises therein described, and that there is now due and owing on said mortgage the sum of one hundred thousand dollars, together with interest thereon, from the twentieth day of September, 1901.

VOORHEES S. ANDERSON.

Sworn and subscribed before me, this 20th day of September, 1901.

JOHN F. HARNED,
M. C. C. of N. J.

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

Be it remembered, that on this twentieth day of September, 1901, before me, a Master in Chancery of New Jersey, personally appeared David A. Henderson, who, being by me duly sworn, on his oath saith that he is the secretary of the Anderson Food Company, the grantor within named; that John T. Cox is the president, that deponent knows the common or corporate seal of said grantor, and that the seal annexed to the within deed or conveyance is such common or corporate seal; that the said deed or conveyance was signed by the said president and the seal of said grantor affixed thereto in the presence of deponent; that said deed or conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the board of directors of said grantor, and at the execution thereof this deponent subscribed his name thereto as witness.

DAVID A. HENDERSON.

Sworn and subscribed the day and year aforesaid.

JOHN F. HARNED,
M. C. C. of N. J.

Recorded September 20th, 1901, at 4.05 P. M., by Isaac W. Coles, Register.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,
Complainant,

AND

ANDERSON FOOD COMPANY,
Defendant.

ON BILL, &C., FOR INJUNCTION.

ANSWER, &C.

The answer of the defendant, Anderson Food Company, to the bill of complaint in the above cause:

1. This defendant answering says, that it admits that on or about the twentieth day of September, last past, John T. Cox, the president of the defendant company, entered into an agreement in writing with complainant for the sale to him of complainant's interest in the business of the Anderson Preserving Company; and that said Anderson Preserving Company, in pursuance of such antecedent agreement (copy of which is annexed hereto and made part of this answer), did assign, convey and deliver all of the property, real and personal, franchises and business of said company to said Anderson Food Company.

2. And this defendant admits that it, by its officers thereupon, in pursuance of said antecedent agreement, on the said twentieth day of September, last past, assigned and delivered to the said Anderson Preserving Company a mortgage for one hundred thousand dollars, payable in ten years,

as part of the purchase price therefor, besides the sum of one hundred and fifty thousand dollars (in cash and assumed indebtedness) as covenanted in said aforementioned agreement; which said mortgage was assigned to complainant, as in said bill mentioned, was duly recorded, and is in the form therein set forth. But defendant denies that it executed and delivered said mortgage in the form set forth in the bill of complaint with the knowledge and volition of the defendant or its officers, and says that the same, in the form set forth, was signed and delivered by a mistake and for want of knowledge as to its real contents. And this defendant charges that the form of said mortgage, as signed, is not the form prescribed therefor by the terms of said antecedent agreement, nor according to the covenants made therein by the said Abraham Anderson and John T. Cox, in that said agreement covenanted for a security upon the "plant, appurtenances and equipment" of the defendant company, and that unknown to defendant, said mortgage was drawn and afterwards executed, inclusive of the lien upon the "stock manufactured and unmanufactured, and in the process of manufacture." And this defendant avers that upon discovery of the inclusion of its stock in said mortgage, it immediately protested to the complainant that an unlawful and unfair advantage had been taken of defendant at the time of the execution of said mortgage, and demanded reformation thereof.

3. The defendant admits that since it has taken over the business it has actively conducted the same, and, as this defendant shows and charges, with great success, with a greater output and enlarged sales over the antecedent business of the said Anderson Preserving Company.

4. The defendant admits that among its stock is a large quantity of canned goods, and it admits that it caused to be removed, on or about the date mentioned in said bill, in the neighborhood of thirty-five hundred cases of such canned

goods to the Pennsylvania Warehousing & Safe Deposit Company, in Philadelphia; but it avers that this was done openly and by the customary drayman of the company and without any fraud or wrongful intent, but charges that the doing of the same was a right of defendant; that defendant had intended, should it be deemed necessary or expedient, to raise upon said goods, as is customary in the trade in the ordinary course of business, a loan, and give back therefor the warehouse receipts of defendant; but this defendant says that no such loan nor has any loan yet been made upon said goods, although defendant avers and insists that it has a lawful right to so consign its said goods and to obtain loans thereon, and charges that such loans so made are in the ordinary course of its business and not in contravention with the covenants contained in the said mortgage of defendant or any of the terms thereof, nor prejudicial to the rights of the complainant as the holder of said mortgage.

5. The defendant further says that the immediate occasion for the proposed loan upon the said goods of the defendant was to aid this defendant in meeting promptly three demand notes of defendant aggregating the sum of ten thousand five hundred and forty-nine dollars, given by defendant to one Voorhees S. Anderson, the son of complainant; which notes of defendant were given to take up certain other notes of like amount held by said Voorhees S. Anderson against the Anderson Preserving Company, to which this defendant succeeded as aforesaid.

6. And defendant further shows, that when, on September twentieth last past, this defendant took over the business of the said Anderson Preserving Company, it was covenanted by agreement between said John T. Cox, for the defendant, and the complainant as the chief stockholder of the Anderson Preserving Company, that the defendant should assume and pay all the debts of the said Anderson Preserving Company, and that the said demand notes held by said

Voorhees S. Anderson represent a part of said indebtedness. That the assumption of said indebtedness by defendant is shown in the agreement made between the said parties respecting thereto, dated the fourteenth day of August, nineteen hundred and one, copy of which said agreement is hereto annexed and making a part of this answer.

7. And defendant further says that said three notes of defendant, taking up said former obligations of the Anderson Preserving Company, were each dated October first, nineteen hundred and one, and although they were demand notes, it was understood and agreed when given, that the defendant should have the calendar year of nineteen hundred and two within which to pay and discharge the same should the defendant so desire; and the said Voorhees S. Anderson consented not to make demand for the entire face of said notes before the end of said calendar year of nineteen hundred and two.

8. And defendant further shows, that because of antipathy existing between complainant and defendant company, due to various causes, one of which was the severance of the relation of the said Voorhees S. Anderson, son of complainant, with the defendant company, the said Voorhees S. Anderson, on the fifteenth day of January, last past, made demand on defendant for the immediate payment of his said three notes in full, and that on the same day he put the said notes in suit against the defendant by action brought in the Supreme Court of this State by the solicitor of the complainant as attorney for the said Voorhees S. Anderson.

9. And this defendant shows and charges that the negotiation of loans upon the consigned goods of defendant is lawful and proper, and is justified alike by reason, equity and the ordinary course of large business concerns such as defendant, and particularly charges and insists that the proposed loan for the distinct purpose of meeting the aforesaid

unexpected obligation of defendant was regular, lawful and proper.

10. And defendant further shows that it has been and is the daily practice of concerns such as that of defendant to consign manufactured goods to warehouses and, in the ordinary course of their business, to obtain loans of moneys thereon to use in their business and to issue certificates of indebtedness therefor.

11. And this defendant says that so far as the removal of said goods in said bill mentioned constituting a menace to the security of complainant, that it avers and charges that the security of complainant is much more adequate than it was when the defendant took hold of the said business from the said complainant, and it further says that after the removal of the said goods to said warehouse there remained and still remains in the factory of defendant twenty-seven thousand eight hundred and thirty-six dollars in value of stock in excess of the value thereof in said factory at the time the defendant took hold thereof.

That since the defendant took the business the amount in value of the stock on hand has increased from seventy thousand dollars to one hundred and nine thousand dollars in value.

That during said time of defendants' management, since September twentieth, last past, there has been added to said plant machinery to the value of thirteen thousand dollars.

That during said time improvements have been made to said factory and buildings to the value of twenty-seven hundred dollars, and the defendant has increased in many and divers ways the value of its business and plant during said time and has enhanced the security of the complainant.

12. The defendant further says, that the excess of sales for the month of February, nineteen hundred and two, over the corresponding month of last year, when the business was

under the management and control of the complainant, was over sixty per cent.; and that the sales of the defendant, from March first to March fourteenth, nineteen hundred and two (the date of the commencement of this action), exceeded by ninety per cent. the sales for the corresponding period of last year; all of which this defendant will show by its stock and sales books respectively, which are here tendered for the inspection of this honorable Court.

13. The defendant further answering says and charges, that it was always the policy of the Anderson Preserving Company, to which this defendant succeeded, while it was under the direction of complainant, to have large quantities of goods in warehouses outside of its own factory and outside of the State, and that upon an average in said warehouses the said Anderson Preserving Company had outside of its factory from forty to fifty per cent. more of such goods upon consignment than the defendant now has, or has ever had. That in January, nineteen hundred, Anderson Preserving Company had over sixty-two thousand dollars' worth of such goods upon such consignment, and in January, nineteen hundred and one, it had sixty-four thousand nine hundred dollars' worth on such consignment, whereas, the defendant, on January thirty-first, of this year, had but thirty-nine thousand seven hundred dollars in value on consignment, and on February twenty-eighth, nineteen hundred and two, but thirty-eight thousand one hundred and fifty-four dollars' worth upon such consignment.

14. And this defendant acknowledges the obligation resting upon it fully to pay and discharge its debts and to maintain intact its lawful securities for all lawful debts and charges, inclusive of those of complainant, and it avers that it has and will fully and legally discharge such obligations, both by the letter and in the spirit of right and law; and the defendant avers that the complain set forth in the said bill of complainant is captious, inequitable and unjust, and

that the relief sought therein is wholly unnecessary to protect the complainant as the holder of said mortgage, and that the relief therein prayed, if granted, would impair the credit of the defendant company and embarass it in the conduct of its business, and would do great and unnecessary harm to defendant in its conduct of its said business.

All of which matters and things the defendant is ready and willing to aver, maintain and prove, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

15. And this defendant answering by way of cross-bill exhibited against the complainant, says that the said John T. Cox, who is the present president and the chief stockholder of the defendant company, for sometime previous to the purchase of the said Anderson Preserving Company by defendant as aforesaid, on the twentieth day of September, nineteen hundred and one, was in negotiation with complainant, who was the president and chief stockholder of the said Anderson Preserving Company, and with the company itself, for the sale thereof.

16. That two several preliminary agreements were drawn between the said parties, anterior to the agreement of September twentieth, nineteen hundred and one, which superseded the same, and to which reference has already been made, and by which anterior agreements was also covenanted the purchase of said business, property and franchises of said Anderson Preserving Company, and all the interest of said complainant therein. (That a copy of said two antecedent agreements is annexed hereto, and made a part of this cross-bill.)

That as appears by the terms of said annexed agreement of September twentieth, nineteen hundred and one (which is also here made a part of this cross-bill), upon the conveyance to the Anderson Food Company by the Anderson Preserving Company of its property, business and franchises,

the said Anderson Food Company, by covenant therein agreed to execute and deliver to complainant a mortgage of one hundred thousand dollars for part of the purchase money thereof upon the "plant, appurtenances and equipments" of said defendant company.

17. And this defendant further says that in neither of the two antecedent agreements before the final agreement aforesaid (which antecedent agreements were dated respectively August fourteenth and September thirteenth, nineteen hundred and one) was it provided that the mortgage to be executed by defendant, upon conveyance to it of said business, should cover any of the stock of the defendant "manufactured or unmanufactured, or in the process of manufacture," or in anywise; nor was it ever suggested by the complainant, or his attorney, or by any of the parties to said agreements, that such security should cover the same by the terms of any agreement to be drawn, but on the contrary, that the proposed mortgage was to be a lien upon the "plant, appurtenances and equipments" of the defendant company alone.

18. And defendant further shows that the said mortgage was signed and delivered by defendant under and by virtue of a resolution of the stockholders of defendant company at a meeting held on September fifth, nineteen hundred and one, which said resolution was as follows: "Upon motion it was resolved and ordered, that the board of directors be authorized to purchase from the Anderson Preserving Company its *entire plant, including all of its assets* and subject to its liabilities for the consideration of one thousand dollars in cash, one hundred forty-nine thousand dollars in capital stock for this Anderson Food Company, and a bond and mortgage to be given by this Anderson Food Company upon the said plant, for the sum of one hundred thousand dollars, payable at the expiration of ten years, with interest at the rate of five per cent. per annum." And that in pursuance of said resolution of the stockholders of defendant the board

of directors thereof afterwards, on the twentieth of September, nineteen hundred and one, passed the following resolution: "Upon motion it was ordered, that the board of directors purchase the plant and assets of the Anderson Preserving Company, and issue therefor one hundred forty-nine thousand dollars in capital stock, pay one thousand dollars in cash, and make the mortgage authorized by the stockholders of one hundred thousand dollars to the Anderson Preserving Company, and the proper officers are authorized to execute the said bond and mortgage." And this defendant charges that the said mortgage, as executed and delivered by defendant, and as now held by the complainant, is as to the inclusion therein of the stock of defendant, or any part thereof, *ultra vires*, and without force and legal effect against this defendant.

19. And this defendant further shows that the aforementioned agreement of September twentieth, which was the final agreement as aforesaid, and which provided for the form of the intended mortgage, was drawn by John F. Harned, Esquire, the solicitor of the complainant.

20. That on the day of the date of such last mentioned agreement said agreement was submitted by the said Harned to the said John T. Cox, representing the said defendant company, and was approved by him. That on the same date the said John T. Cox, as president of the defendant company, and David A. Henderson, as its secretary, upon his request, went to the office of John F. Harned, Esquire, the complainant's solicitor, in Camden, N. J., to execute the mortgage prescribed by said agreement. That neither the said Cox or said Henderson read over the said mortgage before signing the same, nor was it read over to them, nor did the officer who took the deposition thereof make any declaration as to its contents; that said mortgage was upon the table in the office of the said Harned when the defendant officers aforesaid came into said office; that as the said deed

of mortgage lay upon the said office table of complainant's solicitor, he, said solicitor, turned the leaves of the same over to the place for signature and said to the said Cox and Henderson, "This is the place to sign," which was the only declaration made at the time of the alleged execution of the said mortgage in respect thereof. And the said Cox and Henderson supposing said mortgage to be as prescribed by said agreement, a mortgage upon the "plant, appurtenances and equipments" alone of defendant, signed the same with confidence, but in absolute ignorance of the real terms thereof.

21. And this defendant expressly denies that the defendant company executed the said mortgage as a chattel mortgage upon the stock of defendant manufactured and unmanufactured and in the process of manufacture in any legal sense of an instrument signed and delivered with full knowledge of the terms and contents thereof, and charges that the execution and delivery of the mortgage in question, as executed and delivered, was not lawfully executed and delivered in equity and good conscience, but that the same as contrived was either a mistake or a grievous wrong and a fraud upon the defendant company.

22. That said David A. Henderson, secretary of the defendant company, has been actively engaged in the insurance business for many years, and he not only knows that the inclusion of stock of the defendant in said mortgage would affect the credit of defendant, but that it would make it very difficult to place the fire risks upon the plant of defendant, and the defendant avers and charges that had said Henderson known of the inclusion of said provision in said mortgage, he would (because of such his special knowledge) have absolutely refused, on behalf of defendant, to sign the said mortgage as drawn.

23. That said Henderson, anterior to the signing of any agreement between said complainant and Cox respecting the

purchase of the business of Anderson Preserving Company, and at the time of the signing of all of them, conducted for said Cox the conferences with said complainant and his attorney, and that at no time was it ever suggested that the proposed mortgage should cover the "stock manufactured, unmanufactured or in the process of manufacture," or otherwise, of the defendant.

24. That the actual form of the mortgage, as signed by the said officers for defendant, was unknown to the defendant or its officers till on or about October tenth, nineteen hundred and one; that at said time said Henderson, as secretary of the defendant, called upon Mr. Harned, the attorney of complainant, and took up with him, as representing the complainant, the subject of insurance; that Mr. Abraham Anderson, the complainant, happened to be in the office of Mr. Harned at the time said Henderson called; that in conversation as to insurance, said Henderson was told that the mortgage covered the stock and that the fire risk should cover the same; that said Henderson was utterly surprised at such information, and angrily protested to said complainant and his attorney that the mortgage should not have been so drawn, and that they knew it, and said to Mr. Harned, that "if that was in, it was done surreptitiously, and would have a tendency to hurt the credit of defendant," which Mr. Harned agreed was possible. That said Henderson then said to them, Abraham Anderson and his attorney, John F. Harned, that he would investigate the matter; that said Harned then said the mortgage was at the Register of Deeds' office; that said Henderson then replied, "that if it was so, it must be changed." That said Henderson then went immediately to the office of Samuel W. Beldon, Esquire, and together they went to the Register's office to find if said mortgage was drawn and recorded as a chattel mortgage inclusive of the stock of defendant, and upon examination they found that it was in fact true; which was the first certain knowledge that defendant had thereof.

That said Henderson, for the said defendant, on the same day last aforesaid, saw Mr. Harned again and told him that he, Henderson, "had found that it was so, and that if it was not corrected within a reasonable time they (the defendant) would bring proceedings legally to have it changed."

25. That a few days after said time said Henderson again went to see Harned, and as secretary of defendant company again protested in the same manner and gave to him, as attorney of the complainant, verbal notice that the mortgage must be changed.

26. That said Henderson, a few days later, still met said Harned at Fourth and Market streets, Camden, and again protested and called Mr. Harned's attention to the position the corporation would be in were it desirous of borrowing money, there being a chattel mortgage on its goods, and asked the said Harned, as director of one of the banks, if he would approve of such a loan under such circumstances, and that said Harned replied, "No, he would not; but that if the defendant made application he (Harned) would not vote on the subject."

27. The defendant further shows, that upon the protests to complainant and his attorney remaining unanswered, the defendant sent a notice in writing to the complainant, Abraham Anderson, at his residence, in Camden, in form as follows:

"Camden, N. J., Nov. 11, '01.

"Mr. A. Anderson,

"3rd & Cooper Sts., Camden, N. J.

"Dear Sir:—We again beg your attention to the matter concerning which we have frequently spoken to you and your attorney, John F. Harned, viz., the mortgage covering our property, situated at Front and Arch streets, Camden,

N. J., and which we have stated and complained there was an error made in the drawing of the same, and at the time of signing said mortgage we did not know that a portion thereof contained the clause that it covered goods manufactured, unmanufactured, or otherwise chattels on our property, as it appears of record in the Register of Deeds' office, Camden, N. J. We do hereby protest and give you notice that we do not regard said mortgage as covering the property as so stated therein, as our specific agreements stated very plainly that the mortgage was to be given to cover the *plant* of the Anderson Food Company, with no mention that it should cover the chattels of the same. We understood by the meaning of the word "plant" in said agreement, that it was the buildings and permanent fixtures now erected, or that might possibly be erected in the future, on the ground described as owned by us at that time, at Front and Arch streets, Camden, N. J., and that mortgage to be executed would cover same alone. We feel that you should take steps immediately to release that portion of said mortgage, which is contrary to our agreement, without delay. Awaiting your advices, we beg to remain,

"Yours, very truly,

"ANDERSON FOOD COMPANY.

(Signed) "D. A. HENDERSON, Secretary.

"D. A. H.—A. R. B."

That the defendant company had no response whatever to said notice.

28. That afterwards, on the tenth day of March, nineteen hundred and two, the defendant sent a communication to said complainant, at Passadena, California, respecting the payment of the interest shortly due him, and in defendant's notice of such payment there was sent to complainant a further protest and notice in writing in the following form:

"Camden, N. J., 3-10, '02.

"Mr. Abraham Anderson,

"Passadena, Cal.

"Dear Sir:—According to our records we note that on the 20th inst. interest at the rate of 5 per cent. on the mortgage of $100,000, held by you on our plant in Camden City, N. J., which will amount to $2500, will be due you; also interest on certain notes, amounting in the aggregate to $57,023.55, at the rate of 5 per cent. per annum, which will amount to $1,425.59, will also be due you, making the total sum of interest due you on said date to the amount of $3,925.59.

"If you will have your duly authorized representative call at our office, situate northwest corner of Front and Arch streets, Camden, N. J., on the morning of the twentieth instant, we will be pleased to hand him our certified check covering said amount of interest.

"We are under the impression at this writing that Mr. John F. Harned represents you as attorney here, and if he presents the authority aforesaid to us we will gladly hand him said check.

"In making this payment we shall do so under protest, as we have done before, and now we do hereby protest to you against the inclusion in mortgage given you under the antecedent agreement leading up thereto of quoting goods manufactured and unmanufactured as coming within the purview of the word plant under such agreement, and we demand a specific release of such goods from the operation of the mortgage and by an affirmative act of yours.

"Yours, very truly,

"ANDERSON FOOD COMPANY.

(Signed) "D. A. HENDERSON, Secretary.

"D. A. H.—A. R. B."

29. And defendant further says, that in response to said notice the complainant, one Frank J. Burr, of Camden, came to defendant, on March twentieth last past, with an authorization from complainant to receive said money for him, and the defendant gave him, as the agent of complainant, its check for the moneys due complainant, and at the time of such complainant gave to him as such agent notice in writing that such payment was made under the same protest as had been before made to complainant.

30. And the defendant further says, that by the terms of a certain agreement made between Voorhees S. Anderson, the son of the complainant, and the said John T. Cox (at the time said Cox was negotiating with complainant for the purchase of said business), the said Cox agreed for the proposed company, the defendant, that he would vote his stock for the said Voorhees S. Anderson for the office of treasurer thereof so long as said Voorhees S. Anderson would devote his time and attention, skill and ability to the company.

31. And defendant says that because of the neglect of business by said Voorhees S. Anderson, his prolonged absences therefrom and his general conduct, the directors of the defendant company failed to re-elect him as treasurer at its annual meeting, on January fourteenth, nineteen hundred and two.

32. That this action of the directors of defendant caused great animosity on the part of the complainant against the defendant and its management, notwithstanding the admission of his son, Voorhees S. Anderson, that under the circumstances his failure in re-election was justified, because of his fault. That this animosity of complainant has gone so far that on January fifteenth, nineteen hundred and two, he sent a telegram from Passadena, California, to his son, Voorhees S. Anderson, at Camden, N. J., which said Voorhees S. Anderson exhibited to one John Matthews, in form

and effect as follows: "Advertise all my stock in New Jersey and Pennsylvania papers for sale. What I have built up I will break down."

33. That the attorney of complainant has repeatedly given out that defendant could not succeed in its business with the obligation the complainant had against it, and that it was only a question of time when the business would in all probability come back to complainant.

34. And this defendant further says and avers, that a high credit, unimpaired, is the life of any such business as that of defendant, and that the credit of defendant is endeavored by it to be sedulously guarded, and that the adverse action of complainant toward defendant, coupled with his refusal to right the wrong respecting said mortgage held by him, is a detriment to the credit of defendant company, although the full and absolute maintainance of such credit is essential to the conservation of the securities of the defendant held by the complainant against it; and defendant well hoped that complainant, in response to defendant's said several requests, would have released the stock of the defendant from the operation of said mortgage; but that said complainant has absolutely refused, and still does refuse, to release the same, to the great injury of this defendant.

35. And this defendant further says, that on the morning of the fourteenth day of March, instant, David A. Henderson, the secretary of the defendant, consulted with Schuyler C. Woodhull, the defendant's attorney, and requested and directed him to take legal action to reform the mortgage of complainant and correct the mistake made in the execution thereof, so that the same should agree with the understanding and agreement under which conveyance was made to this defendant, and by the terms of which this defendant so secured the complainant. And defendant says further, that on the afternoon of the same day, March fourteenth last, at

2.47 P. M., the papers in this case were served upon defendant, and that such service was the first intimation that the defendant company had of any such action.

36. And this defendant further says, that all of the stock of the Anderson Preserving Company having been turned over to this defendant company incident to the purchase of said Anderson Preserving Company by defendant, is now held by defendant company; that said Anderson Preserving Company is still a legal entity, never having been dissolved, and that it has its own board of directors.

In consideration whereof, this defendant therefore, by way of cross-bill, prays the Court against the complainant here that the Court may grant to defendant its decree against complainant that said mortgage so held by complainant, as executed and delivered to him, was not the act and deed of the defendant; and that it may be further decreed, that the complainant may be compelled to deliver up his said mortgage, so as aforesaid alleged to be executed by defendant, for cancellation; or that decree be made reforming said mortgage by striking out therefrom the words "stock manufactured, unmanufactured and in the process of manufacture," or any words of like import where they shall occur in said mortgage; and that it be further decreed, that the record of said mortgage be amended, in accordance with this decree, by the re-recording of the said mortgage as so reformed.

And that said defendant may have such other and further relief as to this honorable Court shall seem meet, and as shall be agreeable to equity and good conscience.

And this defendant will ever pray, etc.

SCHUYLER C. WOODHULL,
Solicitor for Defendant, Anderson Food Company.

SAMUEL W. BELDON,
Of Counsel.

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

DAVID A. HENDERSON, of full age, being duly sworn according to law, on his oath says: That he is the secretary of the Anderson Food Company, the defendant in the above cause, and its agent in this behalf. And deponent further says that the matters and things set forth in the foregoing answer, so far as relates to the acts of defendant company, are true, and so far as they relate to the acts and doings of others, he believes them to be true.

And deponent further says, particularly is it true that on the tenth day of March, last past, the defendant company moved from its factory, in Camden, some thirty-five hundred cases of goods of defendant to the Pennsylvania Warehousing & Safe Deposit Company, in Philadelphia, as set forth in said bill of complaint; and deponent further says, that defendant made no loan upon or hypothecation of any of said goods so removed, but he says that it was the intention of defendant to negotiate a loan upon said goods in the ordinary course of its business, should such loan appear necessary or expedient to the defendant.

That the immediate reason for an intended advance of money upon said goods of defendant was to aid in promptly meeting three certain demand notes, aggregating the sum of ten thousand five hundred and forty-nine dollars, given by defendant to Voorhees S. Anderson, the son of complainant; which notes of defendant were given to take up certain other notes of like amount held by said Voorhees S. Anderson against the Anderson Preserving Company, to which this defendant succeeded on the twentieth day of September, nineteen hundred and one. And deponent further says, that when, on said September twentieth, nineteen hundred and one, the defendant took over the business of the Anderson Preserving Company, it was covenanted by agreement between complainant, as the chief stockholder of the Anderson Preserving Company, and on its behalf, and John T. Cox,

for the defendant, that the defendant should assume and pay all the debts of said Anderson Preserving Company; and that the said notes of the said Voorhees S. Anderson, aforementioned, represent a part of said indebtedness.

And deponent further says, that said three notes of defendant to Voorhees S. Anderson, taking up said former obligations of the Anderson Preserving Company, were each dated October first, nineteen hundred and one, and although they were demand notes, when given it was understood and agreed that the defendant should have the calendar year of nineteen hundred and two within which to pay and discharge the same, should the defendant so desire.

And deponent further says, that the cause of ill-feeling existing between complainant and defendant company and its management, due to various causes, one of which was the severance of the relation of complainant's son, Voorhees S. Anderson, with the defendant company, the said Voorhees S. Anderson, on the fifteenth day of January, nineteen hundred and two, made demand for an immediate payment of his said three notes, and that on the same day he put the notes in suit against the defendant by an action brought in the Supreme Court by complainant's solicitor as attorney for Voorhees S. Anderson.

And deponent further says, that a negotiation of a loan upon the consigned goods of defendant for the purpose of meeting this unexpected obligation of defendant was justified by reason, equity and the ordinary course of business of defendant and of concerns such as that of defendant company.

And deponent further says, that the books of the Anderson Preserving Company, to which defendant succeeded, which are in the possession of defendant, show that said Anderson Preserving Company, while under the management of complainant, always had large quantities of its goods upon storage in warehouses outside its factory and outside of this State; and that such consignments in such warehouses amounted to sixty-two thousand three hundred and

seventy-eight dollars in value on January thirty-first, nineteen hundred; sixty-four thousand nine hundred and twenty-four dollars in value on January thirty-first, nineteen hundred and one, and that the average amount in value of the goods of said company upon such consignment was fifty thousand dollars in value and upwards at the end of each month of the years nineteen hundred and nineteen hundred and one.

And deponent further says that, irrespective of the circumstances surrounding the particular consignments complained of in said bill, that it is the daily practice of concerns like the defendant to consign goods to warehouses and to obtain loans of money thereon in the course of their ordinary business, or for the purpose of meeting unexpected demands threatening to impair their credit, and upon the granting of such loans to issue certificates therefor.

And deponent further says, that it is the whole aim, desire and purpose of defendant company to maintain its high credit, and that the strict maintenance of such credit by all means in its power was, and is, absolutely essential, not only to the success of defendant, but to the conservation of the securities held by the complainant against the defendant.

DAVID A. HENDERSON.

Sworn and subscribed before me, this twenty-second day of March, A. D. 1902.

MARTIN V. BERGEN,
M. C. C.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,
Complainant,

AND

ANDERSON FOOD COMPANY,
Defendant.

ON BILL FOR INJUNCTION.

AFFIDAVIT, &c.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.*

CHARLES W. WALTERS, of full age, being duly sworn, on his oath says that he is a member of the firm of John Hines & Company, public accountants and auditors, of No. 642-646 Drexel Building, Philadelphia; that the business of said firm has been carried on since its establishment, in 1878; that deponent, as public accountant and auditor,, has had a wide experience in the business practice of large manufacturing concerns throughout the country, and deponent further says, that the borrowing of money by such large manufacturing concerns on their goods consigned to warehouses upon their certificates is a matter of daily occurrence and that it is done in the ordinary course of the business of such manufacturing concerns, such certificates being negotiable at the banks and constituting one of the best securities that manufacturers can use.

And deponent further says, speaking from his experience, that the freedom on the part of large manufacturing con-

cerns to make such loans on their goods is necessary for the proper prosecution of their business and the maintenance of the credit of such concerns.

(Signed) CHAS. W. WALTERS.

Sworn and subscribed before me this twenty-first day of March, A. D. 1902.

(Signed) WINFIELD S. SHEARD,
Notary Public.
Commission expires January 18, 1903.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } *ss.*

CHARLES T. MALONEY, of full age, being duly sworn, on his oath says that he is the general superintendent of the Pennsylvania Warehousing & Safe Deposit Company of Philadelphia; that on or about the 11th day of March last, one representing himself to be a Mr. Anderson, from Haddonfield, New Jersey, called upon deponent at the office of the said company and stated that he owned a chattel mortgage on the property of the Anderson Food Company, in the company's warehouse, and said to deponent that there were thirty-five hundred cases of goods of the Anderson Food Company in the warehouse of deponent on which goods the Pennsylvania Warehousing & Safe Deposit Company had loaned money; and deponent further says that to the best of his knowledge and belief said Anderson did not get in the warehouse of deponent's company or inspect or count any goods therein; that no permission was given to said Anderson to go into the warehouse, either by this deponent as general superintendent of the company nor by the local superintendent thereof, who are the only persons who could give

such permission for such inspection; that deponent has read the affidavit of said Anderson annexed to a certain bill in Chancery in a cause between Abraham Anderson and the Anderson Food Company, and the statements therein in relation to his inspection of the goods of the said Anderson Food Company; and deponent says it is impossible that the said Anderson should have so entered into the said warehouse and have counted the goods as alleged by him in said affidavit.

And deponent further says that the company of this deponent has made no loan upon the said goods so stored with it of the Anderson Food Company, and that the warehouse receipt for said goods has been turned over to the said Anderson Food Company without endorsement or assignment, and that the said goods remain in said warehouse in the name of the said Anderson Food Company.

CHAS. T. MALONEY, 2d.

Sworn and subscribed before me this twenty-first day of March, A. D. 1902.

E. L. BUCHEY,
Notary Public.

[SEAL]

THIS AGREEMENT, made the twentieth day of September, nineteen hundred and one, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, in the county of Burlington and State aforesaid, party of the second part.

Witnesseth, That for and in consideration of the mutual covenants and promises hereinafter contained, the said parties have agreed as follows:

1. The said party of the first part agrees to sell, assign, transfer and set over to the said party of the second part, or such person or persons as may be nominated by him, two thousand two hundred and fifty shares of the capital stock of the Anderson Preserving Company upon the payment of the sum hereinafter agreed to be paid and the performance of the conditions hereinafter agreed to be performed by the said party of the second part.

2. The said party of the second part agrees, upon the delivery of the said shares of the capital stock of the Anderson Preserving Company, properly assigned, transferred and set over as aforesaid, to pay to the said party of the first part the sum of seventy-five thousand dollars in cash, to deliver to him a mortgage *on the plant, appurtenances and equipments now owned by* the said Anderson Preserving Company, securing the payment of the sum of one hundred thousand dollars in ten years from the date hereof, with a net interest thereon of five per centum per annum, to deliver to the said party of the first part notes of a corporation constituted under the name of the Anderson Food Company the sum of fifty-eight thousand dollars, one-third payable on the thirty-first day of December, nineteen hundred and two, and one-third payable on the thirty-first day of December, nineteen hundred and three, and the balance in one year thereafter, the same to bear interest at the rate of five per centum per annum.

3. The said party of the second part further agrees to sell, assign, transfer and set over to the said party of the first part two hundred and fifty shares of the par value of one hundred dollars each of the capital stock of the proposed corporation above referred to, the Anderson Food Company, upon the payment of the sum of seventy-seven dollars and seventy-seven cents per share, which said two hundred and fifty shares of stock the said party of the first part agrees to buy and pay for at the rate last aforesaid.

4. The party of the second part agrees that the total net profit of the Anderson Food Company, which company it is understood and agreed is to absorb the good will, property and assets, and to assume all the liabilities of the Anderson Preserving Company, or the net profits of any company which shall succeed to the rights and interests of the said Anderson Preserving Company, shall be used exclusively in paying the principal and interest on the sum of fifty-five thousand five hundred and fifty-seven dollars and fifty cents, advanced by the party of the second part for the purchase of the said stock, and the obligations to be given to the party of the first part as before mentioned; and no dividends shall be declared in the Anderson Food Company, or any other company that may succeed to the rights of the Anderson Preserving Company under this agreement, except to be used toward making the said payments, or some part thereof, until all of the same shall have been paid; it being particularly understood and agreed, that nothing herein contained postpones the time of payment of any of the obligations held by the party of the first part.

5. It is further agreed, that each and all of the foregoing covenants and promises shall be carried out and fulfilled on or before the nineteenth day of September next, and that they shall all be carried out and performed at the same time.

6. And it is further understood and agreed, that the total amount of salary to be paid all of the elective officers of the said Anderson Food Company shall not exceed the sum of twelve thousand five hundred dollars per year, for the period of five years from this date.

7. The party of the first part covenants and agrees, that the assets of the Anderson Preserving Company are not less and its liabilities are not relatively greater than on August 16, 1901.

In witness whereof, the said parties have hereunto set their hands and seals the day and year above referred to.

A. ANDERSON, [L. S.]

JOHN T. COX. [L. S.]

Signed, sealed and delivered in the presence of

JOHN F. HARNED,
As to A. Anderson.

DAVID A. HENDERSON,
As to John T. Cox.

"Relatively" interlined before signing.

THIS AGREEMENT, made this fourteenth day of August, one thousand nine hundred and one, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, in the county of Burlington and State aforesaid, party of the second part, Witnesseth: That for and in consideration of the mutual covenants and promises hereinafter contained, the said parties have agreed as follows:

1. The said party of the first part agrees to sell, assign, transfer and set over to the said party of the second part, or such person or persons as may be nominated by him, two thousand two hundred and fifty shares of the capital stock of the Anderson Preserving Company upon payment of the sum hereinafter agreed to be paid and the performance of the conditions hereinafter agreed to be performed by the said party of the second part.

2. The said party of the second part agrees, upon the delivery of the said shares of the Anderson Preserving Company, properly assigned, transferred and set over as afore-

said, to pay to the said party of the first part the sum of seventy-five thousand dollars in cash, to deliver to him a mortgage on the plant, appurtenances and equipments now owned by the said Anderson Preserving Company, securing the payment of the sum of one hundred thousand dollars in ten years from the date thereof, with a net interest thereon of five per centum per annum; to deliver to the said party of the first part notes of a corporation about to be constituted under the name of the Anderson Food Company, for the sum of fifty-eight thousand dollars; one-half payable on the thirty-first day of December, nineteen hundred and two, and the remainder one year thereafter, the same to bear interest at the rate of five per centum per annum.

3. The said party of the second part further agrees to sell, assign, transfer and set over to the said party of the first part two hundred and fifty shares, of the par value of one hundred dollars each, of the capital stock of the proposed corporation above referred to, The Anderson Food Company, upon the payment of the sum of seventy-seven dollars and seventy-seven cents per share, which said two hundred and fifty shares of stock the said party of the first part agrees to buy and pay for at the rate last aforesaid.

4. It is further agreed, that each and all of the foregoing covenants and promises shall be carried out and fulfilled on or before the sixth day of September next, and that they shall all be carried out and performed at the same time.

5. It is further understood and agreed, that the foregoing covenants and promises of the party of the second part are subject to and conditioned upon the agreement of the assets and liabilities of the said Anderson Preserving Company, with a statement thereof as made on the fifteenth day of July last past.

In witness whereof, the said parties have hereunto set their hands and seals the day and year above referred to.

A. ANDERSON, [L. S.]

JOHN T. COX. [L. S.]

Signed, sealed and delivered in the presence of
"Second" written over "first" erased in 5th paragraph.

DAVID A. HENDERSON.

THIS AGREEMENT, made this thirteenth day of September, nineteen hundred and one, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, in the county of Burlington and State aforesaid, party of the second part.

Witnesseth, That for and in consideration of the mutual covenants and promises hereinafter contained, the said parties have agreed as follows:

1. The said party of the first part agrees to sell, assign, transfer and set over to the said party of the second part, or such person or persons as may be nominated by him, two thousand two hundred and fifty shares of the capital stock of the Anderson Preserving Company upon the payment of the sum hereinafter agreed to be paid and the performance of the conditions hereinafter agreed to be performed by the said party of the second part.

2. The said party of the second part agrees, upon the delivery of the said shares of the capital stock of the Anderson Preserving Company, properly assigned, transferred and set over as aforesaid, to pay to the said party of the first part

the sum of seventy-five thousand dollars in cash, to deliver to him a mortgage on the plant, appurtenances and equipments now owned by the said Anderson Preserving Company, securing the payment of the sum of one hundred thousand dollars in ten years from the date hereof, with a net interest thereon of five per centum per annum; to deliver to the said party of the first part notes of a corporation about to be constituted under the name of the Anderson Food Company for the sum of fifty-eight thousand dollars, one-third payable on the thirty-first day of December, nineteen hundred and two, and one-third payable on the thirty-first day of December, nineteen hundred and three, and the balance in one year thereafter, the same to bear interest at the rate of five per centum per annum.

3. The said party of the second part further agrees to sell, assign, transfer and set over to the said party of the first part two hundred and fifty shares of the par value of one hundred dollars each of the capital stock of the proposed corporation above referred to, The Anderson Food Company, upon the payment of the sum of seventy-seven dollars and seventy-seven cents per share, which said two hundred and fifty shares of stock the said party of the first part agrees to buy and pay for at the rate last aforesaid.

4. The party of the second part agrees that the total net profits of the Anderson Food Company, which company, it is understood and agreed, is to absorb the good will, property and assets, and to assume all liabilities, of the Anderson Preserving Company, or the net profits of any company that shall succeed to the rights and interest of said Anderson Preserving Company, shall be dispersed as follows: First. In the payment of the interest on the sum of fifty-five thousand five hundred fifty-seven dollars and fifty cents, advanced by the party of the second part hereto in purchase of said stock. Second. In the payment of the notes held by the party of the first part against the Anderson Preserving Company, and

agreed to be assumed and renewed by the Anderson Food Company, amounting to the sum of fifty-eight thousand dollars as provided for aforesaid. Third. In the payment of the principal fifty-five thousand five hundred fifty-seven dollars and fifty cents advanced by the party of the second part.

5. It is further understood and agreed, that no dividends are to be declared or paid by the Anderson Food Company, or any other company that may succeed to the rights of the Anderson Preserving Company under this agreement, until all of the above indebtedness, including said seventy-five thousand dollars, is paid, or if so declared, shall be appropriated as set out in section four.

6. It is further agreed, that each and all of the foregoing covenants and promises shall be carried out and fulfilled on or before the nineteenth day of September next, and that they shall all be carried out and performed at the same time.

7. And it is further understood and agreed, that the total amount of salary to be paid all of the elective officers of the said Anderson Food Company shall not exceed the sum of twelve thousand five hundred dollars per year, for the period of five years from this date.

In witness whereof, the said parties have hereunto set their hands and seals the day and year before referred to.

A. ANDERSON, [L. S.]

JOHN T. COX. [L. S.]

Signed, sealed and delivered in the presence of "And the balance in one year thereafter" inserted before signing.

JOHN F. HARNED,
As to A. Anderson.

DAVID A. HENDERSON,
As to John T. Cox.

THIS AGREEMENT, made this fourteenth day of August, 1901, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, county of Burlington, State of New Jersey, party of the second part.

Witnesseth, whereas, the parties hereto are about to enter into an agreement concerning the sale of the stock of the Anderson Preserving Company, now it is hereby further agreed in connection with said first mentioned agreement, and the parties hereto do hereby agree as follows:

1st. The party of the second part agrees that the total net profits of the Anderson Food Company, which company, it is understood and agreed, is to absorb the good will, property and assets of the Anderson Preserving Company, or the net profits of any company that shall succeed to the rights and interests of said Anderson Preserving Company, shall be dispersed as follows: In the payment of the interest on the sum of seventy-five thousand dollars advanced by the party of the second part hereto in purchase of said stock. In the payment of the principal of one hundred thousand dollars agreed to be executed and delivered to the party of the first part by his agreement. In the payment of the notes held by the party of the first part against the Anderson Preserving Company, and agreed to be assumed and renewed by the Anderson Food Company, amounting to the sum of fifty-eight thousand dollars. In the payment of the principal of seventy-five thousand dollars advanced by the party of the second part.

2nd. It is further understood and agreed, that no dividends are to be declared or paid by the Anderson Food Company, or any other company that may succeed to the rights of the Anderson Preserving Company under this agreement, until all of the above indebtedness, including said seventy-five thousand dollars, is paid.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

A. ANDERSON, [L. S.]

JOHN T. COX. [L. S.]

Signed, sealed and delivered in the presence of

DAVID A. HENDERSON.

Line interlined as line two on page two and third paragraph erased before execution.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,
Complainant,

AND

ANDERSON FOOD COMPANY,
Defendant.

ON BILL &c.

REPLICATION AND ANSWER TO CROSS BILL.

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1. The complainant joins issue with the defendant upon his answer filed in the above entitled cause, and to so much thereof as in the way of cross bill this complainant admits that John T. Cox and himself, for some time previous to the 20th day of September, were in negotiation for the purchase and sale of the Anderson Preserving Company.

2. This complainant admits that several preliminary agreements previous to the agreement of September 20th were drawn up between the parties.

3. This complainant admits that, as appears by the terms of said agreement of September 20th, the said Anderson Food Company agreed to execute and deliver to complainant a mortgage of $100,000 for part of the purchase money thereof upon the plant, appurtenances and equipments of said defendant company.

4. This complainant denies that by the previous agreements it was not provided that the mortgage to be executed by the defendant should cover any of the stock of the defendant, manufactured, unmanufactured or in the process of manufacture, and denies it was not ever suggested by the complainant, or his attorney, or by any of the parties to said agreement, said security should cover the same.

5. This complainant admits said mortgage was signed and delivered by said defendant under and by virtue of a resolution of the stockholders of the defendant company, but as to the precise terms of the said resolution, has no knowledge, and therefore leaves said defendant to make such proof as it may be advised.

6. This complainant admits that in pursuance of the resolution of the stockholders, the board of directors thereof, on the 20th day of September last, passed a resolution, authorizing the purchase of the plant and assets of the Anderson Preserving Company, but as to the precise terms of said resolution, this complainant has no knowledge, and leaves said defendant to make such proof as it may be advised.

7. This complainant denies that the said mortgage as executed by said defendant company is, as to the inclusion therein of the stock of the defendant company, *ultra vires*, and without force and legal effect.

8. And this complainant denies that that portion of the agreement of September 20th, which provided for the form of the intended mortgage, was drawn by John F. Harned, solicitor of the complainant, and charges the fact to be that that portion of said agreement was drawn by some person employed by and in the interest of the defendant, and was produced to said complainant by said defendant's representative.

9. This complainant admits that the said David A. Henderson and John T. Cox, as president and secretary of the said company, went to the office of John F. Harned, complainant's solicitor, to execute the mortgage prescribed by said agreement, denies that neither said Cox or said Henderson read over said mortgage before signing the same, denies that it was not read over to them, *denies that the officer who took the deposition thereto made no declaration as to its contents,* denies that the said mortgage was upon the table in the office of said Harned when said officers came in said office, denies that he turned the leaves over to the place for signature, and said to said Cox and said Henderson, "this is the place to sign;" denies that such was the only declaration that was made at the time of the alleged execution of said mortgage, and denies that the said Cox and the said Henderson signed the same in absolute ignorance of the terms thereof.

10. This complainant denies that the said defendant did not execute said mortgage as a chattel mortgage upon the stock of the defendant, manufactured, unmanufactured and in the process of manufacture, in any legal sense of an instrument signed and delivered with full knowledge of the terms and contents thereof, and denies that said mortgage was not lawfully executed and delivered in equity, and denies that the said mortgage was a mistake or grievous wrong and fraud upon said defendant company.

11. This complainant has no knowledge as to the knowledge of the said David A. Henderson's insurance business, or as to what he knew of the effect of the chattel mortgage upon stock, or whether or not it would be difficult to place a fire risk on a plant, and this complainant charges that the said Henderson had full knowledge of the contents of said mortgage before he signed the same.

12. This complainant denies that, previous to signing said mortgage, it was not suggested to said Henderson that said

mortgage should cover the stock manufactured, unmanufactured or in the process of manufacture; denies that the actual form of said mortgage was unknown to the defendant or its officers until the 10th day of October; admits that the said Henderson called upon the said Harned, and that said complainant was present at the time; admits that said Harned informed him that the fire policy covering the stock should be marked to the use of the mortgagee, but as to whether said Henderson was surprised, this complainant has no knowledge; *denies that the said Henderson at that time said anything about changing the mortgage,* and has no knowledge as to where the said Henderson went after leaving said office.

13. This complainant denies that the said Henderson threatened to bring legal proceedings to have it done.

14. This complainant has no knowledge as to what interview was had between said Henderson and said Harned as therein alleged, and leaves said defendant to make such proofs as it may be advised.

15. This complainant admits that on the eleventh day of November, said defendant addressed a communication to this complainant as set out in said bill.

16. This complainant admits that on the third day of March last, said defendant addressed a communication to this complainant as set out in said bill; admits that said defendant has paid the first six months' interest due upon said mortgage.

17. This complainant further admits that under agreements existing between John T. Cox and one Voorhees S. Anderson, said Cox agreed to vote his stock for said Anderson as treasurer of said company.

18. This complainant admits that the said Cox, in disregard of said agreement and in violation thereof, has failed to vote his stock according to said agreement, and denies that it was for the reason therein mentioned.

19. And this complainant, by way of further answering, says that he has devoted his entire life to the building up of the business formerly conducted under the name of the Anderson Preserving Company; that by constant application to his business he was successful in building up a very large trade; that for several years last past his health has failed and he found it desirable and necessary that he should relieve himself from the strain of business, and with that end in view made it known that he was willing to sell the business; that many years before he had taken into his employ his son-in-law, John T. Cox, and from time to time had advanced him in the business until he became the secretary of the company, which position he held for a number of years; a year previous to the selling of the business, differences arose between the said Cox and complainant, and said Cox relinquished his position and retired from the business; as soon as said Cox learned that said business was in the market, he made overtures to complainant, through one David A. Henderson, for the purchase thereof; that verbal understanding was reached, and the same attempted to be reduced to writing; that the said Henderson caused to be prepared a written agreement setting forth the terms of the purchase and sale of the said Anderson Preserving Company by this complainant by the said John T. Cox; that the said Henderson produced said agreement to this complainant to be signed; that up to this time complainant has consulted no counsel in the matter, and had not made known to any person his intention to sell; that upon receiving said agreement, he called upon his present counsel and consulted with him regarding the same; that several alterations in said agreement were suggested, submitted to Mr. Cox, through Mr. Henderson, and agreed upon; further alterations were after-

wards suggested from time to time, and consented to by said complainant; *that the clause now in controversy respecting the items of the mortgage to be given on the property therein to be included, was drawn for Mr. Cox, was in the first draft submitted to this complainant, and was not thereafter altered;* that at the time said draft was submitted, he believed that the terms used were meant to include all the property which was being sold, and in his discussion of the matter always spoke of it in that light; that exclusive of the stock of the company, the property conveyed would have been a very scanty and insufficient security for the debt, and had this complainant not believed that he was to receive back a mortgage co-extensive with the property, real and personal, that he was transferring he would not have consented to the sale; that as part of the negotiations it was agreed that a bill of sale, deed, and bond and mortgage, should be drawn up by one Samuel W. Beldon, counsel of Mr. Cox and Mr. Henderson; that said bill of sale, deed, and bond and mortgage, were so drawn by Mr. Beldon; that on the day previous to the consummation of the transaction, complainant's counsel called upon Mr. Beldon and stated to him that the mortgage ought to be both a real estate and chattel mortgage in order to properly secure the complainant. Mr. Beldon stated that he so understood it. Mr. Harned suggested that possibly a chattel mortgage would injure the credit of the company, whereupon Mr. Beldon replied that he had been assured *by Mr. Henderson that that would make no difference, that the people* back of them and who were furnishing the money were amply able to carry the concern and would do so; that thereupon Mr. Beldon called the stenographer and dictated that portion of said mortgage, which reads as follows: Also all moveable machinery, machines, tools, kettles, pots, pans, jars, cups, beltings, gearing, stock manufactured, unmanufactured, or in the process of manufacture, office furniture, and all appliances and appurtenances of every kind and description used in connection with the business of the party of the first part, or otherwise.

And, also, including all personal property and chattels which may be brought upon the premises above conveyed, or become the property of the party of the first part as in substitution for renewal of or addition to the personal property above described; it, however, being particularly understood and agreed, that the party of the first part may conduct its ordinary business, and in so doing dispose of any of the foregoing personal property." And directed that the same be inserted in the mortgage, copying *the language so near as can be from the bill of sale,* which he had already prepared; that on the following morning Mr. Harned again called upon Mr. Beldon to ascertain if all the papers were ready for the settlement. Mr. Henderson was present in Mr. Beldon's office. Mr. Harned asked Mr. Beldon if *the clause last above referred to had been inserted in the mortgage. Mr. Beldon then took the paper from his desk to ascertain if it was properly inserted, and then turning to Mr. Henderson,* read it in full, and stating to him that it was as he understood the arrangement. Mr. Henderson replied that *it was all right;* and an appointment was then made for all the parties to meet at Mr. Harned's office at two o'clock in the afternoon, execute all the papers and pay over the money to be paid; at that meeting there was present Mr. Beldon, Mr. Cox, Mr. Henderson, Voorhees S. Anderson, Robert L. Anderson and Abraham Anderson and Mr. Harned; when Mr. Beldon came he brought with him the bond and mortgage in controversy; up to this time it had not been out of his possession; it contained the clause in controversy and was unexecuted. Mr. Harned examined the mortgage and discovered that there was no affidavit annexed thereto; that he stated, in the presence of all of the parties, that in order to *make it a chattel mortgage, it would be necessary to add an affidavit of the treasurer of the company, showing the consideration for the mortgage;* Mr. Beldon stated that that was proper, but that he had overlooked it; that thereupon Mr. Harned called in a stenographer, dictated the affidavit which is annexed to the mortgage in the presence and hearing of

Cox, Henderson, Beldon and all the rest of the party; the same was immediately written on the typewriter and returned to Mr. Harned, who was about to paste the same on the mortgage, when Mr. Beldon volunteered to do it, and taking the mortgage in his own hands, placed the affidavit in its present position on the mortgage; that Mr. Harned then proceeded to execute the papers in the case, *taking up the mortgage, he stated that it was a mortgage upon the real and personal property about to be transferred from the Anderson Preserving Company* to the Anderson Food Company, given to secure $100,000 of the purchase price of the property mortgaged; that thereupon Mr. Cox signed the same as president; Mr. Harned then read to Mr. Henderson the formal affidavit to be found on the mortgage; Mr. Henderson then swore to it by the uplifted hand, the typewritten affidavit was then read to Voorhees S. Anderson, who was the treasurer of the Anderson Preserving Company, and he in turn signed and swore to it by the uplifted hand; the mortgage was then taken by a messenger to the Register of Deeds' office and duly recorded; that this complainant had taken every means within his power to make clear to the said Cox and Henderson his understanding of said transaction; that the whole negotiations covered a period of several weeks, and they had every opportunity to learn the full meaning of the transaction; that complainant's counsel had numerous interviews with said Henderson and Cox, and that neither of them ever complained that they did not fully understand the whole transaction; that at the time said mortgage was being drawn by Mr. Beldon, the question of insurance was raised; Mr. Harned suggested that they should have a line of $100,000 assigned with the mortgage as collateral security; Mr. Henderson suggested that it had not been the policy of the company to carry that much insurance; Mr. Harned then stated that he would be satisfied with the actual amount of insurance that the Anderson Preserving Company had been carrying in the past; Mr. Henderson stated that he thought that was about $60,000, and the

amount in the mortgage was left blank in order to more definately ascertain the amount; *when the mortgage was finally executed, this was overlooked and no amount was placed in* the mortgage; Mr. Beldon thought of this the next morning and called upon Mr. Harned and stated that it would make no difference, as the company would turn the insurance over just the same; the insurance did not come as agreed upon, and Mr. Harned called upon Mr. Henderson several times for the purpose of obtaining the insurance papers; Mr. Henderson called at Mr. Harned's office for the purpose of adjusting this matter when this complainant was present, and *Mr. Harned then stated to him that the policies should also include the stock,* although no policies were ever furnished or attempted to be furnished, that the said defendant has repeatedly refused to furnish said policies, or any policies whatever, to said mortgage. Complainant further shows, that since the transfer of the business by this complainant and his representatives to the said Cox and Henderson, they *have shown the grossest disregard for complainant's interest,* and have taken many steps to arouse his resentment and *to injure his holdings* in the company; that complainant, in addition to the $100,000 mortgage held by him, still holds the obligations of the new company, unsecured, to the amount of $56,000; that the original agreements of sale provided that the son of complainant, Voorhees S. Anderson, should continue in said company as its treasurer, and this complainant having great confidence in his son, Voorhees S. Anderson, consented to the sale and signed said agreement, believing that the said Cox would in good faith carry out his said agreement, and that the said Voorhees S. Anderson would be there as treasurer of the company to protect complainant's large interest in the company; that formerly, and for ten years previous, the said Voorhees S. Anderson has acted as the treasurer of the Anderson Preserving Company, at the salary of $2,500 a year; that it was the understanding of the parties at the time of the execution of the agreement in this matter that the said salary should be increased; that shortly

after the said Cox obtained possession of said property and installed himself as president and manager thereof, in utter violation with his agreement with the said Voorhees S. Anderson, he reduced his salary to the sum of $500, manifestly and purposely as this complainant believes, for the purpose of driving him out of the business, and for the purpose of preventing this complainant from having any person in the business who would properly and carefully look after his interest; that it was part of the understanding of the said business settlement, that David A. Henderson should be elected secretary of said company, should devote a small portion of his time to the business of the company and should receive therefor a nominal salary of $1,000 a year, and that the said Cox, who was to be the active manager of the business, should receive the sum of $5,500; that according to the agreement existing between said Cox and said Voorhees S. Anderson, said Cox's salary should not exceed that of Voorhees S. Anderson by more than $1,000; that in order to overcome this trouble, said Cox united with said Henderson in voting to the said Henderson a salary of $6,000 a year, and to himself a salary of $1,500. This complainant charges that said arrangement is a fraud and a scheme concocted by the said Cox and Henderson to drive the said Voorhees S. Anderson from the business and prevent this complainant from having a suitable representative in the company; that failing to drive the said Voorhees S. Anderson from the business by this method, at the annual election of the officers they again violated their agreement, and the said Cox voted the stock which he had agreed to vote for said Voorhees S. Anderson, as treasurer, for himself, both as president and treasurer, and from that time excluded the said Voorhees S. Anderson from the building; that from the time the said Cox took possession of said business, he refused to permit the said Voorhees S. Anderson to have any knowledge of the business transactions of the company, although he as supposed to be its treasurer; the books and papers that properly belonged to the treasurer were kept in a private safe, to which the treasurer

was not permitted to have access; he was requested time and time again to sign checks on the company's bank account for amounts which he did not understand, and when he demurred and requested to be informed of the reason, he was informed that he could not be told at that time, but he would see the importance of it later on; that during the time he served as treasurer of the company he was not permitted to enter any of its business transactions, nor was he permitted to take any part in the business of the company; he was forbidden by said Cox to exercise the duties which he had been previously exercising as the treasurer of the Anderson Preserving Company, and was never assigned any new duties.

All of which matters and things tend to the manifest wrong, injury and oppression of this complainant, and this complainant prays to be hence dismissed with his reasonable costs in this behalf sustained.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,
Complainant,

AND

ANDERSON FOOD COMPANY,
Defendant.

} ON BILL &c.

Transcript of shorthand notes of the testimony and proceedings in the above cause before his Honor, Martin P. Grey, one of the Vice Chancellors of this State, at the Chancery Chambers, in the city of Camden, on Monday the 6th day of October, A. D. 1902.

MR. JOHN F. HARNED and MR. JOSEPH H. GASKILL,
For Complainant.

MR. S. C. WOODHULL, MR. D. J. PANCOAST and MR. SAMUEL W. BELDON,
For the Defendants.

Mr. Gaskill, on the part of the complainant, moved to strike out portions of the answer and cross bill as irrelevant.

Counsel for defendants objected to the consideration of the motion, on the ground that the notice given of the motion was insufficient.

The Vice Chancellor held, that as there had been a failure to give the eight days notice required by the rules, he could not consider the motion.

Mr. Gaskill then called attention to the notice given of the same motion for last Monday, the hearing of which was postponed.

After inspecting the affidavit of the service of the notice last referred to, the Vice Chancellor stated that the affidavit failed to state the date of service.

In order to prove the date of service, Mr. Gaskill called:

SCHUYLER C. WOODHULL, sworn.

Examined by Mr. Gaskill:

Q. Notice dated September 19th, 1902, signed John F. Harned, solicitor of complainant, addressed to Schuyler C. Woodhull, solicitor of defendant, on which is endorsed affidavit of service by Arthur B. Williams, not mentioning the date of service in the affidavit, shown witness and he is asked: When was that notice served at your office?

A. I have no distinct recollection.

Q. Was it prior to Monday of last week?

A. Prior to Monday of last week.

Q. Prior to the preceding Saturday?

A. I think so.

Q. How many days before that was it?

A. I can't tell you, sir.

Q. Wasn't it in the middle of the preceding week?

A. I really don't remember.

Q. You made no note or memorandum of it?

A. I think I did; but I can't find my notice.

Q. But it was served as early as Saturday, week before last?

A. The Saturday before the motion day?
Q. Yes.
A. Yes.
Q. That is all.

The Vice Chancellor: It should be eight days prior to the return day, which is September 29, 1902. The proof must be of service on the 21st of September, or some day prior thereto. I do not understand that to be shown. As it stands, unless proof is made of service of at least eight days before the return day of the notice, the motion to strike out cannot be entertained. That is the requirement of rule 213, and I am bound by that. I cannot entertain the motion to strike out, and do not pass upon the subject matter of the notice at all.

Judge Gaskill: I ask that it may appear upon the record that we attempted to reform these pleadings.

The Vice Chancellor: It will appear in the stenographer's notes of the testimony.

Judge Gaskill: If your Honor please, for the information of the Court, and as notice to the other side, which I will follow up with full and legal notice, I shall move, at a suitable time, to reform the pleadings in this case in accordance with the proofs as they may be taken by your Honor upon the hearing, eliminating all matters from the bill, answer and cross bill, and answer thereto, which are irrelevant to the issue made in the original bill, which is as to the nature of the mortgage and the rights of the parties.

The Vice Chancellor: A notice so general as that can be no guide to the Court. If counsel choose either to omit or to introduce testimony based upon such a notice, it must be at his peril.

Judge Gaskill: Very well. The answer in this case admits the execution and assignment of the bond and mortgage.

The Vice Chancellor: You had better produce them.

Judge Gaskill: I produce and offer in evidence a bond, made by the Anderson Food Company, a corporation of the State of New Jersey, to the Anderson Preserving Company, in the penal sum of $200,000, conditioned for the payment of $100,000 at the expiration of ten years from the date thereof, bearing date September 20th, 1901, being the bond referred to in the bill of complaint.

[Marked Exhibit C1.]

Counsel for complainant also produced and offered in evidence the mortgage accompanying that bond, and referred to in the bill of complaint in this case, bearing date the same day, made by the Anderson Food Company to the Anderson Preserving Company, to secure the bond just produced, in the sum of $100,000, at the expiration of ten years; which mortgage is recorded in the Register's office of Camden county in full in folio 86 of mortgages, page 176, on the 20th day of September, 1901, and also recorded on the same date, in the same office, in Book No. 10 of Chattel Mortgages, page 520.

[Marked Exhibit C2.]

Judge Gaskill: I would like to read into the record the portion of the mortgage which has given rise to the litigation in this case.

The Vice Chancellor: Is it not already in the pleadings?

Judge Gaskill: I think it is. I also produce and offer in evidence an assignment of the same bond and mortgage from

the Anderson Preserving Company to Abraham Anderson bearing date the 20th of September, 1901, and recorded in the Register's office of the county of Camden on the 9th day of October, 1901, in Book No. 27 of Assignment of Mortgages, page 226, &c.

[Marked Exhibit C3.]

Judge Gaskill: Perhaps we can save calling some of the witnesses upon facts set up in the bill, which perhaps were attempted to be answered, but not as directly answered as it was intended to be. I asked counsel if they will admit the fact that the goods in question, which came into the possession of the Anderson Food Company from the Anderson Preserve Company, are the goods which were removed to the Pennsylvania warehouse and stored there. The answer admits the removing of the goods. The bill alleges that the goods so removed and pledged were among the stock sold by the Preserve Company to the Food Company. The answer does not either admit or deny whether it was part of these same goods.

Mr. Beldon: They were either goods that were included in the bill of sale or that were manufactured afterwards, but it is impossible to say which at the present time, because there were some manufactured after that time and before the depositing with the warehouse.

Judge Pancoast: You insist that they were equally within the mortgage?

Judge Gaskill: Yes.

The Vice Chancellor: Your claim, representing the holders of the chattel mortgage, is, that the stock manufactured after the time the chattel mortgage was made and recorded is subject to the lien of the chattel mortgage?

Judge Gaskill: Yes, sir; but my contention is that the identical cases of soup which were put in the pledge were among the personal property conveyed to the Food Company, for which this mortgage is given.

The Vice Chancellor: I do not think that is admitted in terms. I think you had better make your proof and establish it.

ROBERT L. ANDERSON, sworn for complainant.

Direct examination.

By Judge Gaskill:

Q. Where do you live?
A. Haddonfield, N. J.
Q. Were you one of the stockholders and officers of the Anderson Preserving Company?
A. I was.
Q. What position did you hold in that company?
A. Secretary.
Q. Do you remember the fact of a sale of a property, goods, chattels, machinery, &c., by the Preserving Company to the Food Company?
A. I do; yes, sir.
Q. Were you familiar with that transaction?
A. Not entirely; but in some respects I was.
Q. Among the goods and chattels and personal property thus transferred by the Preserving Company to the Food Company, were there any cases of tomato soup?
A. Yes, sir, there were.
Q. About how many?
A. As near as I can tell about 20,000 cases we had in stock at that time.

Q. They were included in the sale?

A. Yes, sir.

Q. Were they transferred to the new company along with the other property of the old company?

A. Yes, sir.

Q. How was that tomato soup put up; what kind of package, what shape and form?

A. They were put up in one-pound tins, four dozen to the case.

Q. And then four dozen packed in a wooden box?

A. Four dozen one-pound tins, a case of soup, packed in a case.

Q. And there were 10,000 cases of that kind?

A. I said in the neighborhood of 20,000, about 20,000 cases.

Q. 20,000 cases, or cans?

A. 20,000 cases—4 dozen to the case.

Q. When did you see those goods, if at all, or any of them, after the delivery by the Preserving Company to the Food Company?

A. What do you mean?

Q. These cases of tomato soup, which were sold and delivered by the Preserving Company to the Food Company, when next did you see them?

A. In the warehouse, in Philadelphia, on Delaware avenue.

Q. How soon was that after the sale?

A. I can't tell you just the day and date; that was the time this transaction came up in regard to the mortgage. I think it was about a week or two before that.

Q. A week or two before the discussion came up between these parties as to the force and effect of this mortgage?

A. Yes, sir.

Q. Did you recognize those cases of soup?

A. I did.

Q. Were they or not the same cases, or part of the same lot, which was conveyed by the Preserving Company to the Food Company?

A. They were part of the lot that was conveyed to the Food Company.

Q. How long had you been connected with the Preserving Company?

A. Officially?

Q. Yes.

A. About a year.

Q. How long had you been associated with the parties who were operating that company in the manufacture of canned goods?

A. About all my life.

Q. And that would run back how many years?

A. Well, from recollection, I would not want to say more than 25; I am 36 years old now.

Q. This tomato soup, from what is it made?

A. It is made of tomatoes, crushed and condensed.

Q. And during what season of the year is it made?

A. It is made—generally start in July and run on until about the 6th of October.

Q. Then was the season for manufacturing tomatoes into tomato soup, at the time of this transfer, on September 20, about over; had you ceased making soup?

A. This transfer occurred back sometime in March, when there were no tomatoes around, when no tomatoes could be put up.

By the Vice Chancellor:

Q. What transaction?

A. The removing of those cases over to the warehouse, that was done somewhere back in the spring of the year.

Q. That was the spring following the sale to the Anderson Food Company?

A. It was after the Anderson Preserving Company sale to the Anderson Food Company.

Q. They sold in September?

A. Yes, sir; and these goods were removed way back in April of this year.

Q. The following year?

A. Yes, sir; the following year.

Further direct.

Q. My question is, at the time of the sale and transfer by the Preserving Company to the Food Company, September 19, was the manufacture of tomato soup from tomatoes practically over?

A. Practically over at that time; but sometimes it went into October. It was practically over in September.

Q. Were you able to recognize or identify the cases that you saw in the warehouse as being part of the cases that had been under your charge, or in the factory of the Preserving Company?

A. Yes, sir; I recognized them as being the cases that were in the factory.

Cross-examination.

By Judge Pancoast:

Q. You didn't yourself see the delivery of any of these goods?

A. No; I did not.

Q. You didn't see them when they were shipped in Camden, nor when they were delivered in Philadelphia?

A. No, sir; I did not.

Q. After their shipment, did you go where these goods were supposed to be, in this warehouse, more than once?

A. Only once.

Q. When was that?

A. They say that was just previous to that time; I can't tell you the date.

Q. Who was with you?

A. There was a party with me.
Q. Who?
A. A party went with me.
Q. Who?

Judge Gaskill: That is a confidential matter, and I submit that it is not material to this case.

The Vice Chancellor: In what way?

Judge Gaskill: The gentleman secured access to the stock of the Philadelphia warehouse, and he did that by going to the person whose confidence he promised to keep, that he would not reveal how he got there. I do not see how the name of that person is material to this suit. It might answer some ulterior purpose, and unless it is necessary to elucidate some point to your Honor, I do not think it is material.

Judge Pancoast: I have no ulterior purpose. I never heard it suggested that the person with him was in confidential relations with him in respect to this matter. He has undertaken to prove his personal knowledge of the delivery of 20,000 cases of tomato soup. I certainly have the right to cross-examine him in relation to everything that may throw light upon his knowledge of this transaction.

The Vice Chancellor: I do not see that I can deny the inquiry under cross-examination, because if the witness is testifying falsely, or exaggerating his testimony, the person with him might corroborate or contradict it. To refuse to allow the name of that person to be disclosed is to refuse the other side an opportunity to produce him here in regard to this transaction. In the absence of any apparent reason why the witness should not be permitted to answer, I think it is within the line of proper cross-examination. A witness who testifies to any incident, which he narrates, may, on cross-

examination, be properly asked as to whether any other person knew the facts, and if so, the place where the person may be found, for the purpose of bringing him here and showing whether the witness' statement is true or false. I think it is within the line of cross-examination. Answer the question.

A. I can't tell you the last name; his first name is Ed, of Bonstadt & Co.

Q. Had you met this person and arranged with him to go and see these goods?

A. I asked him whether he was going down to the warehouse, and went along with him on another matter, in regard to some peas, and when I was there I saw these goods.

Q. You arranged with him, then, to go to this warehouse?

A. I went with him to the warehouse; yes.

Q. You arranged to go with him to the warehouse?

A. There was no arrangement, no; I simply went over there and he was going down, and I went with him.

Q. That was all the arrangement between you?

A. That is all the arrangement that was made between us.

Q. How was there any matter of confidence in that, that would oblige you not to reveal his name or identity?

A. I can't tell you any more than that. I didn't want to tell the man's name—not that I care anything about it.

Q. Did he go and look at those cases of tomato soup in question?

A. I don't know that he looked at them; he went down on another purpose, something in reference to some peas.

Q. I ask you whether he looked at these cases of tomato soup in question?

A. Yes, he saw the tomato soup in question; could not help seeing that.

Q. But he didn't go there purposely to look at them?

A. Not purposely, no; he went there purposely on his own business; they have goods stored there in this same warehouse and he went down to look at those goods.

Q. Where were these goods that you saw, which you took to be the goods which were formerly owned by the Preserving Company?

A. There were some on the first floor, right in front of the door, covered with a blanket, sort of a canvas arrangement; that was on the first floor. Then there were some piled upstairs in the second story, the balance of them; there were two piles upstairs and one pile downstairs.

Q. Did you examine them so as to be able to identify them as the particular goods manufactured by the Preserving Company and transferred to the Food Company?

A. The names on the cases.

Q. Answer the question. Did you examine them?

A. I examined them; yes, sir.

Q. How many did you examine?

A. Well, I could not examine them all, they were piled in such shape, but I counted as many as I could count, nearly 3400 cases.

Q. Did you count each individual case?

A. I could not very well do that on account of the way they were piled; they were piled in such way that you could not count them without getting on some barrels and pulling them away.

Q. How did you estimate them?

A. By the number of rows, height, and the number of rows deep.

Q. Was there any other person there present?

A. No, sir.

Q. Wait until I finish the question.

A. Pardon me.

Q. Who helped you to identify them?

A. No one else; no, sir.

Q. Who let you into this warehouse?

A. I walked in myself with this gentleman.

Q. You went in and were shown around by the superintendent, or person in charge?

A. No.

Q. Did you see the superintendent, or person in charge?

A. No, sir.

Q. How are you able to tell that these cases that you saw

were the cases that were transferred and conveyed by the Preserving Company to the Food Company?

A. No more than by the style of package; I could not tell any further than the style of package and the name on the case, and the quality—not quality, but the variety of the soups in the case.

Q. That variety of soup was made and packed in that way in the course of the company's business?

A. Yes, sir.

Q. Always?

A. Yes, sir.

Q. You don't know whether these cases were packed before or after the transfer, do you, personally?

A. They were packed before, as I understood it.

Q. But personally you had no knowledge?

A. Personally after the transfer was made; I know nothing of the transfer after that.

Q. The question addressed to you is with relation to these goods which were there before you in the Warehouse Company's storehouse; do you know whether the goods which you there saw were packed before the transfer by the Anderson Preserve Company to the Anderson Food Company, or after the transfer?

A. Before.

Q. How do you know that personally?

A. I can't say they were packed before or after exactly, after the transfer was made.

Q. You don't know, then, of your own personal knowledge?

A. I have no personal knowledge of that, whether they were packed before or after.

Q. That is all I ask you.

Re-direct.

Q. Whose name was on these cases?

A. Anderson Preserving Company, Anderson Soups.

Q. Not Anderson Food Company?

A. No, sir; Anderson Preserving Company.

Q. In the pile of boxes or cases that you saw there, did you see any with the name of the Anderson Food Company?

A. I did not.

Q. How did the name or label on some of these cases compare with that which had been used previously by the Preserving Company?

A. Identically the same.

Re-cross.

Q. Do you know when the label was changed from the Anderson Preserve Company to the Anderson Food Company?

A. No, sir; I do not.

ABRAHAM ANDERSON, sworn for complainant.

Direct examination.

By Judge Gaskill:

Q. You live in the city of Camden?

A. I do.

Q. And have lived here for how many years?

A. About 45 years, I guess.

Q. What is your business?

A. Preserver of fruits, vegetables.

Q. Are you now engaged in that business?

A. I am not.

Q. When did you cease having an active interest or part in the manufacture of these goods?

A. At the time that I transferred the business over to the Food Company, and that was the 20th day of September, 1901.

Q. Prior to that time, how long had you been engaged in that business?

A. Well, I should think thirty years.

Q. How long had you been conducting that business under the name of the Anderson Preserving Company?

A. About 13 or 14 years.

Q. The Anderson Preserving Company was a corporation taking over the business that you had heretofore conducted in your own name, was it not?

A. No; it was conducted by Knowles & Anderson.

Q. That is to say, there was a partnership of which you were a member prior to the organization of this preserving company?

A. Yes, sir.

Q. During the 13 years of the Preserving Company's active business what position did you hold?

A. As president of the company.

Q. State whether or not you were actively engaged in managing the business of the company?

A. I was.

Q. Acquainted with all of its details?

A. I am.

Q. During the 13 years of the business of the Anderson Preserving Company, was it any part of the ordinary business of the company to store its manufactured products and pledge it for loans of money?

A. No, sir.

Q. What did you preserve—what business did you do under the name of the Anderson Preserving Company?

A. We preserved fruits, vegetables of various kinds.

Q. Just name the fruits.

A. We put up strawberries, raspberries, pineapple and peaches, and most all the line of fruits, vegetables.

Q. What vegetables?

A. Tomatoes, sweet potatoes, pumpkins.

Q. You did a general preserving business, packing in tin cans mostly?

A. Tin cans, and making preserves in bulk and barrel.

Q. Among other things, did you manufacture tomato soups?

A. The Anderson Preserving Company?

Q. Yes.

A. Yes.

Q. Was there any of that soup on hand at the time of the sale by the Anderson Preserving Company to the Anderson Food Company?

A. Yes.

Q. Do you know about how much?

A. I could not tell you just about how many cases, but there was around about $60,000 worth of tomato soups piled up there in the factory when we turned the business over to the Anderson Food Company.

Q. At that time was there any tomato soup or any of your products at all on storage except in your warehouse, in Camden?

A. Of tomato soups? Yes, we had previously stored soups and jams. I think there were some in the West to accommodate our trade there; we had some storehouses.

Q. They were in your own storehouses?

A. Yes, sir.

Q. Buildings that you rented?

A. Yes, sir; we rented for storage there.

Q. How many years had you thus stored your own goods in your own storehouses for the accommodation of your trade, other than in the city of Camden?

A. About three or four years, probably longer.

Q. State whether or not experience proved that to be profitable or unprofitable, and whether there was any change made in it before this transfer?

A. It proved to be very unprofitable.

Q. Was any change made in that practice prior to the transfer from the Preserving Company to the Food Company?

A. Yes.

Q. What was the change?

A. The change was, we sold the major part of the goods to the stores and closed several of the accounts up.

Q. That is, you were closing out these warehouses outside of Camden previous to this sale?

A. Yes; we closed them as far as we could.

Q. What was the reason for that?

A. Closing them out?

Q. Yes.

A. We wanted to concentrate our capital; we had it too much scattered over the country, and the other reason was that the trade, while these goods were stored there for their accommodation, they would not buy in carload lots.

Q. How would they buy?

A. Buy 5 or 10 cases, as they wanted them, take them out of the storehouse, and we were not selling them any goods on that account.

Q. Was there the same incentive on their part to sell your goods when they could get 5 or 10 cases from the warehouse as there was when they bought direct in carload lots?

A. No, there was not.

Q. Did that affect to any extent the amount of sales you were making?

Objected to as immaterial.

(Question withdrawn.)

Q. Now, I repeat the question which I asked some time ago, and which was held in obeyance: During the 13 years that the business was carried on by the Anderson Preserving Company, and prior thereto while it was carried on by the firm, were any of your goods stored in other States than New Jersey in warehouses other than those which you yourself rented and controlled?

A. No, sir.

Q. Were any of the goods stored by the Preserving Company, or the firm that preceded it, in your own storehouses made the object upon which loans were had; did you ever pledge these goods for loans?

A. We never did.

Q. Do you know who the president of the new company is?

A. I understand Mr. John T. Cox.

Q. Mr. John T. Cox is the person who entered into the agreement with you that is referred to in the pleadings in this case?

A. Yes, sir.

Q. Prior to the organization of this new company, the Food Company, had John T. Cox been connected with the old company, the Preserving Company?

A. Yes, sir.

Q. For how long?

A. For 13 years, when the company was first organized.

Q. Was he acquainted with the manner in which the old company transacted its business, with respect to the storage of these goods?

A. Yes, sir.

Q. And as to whether or not loans were obtained upon them?

A. Yes, sir.

Q. Did he have that knowledge prior to the sale from the Preserving Company to the Food Company?

A. Yes, sir.

Q. At the time these goods of yours were on storage in different places, who paid the storage and insurance?

A. The Anderson Preserving Company.

Q. Another matter to which I wish to return, what is the season for packing tomato soup?

A. Well, all the way from the middle of July to the first of October.

Q. Had you packed any tomato soup in the fall of 1901, the fall that this sale was made?

A. Oh, yes.

Q. At the time of this sale please state whether or not you had completed that work for that season?

A. We thought we had. We didn't intend to pack any more tomato soup; we got all the stock we thought we needed at that time.

Q. State whether or not the Preserving Company had actually stopped the packing of tomato soup at the time of this sale and transfer?

A. I could not say that. I was laid up quite a little while before that.

Q. You were ill, were you?

A. Yes, sir.

Q. How long had you been ill?

A. Well, I had been on and off about the summer, but I was about the factory.

Q. With respect to the manufactured products which you had on storage in this city, I ask you whether or not it had ever been the practice of your company and the firm that preceded the Preserving Company to put those goods up for a pledge in this city?

A. No, sir.

Cross-examination.

By Judge Pancoast:

Q. Were there other goods stored in these Western storehouses which contained your goods?

A. I don't know, sir.

Q. What was it you rented in the storage of your goods?

A. Regular storehouses.

Q. Did you rent the whole storehouse?

A. No.

Q. What did you rent?

A. Rented the storage of those goods; that is, we put our goods in there and paid so much a case for the goods, two or

three, or three or four cars of goods in the Western storehouses. I don't know, perhaps there might have been some storehouse, I have no knowledge of it, that we did rent.

Further cross.

Q. Name some of those storehouses.
A. Mr. Cox can tell you more about that than I can.
Q. Name some of those storehouses.
A. They are in Minneapolis.
Q. Name some of the storehouses in Minneapolis?
A. Farrington & Company, they were a grocery concern, they had a storehouse; we had some goods in there, but I can't tell you the names now, because it has been quite a while and I don't remember. Mr. V. S. Anderson and Mr. John Cox have full charge of that business.

By the Vice Chancellor:

Q. The same Mr. Cox you previously mentioned?
A. Yes, sir.

Further cross.

Q. Then you have very little personal knowledge relative to these storehouses?
A. No, I was never in them and I don't know. I knew the names probably at the time—that is, the owners—they were a storehouse company, but I don't just recollect now.
Q. These warehouses, then, were owned by the warehouse company?
A. Yes, sir; I think so. Mr. V. S. Anderson will tell you all about it.
Q. And you would pay for the privilege of storing in those storehouses?
A. Yes, sir.
Q. And you did that for several years in succession?

A. Yes; three or four years, I think.

Q. Used it as a means of disposing of your stock?

A. Yes, sir.

Q. By sending your manufactured stock out of New Jersey into these storehouses?

A. To accommodate our Western customers.

Q. And you would keep your goods so stored for months at a time in these storehouses before they were disposed of, didn't you?

A. Yes.

Q. Now, did you ever hypothicate, or pledge, or mortgage any of your stock of goods during your course of business, either here in New Jersey or elsewhere?

A. No, sir.

Q. Never in any single instance?

A. No; not our line of manufactured goods.

By the Vice Chancellor:

Q. When you shipped these goods to the Western storehouses they were all complete in the packing, not only in the individual case, but also in the wooden case?

A. Yes, sir.

Q. Did you get from the storehouses to which you sent the goods anything to show that the storehouse had received the goods?

A. We had storehouse receipts.

Q. Did that express on the face of the receipt the quantity of goods you had deposited with them?

A. Yes, sir.

Q. Did you ever take those storehouse receipts in the course of your business, append them to a note and take them to the bank and obtain a loan?

A. No; we never did.

Q. Either here or in the West?

A. No, sir.

Q. Were not the goods that were stored in the Western storehouses stored in your name, or in the name of an agent on the spot?

A. I think some of them were stored in the name of our agent.

Q. When they were stored in the name of the agent, the warehouse receipt went to him, otherwise how could he draw the goods when the sale time came?

A. Well, as a rule, I think he did in that case, where they were stored in the name of our agent, they had control.

Q. Do you know whether the agent who had control of the storage ever used the warehouse receipts for the purpose of raising money on them?

A. He never did that I know of.

Further cross.

Q. Were most of the goods stored in the name of your foreign agent in these storehouses?

A. Really, Judge, I can't answer that question.

Q. Answer to the best of your information, knowledge and belief.

The Vice Chancellor: He says he has not the information.

A. That part of the business I didn't take an active part in. My son and Mr. John T. Cox did; they understand all about it.

Q. Did you ever, during the course of your business, consign goods to agents out of the city to sell on commission or otherwise?

A. There were goods consigned on commission; yes.

Q. Did these agents to whom you consigned these goods to sell on commission ever draw on you for advances before they sold the goods in the customary way of trade?

A. No, sir.

Q. Never?

A. No, sir.

Judge Gaskill: You mean did he ever draw on the agents; you want to reverse that question.

Q. Yes; did you ever draw on the agents?

A. Not that I remember.

Q. Did any of these agents to whom you consigned goods ever make any advances to you by reason of the fact that they had your goods for sale?

A. No, not that I am aware of; I have no knowledge of it.

Q. But you did consign many of the cases of goods that you manufactured to sales agents out of the State?

A. There were some; I don't know how many.

Q. And when you did, those agents sold the goods out of the State and remitted the money?

A. As far as I know.

Q. You had occasion to borrow money from time to time to use in your business, didn't you?

A. Yes, sir.

Q. Didn't you ever borrow money on the credit of the goods you had manufactured?

A. I did not, or we did not.

Q. On whose credit did you borrow money?

A. On my own credit.

Q. You mean by that on your own personal credit, or on the credit of the company?

A. On my credit; I gave my notes and they were endorsed by the company, my personal notes.

Q. In large amounts?

A. Yes, quite large at times, especially when we had all those goods stored out in the West.

Q. In those warehouses?

A. Yes.

Q. Then it was necessary to borrow money?

A. Yes, sir.

Q. How much would you borrow at times?

A. $5,000, $10,000, $20,000, perhaps.

Q. So that you found it necessary in the course of your business to borrow money?

A. Yes, sir; we always discounted our bills.

Q. That is all.

VOORHEES S. ANDERSON, sworn for the complainant.

Direct examination.

By Judge Gaskill:

Q. Where do you live?

A. Camden, N. J.

Q. How old are you?

A. I shall be 31 in December.

Q. Are you the son of the last witness?

A. Yes, sir.

Q. Were you connected with the Anderson Preserving Company at the time the sale was made to the Anderson Food Company?

A. Yes, sir.

Q. How long had you been connected with the company in any capacity?

A. About 6 years as treasurer, and about 10 years in different capacities.

Q. Sixteen years all together?

A. No; the 6 years are included in the 10.

Q. Ten years all together, and 6 of the 10 you were treasurer of the company?

A. Yes, sir.

Q. Were you treasurer at the time the sale was made?

A. Yes, sir.

Q. Were you familiar with the stock of goods that was on hand at the time of the sale?

A. To a very large extent.

Q. What did that stock consist of generally?

A. It consisted of finished and unfinished goods in the form of fruits, I suppose; I think some canned sweet potatoes, ketchup in bottles and bulk, and similar goods.

Q. Among other things, were there any tomato soups put up?

A. Yes, sir.

Q. About how much?

A. I should say about between 17,000 and 19,000 cases.

Q. What became of that at the time of the sale of the property of the Anderson Preserving Company to the Anderson Food Company?

A. It was included in the sale.

Q. And transferred to the new company?

A. Yes, sir.

Q. State whether or not you had ceased manufacturing tomato soup at the time of the sale?

A. I could not give you the exact date when we ceased on the tomato soup, but it usually was over about the first of October, depending on the season.

Q. This particular season had you stopped operations in that direction?

A. Not yet.

Q. How much unmanufactured stock was there on hand that you can tell; was it made from fresh tomatoes brought in by farmers?

A. Yes, sir.

Q. Then it was made from day to day as the tomatoes came in?

A. Yes, sir.

Q. Then there was not any tomato or stock on hand as a matter of course?

A. Very few; it was getting to the end of the season.

By the Vice Chancellor:

Q. How long is the process from the time the tomatoes come in the factory until they are in the can in the shape of soup?

A. From the time they enter the door.

Q. From the time you begin manipulating them, they come in and we know they are perishable articles; how long does it take to run them into a can?

A. It depends upon the size of the batch—say, a batch can be run through in three or four hours.

Further direct.

Q. Then the raw tomato would be manufactured into soup the same day that it arrived at the factory?

A. Yes, sir.

Q. During the time that you were connected with the Preserving Company, did you have any of your manufactured goods stored anywhere other than in your warehouse or manufactory here in the city of Camden?

A. Yes, sir.

Q. For how many years had you been storing goods elsewhere than at the factory, in Camden?

A. That was started by Mr. Cox; he can tell you the exact date, but to my knowledge, for between 4 and 5 years, anyway.

Q. Before the sale of the Preserving Company's property to the Food Company, had that practice been discontinued?

A. We were attempting to do away with it; yes.

Q. To what extent had you succeeded.

A. You mean the amount of money or the number of goods?

Q. Both; and the places that you closed up, how much had you on storage at the time you made the change in the method, in money and in goods, as near as you can tell?

A. I think somewhere between twenty and twenty-five thousand.

Q. Dollars worth?

A. Yes, sir.

Q. Where were these stored?

A. In several warehouses in the West and in the South.

Q. Name the places.

A. Des Moines, Omaha, Kansas City and some goods in Dallas, Texas.

Q. Who closed out that part of your business for the Preserving Company?

Mr. Beldon: Objected to. He didn't say they were closed out.

Q. So far as they were attempting to close out?

The Vice Chancellor: The question is, who had supervision of that part of the business?

A. I made a trip West for that purpose.

Q. You did it yourself, personally?

A. Yes, sir.

Q. How much of that business had you closed out before the sale and transfer to the Food Company?

A. I don't think I can give you that within a reasonable amount.

Q. Approximately.

A. When we reduced the original storage?

Q. Yes.

A. Oh, possibly 15,000.

Q. When was that done; how long before this sale to the Food Company?

A. That was done in the early spring or winter of 1901.

Q. Preceding the September when the sale was made?

A. Yes.

Q. Why was that done?

A. Several reasons.

Mr. Beldon: Why that was done makes no difference in this case.

The Vice Chancellor: The testimony as to the manner of conducting the business is pertinent to show the ordinary

course of trade as a fact. I do not see the pertinence of statements of the reasons which influenced the parties engaged to take that course.

Judge Gaskill: Our purpose is to show that this storage of goods was not part of the ordinary transactions of such concerns as this, and that it does not pay to store goods for the reasons given by Abraham Anderson.

The Vice Chancellor: So far as it is attempted to show that the transaction was no part of the ordinary business of the concern, it may be admissible, but that is not what is presently asked or objected to. The objection is that the question put seeks to prove not what was the ordinary business, but what were the reasons why certain parts of the business, which had theretofore been conducted in a certain manner, had been abandoned. I do not think it makes any difference what the reasons were. It may have been mistakenly done or wisely done; I cannot enter into that question. When the witness testifies to show what was the ordinary and usual course of the business of the concern, he is testifying to the point in issue; but where he attempts to show the reasons why the course in question was abandoned, I do not think it has anything to do with this case. The question is objectionable as framed, but I do not intend to exclude testimony which goes to show what was the actual conduct of the business.

Q. Prior to this experiment of establishing depots at different points for the sale of your product, how many years, to your knowledge, has the business been carried on before such practice was instituted?

A. If I am correct in saying that we operated this warehouse for from four to five years, and if I have been in the concern since 1892, it must necessarily be for about five years.

Q. Five years previous to the time that this experiment was tried?

A. Yes.

Mr. Beldon: Objected to. I do not think it is fair for counsel to put the word "experiment" into the mouth of the witness.

The Vice Chancellor: I do not think there is any advantage in using a phrase which the witness does not give.

Q. Now, Mr. Anderson, at the time of this sale, were you engaged in trying to close out the remaining goods on storage that you had not been able to close out in your trip through the West in the winter and spring of 1901?

A. Yes, sir.

Q. As near as you can tell, Mr. Anderson, in order to remove any misapprehension, state how much remained in warehouses outside of New Jersey at the time of the sale by the Preserving Company to the Food Company.

A. If my memory serves me, I think I said in round numbers $25,000.

Q. That much left?

A. Yes, sir.

Q. And why was it that hadn't been closed out?

A. Unless the concern is willing to sacrifice the goods and sell them for cost, or less than cost; it is not an easy matter to unload several thousand dollars' worth of goods in a warehouse.

Q. Was that the only reason, the desire to avoid a sacrifice, that the goods in the other warehouses in States outside of New Jersey had not been closed out?

Objected to as incompetent.

The Vice Chancellor: The question is within a former ruling. The underlying reasons which affected the company's action are not proper matters of inquiry here. This line extends to matters which are too remote from the issues here on trial.

Q. Who made the arrangement for the storage of these goods out of the State—which member of your company?

A. Before Mr. Cox went out of the concern it was mostly in his charge; while during the winter months, January and February, I would go to the various warehouses to investigate and examine the goods, so that it really was between the two of us, the supervision.

Q. Now, tell the Court, if you please, the nature of these places where your goods were stored, and how they were stored there.

A. Well, in Des Moines, it was the White Line Transfer Company.

Q. What were they?

A. They owned a storehouse in which we, of course, stored some of our goods.

Q. How did you store goods there; did you rent the space?

A. So much a case, so much a package.

Q. That is, you paid rental according to the number of cases you had on storage?

A. I did.

Q. Were they deposited with them as a pledge for the money loaned?

A. No, sir.

Q. Were any of these goods in any of the storehouses out of New Jersey, or in New Jersey, pledged for a loan to the company?

A. Not while I was with the concern.

Q. And for the last six years as its treasurer, you had an intimate knowledge of its financial transactions?

A. Yes, sir.

Q. Who paid the rent of these various storehouses?

A. The Anderson Preserving Company.

Q. Who paid the insurance?

A. The same company.

Q. In whose name were the goods stored?

A. Now, that will have to be answered this way, for a

time some of the goods were under—you might say the supervision of one or two of our agents; naturally the trade in any particular city would want the goods within a few hours' time of the ordering, consequently there could be no system or arrangement whereby we could give authority on each lot of goods to be withdrawn, and, therefore, in some instances, the respective agents would release the goods, but the receipts would come to us in terms, and we had a book showing the amount of the goods in that warehouse according to the proprietor of that warehouse reporting each month, and we had our regular warehouse book, and deducted the amount withdrawn and sent invoices of the amount of goods to the various parties.

Q. Did you ever use these warehouse receipts for the purpose of borrowing money on them?

A. No, sir.

Q. Or for attaching them to any note of the company to borrow money upon?

A. No, sir.

Q. Were all of the goods in these various warehouses deposited in the name of an agent, as you have just described, or were some in your own name?

A. I didn't finish the other.

Q. Please finish it.

A. We found that it was not at all advisable, and was not exactly correct business to allow these goods to be in that position, so when we attempted to get all these goods I would learn these various facts on my trip, so we attempted to get the goods in the name of the concern, also the insurance in the name of the concern.

Q. That is, the Preserving Company?

A. Yes, sir; and do away with the few agents that we had in that way, and to do away with giving them authority to draw goods.

(Previous question repeated as follows):

Q. Were all goods in these various warehouses deposited in the name of an agent, as you have just described, or were some in your own name?

A. Most of them in our own name.

Q. Now, you say a few in the name of agents; can you tell us exactly how many were thus stored, and the names of the agents?

A. No, sir.

Cross-examination.

By Judge Pancoast:

Q. Did these agents have these goods in charge in their name?

A. In one or two instances, they did.

Q. How were these goods put in the agent's name; merely by consignment, or by bill of sale, or how?

A. The goods were shipped to the warehouse, and I take, for instance, the Des Moines warehouse, and we were given a receipt for the goods upon their arrival, and the warehouse in the usual manner, just as they treated all goods, had the authority to deliver to the jobbers and other customers of ours in the respective cities; and they would forward us a receipt, or forward, rather—what do you call it? not an invoice—a statement of the goods withdrawn, from which we would make an invoice and charge to the concern who would receive the goods.

By Judge Gaskill:

Q. A voucher?

A. Yes, sir.

Further cross.

Q. Then you in reality consigned these goods to the warehouse men?

A. No.

By the Vice Chancellor:

Q. You did in the sense that you consigned them to him for custody, and not for sale?

A. All I know is the custom of the warehouse.

Further cross.

Q. You consigned these goods to the warehouse man and gave him control of it. You have already said that the goods could not be released without his authority?

A. The authority of the warehouse together with the authority given to the respective jobbers who buy the goods.

Q. Suppose you shipped a lot of goods to a warehouse man by the name of A; you would get something to show that this warehouse man had received those goods?

A. Yes, sir.

Q. Suppose you got a purchaser for these goods; how would that purchaser get these goods from that warehouse man A, whose receipt you held?

A. They would in many instances call for the goods, and being old customers of ours, the goods would be given up.

By the Vice Chancellor:

Q. But you holding an outstanding receipt specifying the number of goods they held?

A. Yes, sir.

Q. How did the warehouse man protect himself against the receipt for the whole number?

A. I can't tell you.

Further cross.

Q. In what particular instance did the agents insure these goods in their own name; were these particular goods consigned to these particular agents, or were they consigned to the warehouse man?

A. They were in most cases consigned to the warehouse, and in that case the insurance policy was made payable to us, or if not, then the goods were insured by the warehouse people as a whole, and we paid our insurance monthly.

Q. Now, these different warehouses that you patronized were in those sections of the country where you sold most of your goods, nearest your customers?

A. Yes, sir.

Q. Give us a list of these warehouses, as near as you can.

A. At any particular time or any particular date?

Q. Well, generally, you patronize the same warehouses?

The Vice Chancellor: Say, the summer of 1901.

A. We had a very few goods at Minneapolis; we had some at Des Moines, some at Omaha and some in Dallas, Texas, and some in Houston, I think, or Galveston. Kansas City: I think that is about all.

Q. Any in Kansas City, San Francisco?

A. I can't remember.

Q. New Orleans?

A. I can't remember.

Q. Butte?

A. I can't remember that.

Q. Colorado?

A. I don't think we had.

Q. Trinidad?

A. You are talking about storage now?

Q. Yes; did you have any in Trinidad, Colorado?

A. I can't remember.

Q. New York City?

A. I can't say.

Q. How long would these goods remain in storage, as a rule, that you shipped to the neighborhood of your customers and lodged in these warehouses?

A. Some of the goods would not remain very long, because they were saleable; others would remain probably several

months. The stock would be replenished, when it would get low, of any particular variety of goods.

Q. Was it desirable to dispose of these goods quickly, or otherwise?

A. When?

Q. At the time you manufactured them and sent them out to these warehouses?

A. Within a reasonable time.

Q. Do these goods deteriorate with age?

A. Some would and some would not.

Q. Do most of them?

A. Yes, sir; with age.

Q. The goods are never better than they are just after they are manufactured, such goods as you made, soups and the like?

A. That is correct of most of them.

Q. They deteriorate with age?

A. To an extent; yes.

Q. And it is always desirable to dispose of your product as quickly as possible?

A. Yes.

Q. And you strive to do so in the course of your business, or did strive to do so in the course of your business?

A. Yes.

Q. Usually, how long would you begin to ship them to the storehouse or attempt to dispose of them after they were manufactured; say you had 20,000 or 30,000 cases of soups, for illustration; how long after you manufactured them and packed them would you hope to dispose of them?

A. In the case of tomato soups, if you refer to that, we naturally would want to unload as soon as possible, and we would go—

Q. Why would you want to unload the tomato soup as quickly as possible?

A. To make money, if we could.

Q. Any other reason?

A. We did not want to carry any goods over the following year.

Q. That class of goods would deteriorate if carried for another year?

A. Not particularly as to the quality of the goods, but as to the general package.

Q. It would be less saleable?

A. Yes, sir.

Q. So that good business practice required you to dispose of this class of goods shortly after they were manufactured.

A. Within a reasonable time.

Q. Usually, how long would they be in storage before you would dispose of them?

A. That varies so greatly I don't think I can give you the time.

Q. Can't you give any idea at all how long these goods would remain in storage before you would dispose of them—in days, weeks, months or years?

A. Some goods would probably go out immediately upon receipt to the warehouse, the demand would be so great for that particular variety, while other goods would probably not sell for three or four months.

Q. Well, as a rule, as nearly as you can state, how long would your goods remain in storage in these warehouses before you would dispose of them?

A. I can't answer you, Judge.

Q. What use did you make of these storage warehouse receipts?

A. Kept them in our safe.

Q. Where are these warehouse books, showing the business that you did with these warehouses, the character and volume of it?

A. I don't know.

Q. You did keep regular books of your warehouse business, did you; didn't you replenish these warehouses by new consignments in 1901?

A. I don't remember.

Q. These books would show, would they not, these warehouse books, would they not?

A. Yes, sir.

Q. Have you any memory at all about it, or is your memory indefinite?

A. I can't remember at all.

Q. When did Cox disconnect himself with your concern, prior to this sale and transfer?

A. In November, 1900.

Re-direct.

Q. Was your practice in sending goods to warehouses, with respect to the manner in which they were stored, or in whose name they were stored, &c., a uniform practice, or did it differ in each individual case?

A. It was usually uniform.

Q. During the 4 or 5 years that you were storing goods elsewhere than in Camden, did you store any goods in Philadelphia?

A. I can't remember.

Q. You can't remember ever having stored any in Philadelphia?

A. No, sir; not to my knowledge.

Q. That is all.

Judge Gaskill: That proves the matters contained in the bill originally filed, and with the matters they have admitted in the answer, and as to which we do not think we have to offer proof. We rest.

CHARLES W. WALTERS, sworn for defendant..

Direct examination.

By Mr. Woodhull:

Q. What is your business?

A. Public accountant, auditor and accountant.

Q. With whom?

A. I am with the firm of John Heins & Co., of Philadelphia.

Q. How long have you been a public accountant?

A. I have been with Mr. Heins about 15 years, and about 3 years for myself, not quite 2½ years.

Q. By reason of your experience are you conversant with the practice of storing goods in warehouses by manufacturing concerns for the purpose of obtaining loans upon warehouse receipts issued therefor?

Mr. Gaskill: Objected to.

The Vice Chancellor: The question is as to the qualification of the witness. I think it is admissible. He may answer yes or no. I will admit the question.

A. I am.

Q. Will you state whether it is the ordinary practice for manufacturing concerns to consign their manufacturing product to public warehouses to have issued thereon warehouse receipts for the purpose of obtaining loans by depositing the warehouse receipts as collateral?

Judge Gaskill: Objected to. It is not shown that he is an expert. In the next place, I think his testimony is irrelevant and immaterial, unless it is shown that he was acquainted with the ordinary business of this concern; in other words, I insist that the construction of this mortgage "ordinary business" applies to the ordinary business of this concern. I might also say that I am entitled to cross-examine this witness as to his expertness before he could give any opinion. Further, this question goes to business generally, and is not limited to this class of business.

The Vice Chancellor: The questions, which seem to multiply as they progress, I will take up in the order in which

they should properly be considered. In the first place, as to the question whether this gentleman has been shown to be an expert upon the particular line of inquiry as to which he is called upon to testify. I will hear defendant's counsel on each question.

Mr. Woodhull: I will ask some further questions first.

Q. Are you conversant in your experience with such storage by manufacturing concerns, or a like or similar kind, to this, preserving fruits and vegetables, and soups, the storage of their goods, or any canned goods, the storage of such goods and obtaining warehouse receipts thereon?

A. We examined the accounts—

Judge Gaskill: Answer yes or not.

The Vice Chancellor: Yes, you may answer that question yes or no.

Q. Does your experience include that line of business or business of a similar kind?

A. I have that experience in fruits, eggs, in storehouses, for loaning money on eggs, fruit, cold storage.

By the Vice Chancellor:

Q. The question is with relation to preserved goods and canned goods, soups and the like.

A. I could not say whether they were preserved goods—they were all kinds of goods, both in cold storage and in storage—accustomed to storage warehouses in issuing warehouse receipts.

Q. Have you acquaintance with the conduct of business by persons engaged in the canning business, as to issuing receipts and storage of goods, &c.

A. Not particularly as to the storage of canned goods, but as to the storage of other kinds of merchandise in other warehouses.

Further direct.

Q. You mean as to the manufactured product?
A. Yes; raw material and goods of all kinds in storage.
Q. Manufactured goods of what kind?
A. Well, manufactured leather goods, manufacture of raw leather, manufactured leather, whiskey—I suppose you call that manufactured goods?
Q. Anything else?
A. Wool would not be a manufactured goods; yarn, wool, a raw product, all kinds of produce.
Q. Produce of what kind?
A. Eggs, largely; fruits, water melons, peaches, pears, cold storage.
Q. And upon these branches of business you have known of the storage of these products?

Objected to as leading.

Q. State whether you have known of these loans you have spoken of on the storage of their goods and the issuing of warehouse receipts?
A. Known of money to be loaned upon them?
Q. Yes.
A. Very largely.
Q. Is it the ordinary practice?
A. Yes, sir. I probably could better explain that by saying that we audit the accounts of two National Banks in Philadelphia and two trust companies. I never made examinations—and I make them every quarter—but that I didn't find lots of warehouse certificates for loans. I don't know that they were for canned goods, but goods of different kinds. I know one case—

Judge Gaskill: Objected to as not responsive.

Q. State the instances.

The Vice Chancellor: I do not know whether the capacity of this witness as an expert has been properly established.

(At the request of the Vice Chancellor the stenographer read as follows: "Q. State whether you have known of these loans you have spoken of on the storage of their, and the issuing of warehouse receipts, for money to be loaned upon them? A. Yes; very largely.")

The Vice Chancellor: I will hear argument whether or not this witness has shown to be an expert in the matter which is presently before me. The construction insisted upon by Judge Gaskill, for the complainant, is, that the right reserved in the chattel mortgage to the defendant company to conduct its ordinary business, and in so doing dispose of any of the personal property mortgaged, allows such disposition only when made in accordance with the mode in which the business of the defendant company was conducted at the time the chattel mortgage was made. My impression is that as the defendant company had just started and had no established mode, it would be difficult to say what was the ordinary conduct of the business.

Judge Pancoast: My view of this proposition is, that it relates to the ordinary conduct of the defendant's own business in the future; having nothing at all to do with the mode of business in the past, nor with the methods pursued by other business companies. There is nothing in this provision that limits this company to pursue any particular business methods. It is open to pursue any ordinary business method which it may elect. If it pursues a line of business of an extraordinary character unknown to modern business methods, then it would not come within the purview of this permis-

sion. If it is within the method that is ordinarily followed by business men throughout the country, although not in this particular line of business, it is not an extraordinary business method and the defendant has a right to pursue it.

The Vice Chancellor: I will leave the question open for discussion and hear you fully at the next meeting.

Adjourned until October 13, 1902, at 10 A. M.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,

Complainant,

AND

ANDERSON FOOD COMPANY,

Defendant.

} ON BILL, &c.

CAMDEN, N. J., Oct. 13, 1902.

The hearing in this matter was continued pursuant to adjournment. Appearances as heretofore noted.

The Vice Chancellor: At the time this case was continued there was pending question as to whether or not the witness on the stand, Walters, was qualified as an expert, to give testimony as to the conduct of its ordinary business, referring to the defendant company, and to the chattel mortgage in question, and the phrase in the chattel mortgage which allowed disposal to be made of the goods mortgaged in the course of the company's ordinary business. The claim on the part of the complainant is, that the witness should not be permitted to testify unless he shows that he is an expert, touching the ordinary business of the defendant company. As I understand the complainant, they claim that the ascertainment of what was the ordinary business of the defendant company must be tested by the business which had been

theretofore, and was at the time when the chattel mortgage was made, carried on upon the premises held by the defendant company. The defendant company, however, by its counsel, claim that the words "ordinary business" referred to in the chattel mortgage meant in such ordinary business as might be carried on by any business firm or company which was not of an extraordinary character, different from the usual methods of conducting business.

The question is addressed to the competency of the witness, because if the complainant's construction of the meaning of the words "ordinary business" is correct, and the construction of the instrument should be that "ordinary business," then the witness, in order to be competent as an expert, must appear to have had knowledge of the particular business of the defendant company. On the other hand, if the construction of the instrument is that it allows the disposal of the goods in question in the usual conduct of any business, which the defendant company might thereafter do in the ordinary management of its affairs, then the witness might be competent to testify upon the showing which he has made of his acquaintance with such ordinary methods. I reserved the question what the construction of this instrument should be, expecting to hear argument from counsel to the fullest extent. It is quite an important element of the case, and is indeed the foundation of the complainant's claim for relief.

Judge Gaskill: Before any discussion took place on this subject I proposed to show by this witness, Walters, on cross-examination, that he has no knowledge whatever of the custom of any manufacturing concern with reference to the management of its business. Even taking the question in the broadest scope, not limiting him, as your Honor intimates, to his knowledge of the business. I propose to elicit from him the fact that he has no knowledge at all of any manufacturing business, and therefore is not qualified to testify.

Mr. Woodhull: I want to touch upon the question raised by your Honor, and that is as to the scope of "ordinary business" regarding the defendant company.

The Vice Chancellor: At what point should this question be decided? I may have to decide the construction of this clause of the chattel mortgage with relation to the admission of the testimony of this witness, but I would much prefer not to do this on a challenge of the competency of a proffered expert witness.

Mr. Woodhull: I want to show why our construction is the reasonable construction.

The Vice Chancellor: I am not willing to hear argument on this question of construction unless counsel will concede that I shall have this discussion but once. It is a very important element of the case. Counsel may present the question of the construction on this objection to the expert witness. I will decide it at this time, or they may let the question go over, receive the expert's testimony subject to objection and present this question on final argument.

Judge Gaskill: I prefer to argue the whole question together, but not at the present time. I prefer that the whole testimony should be before the Court, before the argument is introduced.

Judge Pancoast: This case, from what I have heard, is very likely to be reviewed in the higher courts, and I was going to say that it would be unwise, it seems to me, not to have this testimony in. If your Honor should limit it in any way, it would necessitate a re-hearing.

The Vice Chancellor: The rights of the complainant may be reserved by manifestation on the record, his objection to the right of this party to testify, and when he has testified to

the value of his testimony to establish anything whatever, and then may let the matter go to final hearing for argument and decision.

Judge Gaskill: I do not see that it would prejudice us; all I want is my position noted on the record.

The Vice Chancellor: That seems to be the better plan. The question must come up and be decided, what is the construction of that clause in the chattel mortgage instrument? That is a fundamental question. I should be glad if counsel would make their objections to testimony on this point and let them stand over. I will hear them fully on final hearing, as to what should be that construction, and apply it accordingly, and eliminate testimony if improperly admitted.

Judge Gaskill: Your Honor will give me leave to cross-examine the witness first?

The Vice Chancellor: Certainly, when the witness is produced.

CHARLES W. WALTERS, re-called.

Direct examination.

By Mr. Woodhull:

Q. Where did you have this experience and acquire this knowledge you have testified in relation to?
A. I have been a public accountant—
Judge Gaskill: This calls for a place.
Q. Where?
A. In the examination—

Judge Pancoast: That is not an answer to the question. Where—in Camden, Philadelphia, London, or where?

A. Largely in Philadelphia, some in New Jersey, Newark, Baltimore; I don't know that I can remember anything particular of Camden. Various cities. Our business is general; we go all over the country, except down East.

Q. In the different places where you acquired this experience that you have testified to, is this practice you have testified to general?

Judge Gaskill: Objected to as leading. Also the Court held that so far as he had answered any question as an expert, his answer was not admissible until his qualification was fixed.

The Vice Chancellor: I understood the testimony was to be admitted under objection, and Judge Gaskill would protect his client by making objections, and I will take care of the objections later.

Judge Gaskill: And I ask the privilege of cross-examining this witness before he answers this question, or before his answer to the previous question is allowed to stand.

The Vice Chancellor: That is as to his competency?

Judge Gaskill: Yes.

The Vice Chancellor: The question still is as to his experience.

Judge Gaskill: This question refers to the question they put at the previous hearing.

The Vice Chancellor: I think it is better that we should have the order of testimony to show, first, that this witness is qualified, as an expert, which Judge Gaskill claims that he is not. He has a right, before the witness gives any testimony as to the conduct of business, to show, if he can show it by cross-examination, that this gentleman is not compe-

tent to testify. After he is cross-examined, as I understand the present arrangement, this witness is to answer all the questions the defendant choose to put to him under Judge Gaskill's objection; and the ruling of the Court, which necessarily invokes the very important question of the construction of the chattel mortgage clause, shall be reserved until final hearing. If I then admit the testimony, you will have it in; if I exclude it, it will go out; but it will show on the record and you will have the reasons for it stated in my opinion, and on review any mistake I may make may be corrected.

Judge Pancoast: I do not rest the competency of the witness upon the fact that he is an expert. If he has knowledge generally of the custom of business, he can testify to that knowledge, whether he is called as an expert or not. The point we seek to prove by him is that he has knowledge generally of the customs of the business world, going to show whether or not the business in question in this suit is ordinary or extraordinary. Now, if he has knowledge of it, we have a right to show it, from my point of view. It does not depend upon the technical question whether he is an expert or not. If a man has knowledge of a custom he can prove it, whether he is a doctor, or a lawyer, or a mechanic. In this case, if this witness has proper knowledge of the customs of the business world, he can prove it without putting himself in the attitude of an expert.

Judge Gaskill: He is an expert in that attitude. In other words, I think the witness occupies either one of two aspects. He either testifies to facts connected with the transactions, or he is called to testify to customs or practices or results of his experience. If the latter, he is an expert witness, and this man comes here as an expert. He does not testify to anything within his knowledge concerning the business.

The Vice Chancellor: As we have arranged to take the testimony, I do not think the discussion influences my posi-

tion upon it at the present time. I want to get to the main point, and have this case presented fully before the Court.

Judge Gaskill: May I cross-examine the witness?

The Vice Chancellor: You may. I shall allow Judge Pancoast the fullest opportunity to prove, under either attitude of this witness, the facts he desires to prove. Have you so examined this witness in that phase of the case, which would put him in the attitude of an expert, that you claim has been shown to be qualified?

Judge Pancoast: That he is competent to speak on this question?

The Vice Chancellor: Yes.

Judge Pancoast: We have.

Cross-examination.

By Judge Gaskill:

Q. Have you ever been engaged in the manufacture of canned goods?

A. No, sir.

Q. Or in the manufacture of preserves?

A. No, sir.

Q. Preserving fruits, canned vegetables, or manufacturing soups?

A. In the manufacture of them?

Q. Yes.

A. No.

Q. Have you ever bought or sold any of these products?

A. No, sir.

Q. Have you been a manufacturer of either line of these goods?

A. No, sir.

Q. Have you not bought and sold any manufactured goods of any character?

A. No, sir.

Q. As a business?

A. No, sir.

Q. Your business is simply that of accountant?

A. Yes, sir.

Q. And whatever knowledge you have as to the custom of any manufacturing establishment is derived from the examinations which you have made of banks and other financial establishments?

A. Oh, no; our examinations are not entirely of banks and financial institutions; they are the smallest part of our business.

Q. In the examination of the books of manufacturing concerns?

A. I should say the examination of books of trusts: we are the auditors of the Girard estate, which is a trust.

Q. I call that a banking concern.

A. It is a trust, which comes under the Board of City Trusts and are protected under the will; banks, trust companies, clubs, hospitals, all kinds of manufacturing institutions. When I say all kinds, there may be some that are not in there, but generally all kinds of manufacturing concerns, commercial houses, business houses, partnerships, the Rapid Transit, Union Traction Company, several railroad lines, the American Baptist Publication Society, which is a manufacturing concern, also selling their own goods; the Southern Cotton Oil Company, a manufacturing company of $10,000,000. I could enumerate some sixty concerns.

Q. Your business experience, then, is in examination of books of account of such concerns as that which you have just enumerated?

A. Yes, sir.

Q. And not as a manufacturer or dealer in manufactured goods?

A. No, sir.

Q. In what way have you acquired knowledge of the custom of manufacturing establishments with respect to borrowing on their products?

A. Well, in the examination of several storage companies which we examined, I know they issued negotiable and non-negotiable warehouse certificates. They have them printed in two forms.

Q. You have answered my question.

A. Not entirely; I beg your pardon.

Q. I think your answer, so far as you have gone, is responsive, and the explanatory part is not.

Judge Pancoast: If he says it is, and the witness says it is not, it is for the Court to decide.

The Vice Chancellor: He says from an examination of warehouse companies.

A. Partially that way.

The Vice Chancellor: If you have not finished your answer, you may go on.

A. Also in the examination of banks and trust companies I have found, I said almost invariably, probably—

Judge Gaskill: I say what he has found; I am simply asking him in what way.

The Vice Chancellor: He cannot answer except by stating the way. Your question is to state in what way he arrived at his experience. Proceed.

A. I have found almost invariably that among the collaterals upon which they made loans were warehouse certificates for various products; as I testified before, I am not aware that canned goods were there, but I know that there were

leather goods, wool, and manufactured wool. I also have personal knowledge in the examination of the books of a large manufacturer, who afterwards went into bankruptcy, of a loan of a National Bank in Philadelphia of $100,000, the collateral for which was a warehouse certificate for wool stored. I also remember a case in Newark, N. J.—

Judge Gaskill: Objected to as not responsive.

The Vice Chancellor; Not the particular instance, but how you obtained your experience. The particular instance is not asked for.

A. I would then say generally that it has been in the examination of the books of account of storehouses and banks and trust companies, and cases before registers, assignees or receivers. That would probably cover it.

Q. These storage warehouses that you speak of are storage warehouse companies who carry on a banking business, are they not?

A. Well, under their charters they are not banking concerns; all storage warehouses—I would not say that—but a number of storage warehouses, part of their incomes is from making loans on their own collaterals.

Q. And the storage warehouses that you have been speaking of are of that character?

A. Yes; where I say they have negotiable and non-negotiable certificates, they are of the character spoken of.

Q. Then your knowledge of the borrowing of money by manufacturing concerns upon their product, as derived from the custom which you have observed, to prevail among those who loan money?

A. Not entirely.

Q. I am speaking of the manufactured products?

A. Not entirely; largely so.

Q. Very largely?

A. Yes; now can I qualify that?

The Vice Chancellor: If necessary.

A. Very largely; but I have known a number of cases where I derived this information not from the party loaning the money, but from the party borrowing the money.

Q. Manufacturing concerns?

A. Yes, sir.

Q. What one?

A. Wool and leather.

Q. Manufacturers of leather, or dealers in leather?

A. Manufacturers of leather from the hide.

Q. Manufacturers of leather from the hides?

A. Yes, sir.

Q. Was it part of their ordinary business to manufacture the leather and borrow the money upon it, or was that one of the extraordinary incidents connected with their business career?

A. Their business was to manufacture leather from the hide.

Q. And sell it?

A. The money was necessary to carry on that business.

Q. And the borrowing of money upon the manufactured product was not one of the ordinary incidents; it was an extraordinary incident in their concern, was it not?

A. I should say the borrowing of money of any manufacturing concern—

Q. No; I ask you how about this one?

A. I can't say it was an extraordinary incident; it was part of the manufacturing business. I don't think it was extraordinary.

Q. To what extent did you examine their transactions to determine whether or not this was an ordinary incident or not?

A. In the case of the leather concern in this State, I examined all their transactions from the inception and formation of the company up to the taking of bankruptcy.

Q. And that covers what period?

A. About 18 months or two years in that company.

Q. And when they went into bankruptcy was the loan outstanding that you had found made on their manufacturing product?

A. There were a number of loans; some had been paid and some were outstanding.

Judge Gaskill: Now, on the basis of my cross-examination, I renew my objection, that the witness is not qualified to speak from a manufacturer's standpoint, either a manufacturer of canned or preserved goods, nor from that of a manufacturer of any kind of articles or product, as to the ordinary custom of a manufacturer. His testimony simply qualifies him to speak as to what is the practice of persons who loan money.

The Vice Chancellor: The question will be reserved; I will not now hear argument upon it. I will reserve the objection and take the testimony, and Judge Pancoast may proceed with the examination of his witness.

Judge Gaskill: It will not be necessary to repeat the objection, will it?

The Vice Chancellor: No; the testimony of this witness will be considered to be objected to by Judge Gaskill, as not being the testimony of an expert, and not sustained by sufficient proof of the status of the witness as an expert, without Judge Gaskill renewing his objection to each question.

Further direct.

By Mr. Woodhull:

Q. I repeat the question to which objection was made, to which the witness did not respond to, on page 43 of the testimony: Will you state, from your experience, whether or

not it is the ordinary practice for manufacturing concerns to consign their manufactured product to a public warehouse for the purpose of having issued thereon the warehouse receipts, for the purpose of obtaining loans thereon, by depositing such warehouse receipts as collateral.

A. Very common.

Q. That is all.

Further cross.

By Judge Gaskill:

Q. Are you acquainted with the Pennsylvania Warehouse Company?

A. Yes, sir; the Pennsylvania Warehouse and Storage Company.

Q. Of Philadelphia?

A. Yes, sir.

Q. Is that one of these storage companies that loan money on goods deposited with them for storage?

A. I never examined their accounts, sir; I suppose it is; I don't know. I know they finance concerns. I suppose they loan money.

GEORGE E. STORER, sworn for defendant.

Direct examination.

By Mr. Woodhull:

Q. Where do you live?

A. Laurel Springs, N. J.

Q. What is your business?

A. I have charge of the loan register of the Pennsylvania Warehouse and Safe Deposit Company.

Q. Where is that?

A. 113 S. 13th street, Philadelphia.
Q. How long have you been so employed?
A. About four or five years.
Q. What was your duty in the employment?
A. All loans passed my hands, &c.
Q. That is, the loans made upon goods stored in the warehouse?
A. Yes.
Q. In that alone?
A. In the warehouse alone; we don't loan on anybody else's warehouse.
Q. Will you state whether you ever make loans upon manufactured product stored with you?

Objected to on the same ground above stated. Admitted with the same reservations.

A. It is a frequent occurrence.
Q. Have you knowledge of the loaning of money, the issuing of certificates and the loaning of money on canned goods stored with you?
A. Yes.
Q. What kind?
A. Tomatoes, peas, beans, and that kind of thing.
Q. Is that an extraordinary practice?
A. Not at all; quite common.
Q. Is this a public warehouse?
A. Oh, yes.
Q. Can you state whether or not you have frequently large consignments of manufactured products?
A. We have.
Q. Have you at times large deposits of canned goods?
A. Yes.
Q. What character of canned goods?
A. As I stated before, tomatoes and corn, peas and beans, potatoes and—I don't think of any others at the present time.
Q. Any soups?

A. Yes; I think I have had soups.

Q. Canned how?

A. You mean in what material?

Q. How put up?

A. Principally in tins.

Q. Any other way?

A. Now, I can't say, because they called them canned goods, and I would not see inside of the cases.

By the Vice Chancellor:

Q. Then they came in tins in the original package, and that package was put up in a case, and you receive it at the storehouse in the case enclosing the tins?

A. Yes, sir; we might have had them in glass; but I could not say.

Cross-examination.

By Judge Gaskill:

Q. Have you ever engaged in the manufacture of canned goods or the preserving of fruits?

A. No, sir.

Q. Were you ever engaged in the sale of such goods by the selling of them as a business?

A. Well, not American goods; no.

Q. Have you ever been engaged in any manufacturing business?

A. No, sir.

Q. Or in the purchase or sale of manufactured goods?

A. The only way I can answer that is by saying that I was at one time salesman for a wholesale firm who sold nothing but imported or foreign goods.

Q. You were a salesman?

A. Yes, sir.

Q. But you were not acquainted with their manufacturing or financial transactions?

A. No.

Q. Then you have no knowledge among manufacturers from the manufacturer's standpoint, have you?

A. No personal knowledge, no; only from hearsay; that is all.

Judge Gaskill: I desire to enter an objection to the whole of this witness' testimony on the same ground previously stated, and with that I will continue my cross-examination subject to that objection.

The Vice Chancellor: The objection will be reserved, as above stated.

Q. You have been connected with the Pennsylvania Warehouse and Storage Company how long?

A. Six years.

Q. Do they receive any goods on storage except goods on which they make loans?

A. Oh, yes.

Q. To what extent?

A. I could not tell that.

Q. Is not their principal business that of loaning money on goods deposited with them on storage?

A. Well, I don't know whether I can answer that question or not. I can't say it is their principal business. If a person wanted to make a loan, they make the loan; if they want to store goods and don't want a loan, it is all right.

Q. Which is the usual thing, is it not, with people who store goods with you, they usually do it for the purpose of getting a receipt and getting a loan?

A. No, I don't think so; I think we have more goods stored without loans than with loans.

Q. Now, with the respect to the loans that you have made on manufactured goods, you cannot tell from your own knowledge whether or not those loans are part of the regular practice of such manufacturing concerns, or whether they are mere incidents in the course of their business, can you?

A. Not very well.

Q. You cannot form any idea as to what extent such loans bear to the total amount of business done by the concern?

A. I would not like to say without reference to books.

Q. Nor how frequently such loans are obtained by such concerns?

A. I would not give any guess-work answer.

Q. Among the goods stored in your warehouse you say have been canned goods, by that you describe generally goods put up in tin cans?

A. Yes.

Q. Have you, to your knowledge, had any preserves stored with you, preserved fruits by a preserving company?

A. I could not say.

Q. Jellies and jams and such like?

A. I could not.

Q. Have you, prior to the deposit of the canned soups by the Anderson Food Company to the Pennsylvania Warehouse Company, with which you are connected, ever had any other canned soups there on deposit or storage?

A. I can't say.

Q. You have no knowledge or recollection of any, have you?

A. I don't remember; I might and might not.

Q. You were brought here by the defendant in this case on purpose to testify as to the practice of your company in receiving goods on storage, were you not?

A. Yes.

Q. Now, with respect to the canned goods, using that term in its ordinary significance, canned tomatoes, &c., can you tell us what proportion of the output of any factory has been deposited with you on storage?

A. Is it necessary for me to give names?

By the Vice Chancellor:

Q. No, he didn't ask that; he asked what proportion.

A. I think we had nearly the whole output of some concerns.

Further cross.

Q. Are they not small concerns?
A. No.
Q. That do nothing but the canning of tomatoes?
A. No.
Q. What concerns have you had the whole output of?
A. I told you I would not answer that question.

Judge Pancoast: Is the witness obliged to reveal such facts as that? That might be injurious to their credit.

The Vice Chancellor: What significance, Judge Gaskill, would the revelation have?

Judge Gaskill: I propose to show that in none of these cases is it the regular or ordinary business of those concerns.

The Vice Chancellor: This witness has already stated that he has no acquaintance with the business from the manufacturer's point of view, so if your effort is to obtain from him evidence of what the relation is, which the amount of goods deposited bore to the amount of the product, he has no acquaintance with the matter from the manufacturer's point of view, and his testimony would be of no avail.

Judge Gaskill: His last answer now comes in and changes the situation.

The Vice Chancellor: You brought that out yourself. He having shown that he has no knowledge from the manufacturer's point of view of the relation of the quantity stored as collateral, to the whole quantity produced, his testimony is not addressed to show what that relation might have been. All he could say on this point, as to the amount of goods stored with his company, would be but a guess. His statement that they stored nearly all their product, is of course an estimate.

Judge Gaskill: In view of what your Honor says, I withdraw that question.

The Vice Chancellor: I do not care to go into any inquiry which may involve private business unless it is absolutely necessary.

Q. Then, as I understand Mr. Storer, there are large deposits of manufactured articles on storage with you on which no loans are made?

A. Yes; frequently.

Q. Have you any other soups on storage at this time than the Anderson soups?

A. I could not say.

Adjourned until Wednesday, October 15, 1902, at 10 A. M.

In Chancery of New Jersey.

ABRAHAM ANDERSON,
Complainant,
AND
ANDERSON FOOD COMPANY,
Defendant.

ON BILL, &c.

CAMDEN, N. J., Oct. 15, 1902.

The hearing in this matter was continued pursuant to adjournment. Appearances as heretofore noted.

TRELL S. JAMES, sworn for defendant.

Direct examination.

By Judge Pancoast:

Q. Where do you live?
A. Philadelphia.
Q. How long have you resided there?
A. Ten years.
Q. What is your business?
A. Well, I am in three distinct business member of companies, officers possibly in the company. I am president of the T. A. James & Company, Incorporated.
Q. Is that a manufacturing company?
A. No; that is a broker and commission house, Philadelphia; president of the Front Street Warehouse Company, Philadelphia.

Q. Generally speaking, what is the character of that business?

A. Warehouse business?

Q. Yes.

A. General storage.

Q. What other business?

A. Treasurer of the J. L. Anderson Company, Mt. Holly, canners of fruits and vegetables.

Q. Is it the ordinary canning business conducted by that company?

A. Yes, sir.

Q. How long have you been connected with that company?

A. Two years.

Q. How long have you been connected with the warehouse?

A. About the same length of time.

Q. Can you say whether or not it is the business custom of manufacturers of canned goods and others to deposit their goods in public warehouses and take warehouse receipts, and use those receipts to borrow money on, to use in the conduct of the borrower's business?

Objected to.

The Vice Chancellor: The question is, can he say? I will admit it.

A. Yes, sir.

Q. You know about it?

A. Yes, sir.

Q. Is there or not such a custom?

Judge Gaskill: Objected to as not being material in this case, on the ground that it is not relevant, throws no light upon the language used in this chattel mortgage.

(Question admitted.)

A. Yes, sir.

Cross-examination.

By Judge Gaskill:

Q. Generally speaking, Mr. James, your business is that of a broker, is it not?

A. Not any more than the other two businesses.

Q. How long have you been engaged in the brokerage business?

A. Eight years.

Q. Where abouts?

A. Part of that time at 11 S. Front street.

Q. And brokers of what character of goods or in what line?

A. Canned goods and dried fruits.

Q. Are you still engaged in that business?

A. Yes, sir.

Q. For eight years, then, you have been a member of a firm, or the head of a firm, that has been engaged in the brokerage business in dealing in canned fruits and vegetables?

A. And dried fruits.

Q. For the last two years, in addition to that business, you have also been connected with the Storage Warehouse Company?

A. Yes, sir.

Q. What is the name of that company?

A. The Front Street Warehouse Company, corner of Poplar and Front streets.

Q. What is the character of the business done by that company?

A. General storage.

Q. Making advances upon the goods stored with you?

A. Yes, sir.

Q. Do you receive any goods for storage on which advances are not made?

A. Yes, sir.

Q. To what extent are the goods stored with you, the subject matter of loans, and to what extent are the goods simply stored there without being the subject matter of loans, in the conduct of your warehouse business?

A. I don't know that I can answer that positively, from the fact that our charter allows us—

Q. I don't ask you that, but simply if you can tell me what proportion of your business is loaning upon stored goods, and what part is simply storing goods without loans?

A. No, I can't tell you that.

Q. You are still carrying on that business?

A. Yes, sir.

Q. What do you receive there on storage?

A. All sorts of merchandise.

Q. That is not limited to canned goods or dried fruits at all?

A. No.

Q. Are there any canned goods or dried fruits stored with you from time to time?

A. Yes, sir.

Q. Have you had any preserves stored with you?

A. Yes, sir.

Q. In bulk and in cases?

A. I don't know about bulk; in cases we have.

Q. Have you ever had any soups stored with you?

A. Yes, sir.

Q. Now, you are not personally engaged in the manufacture of canned goods, as I understand; you are simply a treasurer of a company that you bought out at Mt. Holly?

A. I am personally the manager of that company.

Q. And have been during the last two years?

A. Yes; but not as much so as I am at the present time.

Q. Their business is largely that of canning tomatoes, is it not?

A. And other kinds of fruits and vegetables.
Q. Is it not largely that of canning tomatoes?
A. Yes.
Q. That is the great bulk of your business?
A. Yes.
Q. They make no soups?
A. No, sir.
Q. They make no preserves?
A. No, sir.
Q. You don't live at Mt. Holly?
A. No, sir.
Q. And during the season that the canning house is running, what portion of the time do you spend there?
A. I live at Mt. Holly during that time.
Q. What time of the year is that?
A. Usually August and September, the latter part of August and September.
Q. What soups have you on storage with you?
A. I rather think that is private business.

The Vice Chancellor: He did not ask who stored them; but what kind of soups?

A. Tomato soup, I suppose, and different sorts of soup. The party who stored them with us makes all kinds of soups. He would be as liable to store one kind as another.
Q. How many parties have stored soups with you?
A. Two that I recollect now.
Q. Either of them the defendant in this suit?
A. No, sir.
Q. These goods that are manufactured in the canning houses and factories are manufactured for the purpose of sale in the ordinary course of business, are they not?
A. Yes, sir.
Q. And that is the ordinary thing that is done with them?
A. Yes, sir.

Q. And that is the ordinary way of disposing of them, selling them?

A. Yes, sir.

Q. And that is so understood in the trade?

A. Yes, sir.

Q. That is all.

PETER BALLINGALL, sworn for defendant.

Direct examination.

By Mr. Woodhull:

Q. Where do you live?

A. Philadelphia.

Q. How long have you resided there?

A. Fifteen years.

Q. What is your business?

A. I am a certified public accountant.

Q. By virtue of your occupation as an accountant, have you had experience in the commercial usage of manufacturing concerns, in the matter of consigning their goods to the warehouse?

A. I have.

Q. By virtue of that experience have you had knowledge of the consignment of the different kinds of goods?

A. I have.

Q. Of the consignment of manufactured canned goods?

A. I have.

Q. Where have you had that experience?

A. In New York, and also in the State of Wisconsin.

Q. In other places?

A. Well, that is the only two places where I had experience in reference to canned goods; but in other cities I have had experience in reference to merchandise, manufactured goods.

Q. Can you state whether such storage of the manufactured product is a commercial usage, by virtue of your experience.

Objected to.

The Vice Chancellor: The question is, can you state. Admitted.

A. I can.

Q. Will you please state instances in your knowledge of such usage in places about here, Camden?

Objected to.

The Vice Chancellor: This witness is not brought to testify to any fact of which he has personal knowledge. As I understand counsel, he is brought to prove the custom and practice of the business.

Mr. Woodhull: That question simply goes to the proportion of commercial usage by virtue of his experience here—more local than otherwise.

The Vice Chancellor: Well, proceed; if that is the idea, that is clearly admissible.

Judge Gaskill: Is it proper to state instances before he is qualified?

The Vice Chancellor: He is not stating instances for the purpose of establishing a practice in the trade, but for the purpose of establishing his knowledge in this particular locality.

Judge Gaskill: I still object.

The Vice Chancellor: I will admit it for the purposes opened by counsel to show witness' acquaintance with the trade in this neighborhood.

A. I have had no experience in Camden, but in Philadelphia I have had.

Q. What is that experience?

A. I made an examination for a number of banks, and generally of numerous large bankruptcy cases within the past two and a half years, and gained my experience in Philadelphia mostly in that way.

Q. From that experience, can you state what that practice is?

A. I can.

Q. What is it?

Objected to as heretofore stated.

The Vice Chancellor: On the ground taken to the examination of the other expert, Walters?

Judge Gaskill: Yes.

The Vice Chancellor: The objection will be retained; the question will be admitted, and the pertinence of the testimony to the subject matter of this inquiry will be decided on the final hearing.

A. It is the universal custom to deliver—

Judge Gaskill: I also object to the use of the word universal.

The Vice Chancellor: The witness must be allowed some expression of the practice. Proceed.

A. It is the universal practice to consign or send goods of varied manufacture and raw material of various kinds to

warehouses and borrow money on the storage of those goods, either from the warehouse company or take the storage certificate—they are issued in two grades, one not negotiable and the other negotiable—and they take the negotiable certificates of storage to any bank or trust company, or private individual, and borrow money thereon.

Q. Is the volume of business of that character small or large?

A. Very large. In my experience in going over these bankrupt estates and many other large commission houses and manufactories, I should say that ninety per cent. of the goods consigned to storage warehouses are borrowed on.

Cross-examination.

By Judge Gaskill:

Q. You are not a manufacturer, as I understand?

A. I am not.

Q. Never have been?

A. No.

Q. You know nothing about the conduct of the canning business, or any other manufacturing business, except what knowledge you have gained from the examination such as you have testified to?

A. Yes, sir.

Q. You have knowledge other than that?

A. No.

Q. Then, Mr. Ballingall, as I understand, you have no experience whatever which will enable you to state what the ordinary custom of a manufacturer of canned goods, or preserved goods, in the conduct of his business is?

A. Further than I have gleaned from my several examinations and audits.

Q. And the information you gained from these examinations and audits is simply this, that when a man is hard up, he borrows money?

A. Not always.

Q. Borrows sometimes when he is not hard up?

A. Sometimes he wants to keep a good bank account, and he can borrow on these goods when he consigns them to the warehouse; but he does not necessarily have to be hard up.

Q. Do you know any manufacturing business where the product is manufactured for the ordinary purpose of borrowing money upon it?

A. To a great extent that is done in the textile business.

By the Vice Chancellor:

Q. The question is whether you know of any manufacturing business in which the manufactured product is made for the purpose of borrowing money on it, in the ordinary course of business?

A. Not exactly.

Q. Did you ever hear of any business where the parties seriously engaged in the production of articles for the purpose of borrowing money on them?

A. In one or two instances in the textile business, in Philadelphia.

Q. The ultimate object of the business is to borrow money?

A. They are made up and sent to New York on consignment to borrow money to continue on in business.

Q. The ultimate expectation is a sale?

A. It is.

Q. And the borrowing of money on the way is an incident?

A. It is; but the ultimate result of those concerns have been that they have joined the great majority.

Q. The question is whether the product was manufactured for the purpose of borrowing money?

A. I say in one or two instances in Philadelphia it has come to my notice that it was done in the textile business, but the ultimate result of that has been that the parties have become bankrupt.

Q. Your examination of these concerns which has elicited the information that loans have been made upon these storehouse receipts, show that the concerns went into bankruptcy?

A. No, sir.

Q. Didn't you say that it was from an examination of a large number of bankruptcy cases?

The Vice Chancellor: No; he spoke of two textile concerns who appeared to have manufactured their product for the purpose of borrowing money.

Judge Gaskill: I am going back to matters on his direct examination.

The Vice Chancellor: His answer was products of textile concerns.

Q. You said in your direct examination that the information you had was the result of the examination of banks, business houses, and particularly some large bankrupt concerns, concerns that had gone into bankruptcy.

A. I didn't make such a statement.

Q. What was it you did say?

A. I didn't use the word banks. I said my experience had been gained from an examination of commission houses, manufacturers and the examination within the past two and a half years of several large bankruptcy matters.

Q. It is bankruptcy matters that I wish particularly to direct your attention to; in those cases you found that those concerns that had gone into bankruptcy had put their goods into storage and pledged them, borrowed money on them?

A. In some instances.

Q. Was it not in all instances?

A. No, sir.

Q. From your knowledge of the conduct of any manufacturer of preserved goods or soups, or the canning of fruits or vegetables, can you say, from your own knowledge, what

proportion of the product has been directly sold to customers and what proportion has been put in storage for the purpose of borrowing money?

A. I have that knowledge.

Q. Of what concerns?

A. Of a large condensed milk factory.

Q. That was not in answer to my question, which was directed to the canning of fruits and vegetables and the making of preserves.

A. Well, condensed milk is practically a preserve, it is preserved milk.

Q. It is preserving an animal product, rather than a vegetable product. I repeat my question.

(Question read.)

A. Answering that question under the item of preserved goods, I can.

Q. What proportion of the canned goods of any factory, and of what factory, have you known to be put in storage for the purpose of borrowing money?

A. I will answer the first paragraph; the second I don't think I should be called upon to answer, for that is giving away my client's business. I will say that practically—

Judge Gaskill: I object to the answer unless I can have an answer to the whole question.

The Vice Chancellor: You have embodied two questions in one.

Judge Gaskill: Then let the question be divided.

The Vice Chancellor: Which one to be put first?

A. I will answer the first, as to the proportion.

Judge Gaskill (to the stenographer): Just eliminate the words "and of what factory."

A. I have known the percentage or the proportion per annum—I have known about one-sixtieth to be placed in storage and money borrowed thereon.

Q. Where was that—Camden, Philadelphia, New York, or in the West?

A. New York.

Q. Is that the only instance that you are acquainted with?

A. No; there is another instance in the West, also.

Q. How long ago did that occur?

A. Sometime this summer.

Q. What proportion of their goods or products were put in storagehouses for the purpose of borrowing money?

A. Well, it would be about one-fortieth of their annual output, and I might say in explanation—

Q. No, pardon me; just answer the question. These two instances are the only ones of that character that have come under your observation?

A. They are not.

Q. Give us another one.

A. There have been several instances; I can't just give the day and date, but there have been several instances of such a nature.

Q. And the knowledge that you have obtained has been from an examination of the books of the warehouse?

A. No, sir.

Q. How then?

A. From the books of the concern that stored goods to borrow money thereon.

Q. From the manufacturing concern?

A. Yes, sir.

Q. In your experience have you known of any deposit made and loans secured thereon of soups in one-pound tins?

A. No, sir.

Recess was then taken until 2 o'clock.

JOHN T. COX, sworn for defendant.

Direct examination.

By Judge Pancoast:

Q. Where do you live?

A. Moorestown, N. J.

Q. What is your business?

A. I have been engaged in the manufacture and packing of canned goods, preserved fruits, vegetables, since 1885.

Q. Continuously?

A. With the exception of one year.

Q. What year?

A. The year from October, 1900, until September, 1901.

Q. Where was this business carried on?

A. Cor. Front and Arch streets, this city.

Q. Camden, N. J.

A. Yes, sir.

Q. By whom was it carried on?

A. By the Anderson Preserving Company.

Q. With whom are you connected in that line of business now?

A. With the Anderson Food Company.

Q. Did the Anderson Preserving Company, during your connection with it, do any warehouse business with its output, manufactured product?

A. Yes, sir.

Q. What was the character of it?

A. We had warehouses in various parts of the country where we would send goods of all descriptions packed by ourselves, distributing therefrom to various people.

Q. Was Mr. Anderson, complainant in this suit, connected with that business?

A. Yes; he was president of that company.

Q. During the course of that business did you have personal knowledge of any loans of money made on warehouse

receipts given for canned goods deposited in such warehouses?

A. No, sir.

Q. Did you understand that question?

(Question read.)

A. No, sir; there was no money borrowed that way.

Q. I don't think you understand that question.

(Question repeated.)

Q. You notice this question does not ask you whether this house borrowed money on such warehouse receipts?

A. I didn't take in the scope of the question. I do know that that was a common practice by very many packers and handlers of canned goods. I myself have loaned money on canned goods.

Q. During the course of your connection with this Anderson Company?

A. Yes, sir; at the time I was treasurer of that company, in November and December, 1896—

Judge Gaskill: I object to any specific instance.

Q. Do you know of any other persons loaning money on such warehouse receipts?

A. I know that it was commonly done by a good many people.

Q. Do you know whether any member of your company did it besides yourself?

A. Yes, sir.

Q. What other members of the company did it?

A. Mr. Abraham Anderson.

Q. The complainant in this suit?

A. Yes, sir.

By the Vice Chancellor:

Q. What is it you say Mr. Abraham Anderson did?
A. Loaned money on warehouse receipts.

Further direct.

Q. For what kind of goods?
A. For canned tomatoes.
Q. Such as the Anderson Company made?
A. Yes, sir.
Q. Do you know whether or not it is a customary thing in the canning business to deposit part of their product in a warehouse and get warehouse receipts, and use those receipts for the purpose of borrowing money, to be used in the conduct of their business?
A. I know it is commonly done in the canned goods business.
Q. Do you know whether it is a common thing in the canned goods business for manufacturers to borrow money to be used in the business?
A. Yes, sir.
Q. Did this Anderson Company borrow money from time to time to be used in its business?
A. It did.
Q. Did it do it on warehouse receipts on its product?
A. No, sir.
Q. How did it do it?
A. It raised its money by notes given by Abraham Anderson to the company, endorsed by the company and discounted in bank.
Q. Was that done more than once?
A. It was done every year.
Q. What was the necessity or purpose of borrowing money in this way every year?
A. During the heavy season, in the fall of the year, and also at other times in the year, we would be purchasing large

blocks of goods, and we would also be shipping large blocks of goods; it would require money to carry the purchases, also to carry the goods until they were paid for; it was beyond the ability of the usual capital of the company to keep those matters paid, and to carry us over such seasons we would borrow money.

By the Vice Chancellor:

Q. What company was that?

A. The Anderson Preserving Company.

Q. Was that the company which immediately preceded the Anderson Food Company in the conduct of the business at the same site?

A. Yes, sir.

Further direct.

Q. Have you examined the books of the Anderson Preserving Company with a view to ascertain and state here as a witness the character and extent of the warehouse business that it conducted?

A. Yes, sir.

Q. By means of its product?

A. Yes, sir.

Q. Where are those books?

A. The books are in Court.

Q. Will you have them produced; what period did your examination cover?

A. During the year 1900.

Q. Have you a memorandum of what the books show as to the character and volume of that warehouse business?

A. Yes, sir.

Q. Taken from the books here in Court?

A. Yes, sir.

(Books produced.)

34

Q. Are these the two books you used?

A. These are two of the books, but there is another one.

Q. Get the other one.

A. Witness did so.

Q. Just identify the book you examined.

A. This is the book I examined.

(Book produced by witness bound in half leather, dark red, and marked on the back A. P. Co.)

Q. What does that signify?

A. Anderson Preserving Company.

Q. Was this the book of the Anderson Preserving Company which you examined?

A. Yes, sir.

Q. And that was the company you were connected with during the period covered by this book?

A. Yes, sir.

Q. How did this book and the other books come into your possession?

A. They were turned over to us by the Anderson Preserving Company.

Q. Whose successor this defendant company is?

A. Yes, sir.

(Book is offered in evidence.)

Objected to, because it not being an original entry, but purports to be simply a series of trial balances, and secondly, it is not that character of book which can be admitted in evidence, not containing accounts between merchants, and is not an original book.

The Vice Chancellor: The offer is not made as an account between merchant and merchant, nor is it a book of the class which is required to be a book of original entry in order to make it proof. What is offered is, that this book affords a

narrative of a mode of doing business in the Anderson Preserving Company, which immediately preceded the defendant company in the conduct of the business here in question and affected by the clause in the chattel mortgage here under dispute, as to what constitutes the ordinary business. It is claimed, as I understand it, that this book contains entries which show what was the mode of conducting the business by the Anderson Preserving Company in the particular matter in question, namely, the deposit of the product of the factory and obtaining receipts thereon, or the using of the product so deposited as collateral for the obtaining of loans. Is not that what it is offered for?

Judge Pancoast: No; we do not go so far as to say they got loans, but we want to show the character of their warehouse business that has been spoken of in this case; the volume of business they did through this public warehouse. They were not obliged to put up these warehouse receipts and obtain money, because it has already been testified that Mr. Anderson advanced all the money to this company from time to time, that its necessity required, in the form of an ordinary loan.

The Vice Chancellor: What point is there in dispute which is covered by the offer of this book and the testimony of this witness relative to the book?

Judge Pancoast: We offer to show the volume of the warehouse business. It has already been testified to in this case that the Anderson Preserving Company did a warehouse business; that is, deposited a large amount of their manufactured output in this warehouse and took warehouse receipts for them. They were not obliged to use these warehouse receipts as collateral to get loans, because they could get loans from Mr. Anderson, who was connected with the company, without that roundabout way.

The Vice Chancellor: What you offer to show is the extent and character of business done with these warehouses?

Judge Gaskill: By books containing trial balances.

Judge Pancoast: They held these warehouse receipts, which, according to our proofs, are used all over the country as means of getting money.

The Vice Chancellor: You may point out in the book the particular entries which you propose to offer—begin at the beginning.

Judge Pancoast: Your Honor will understand that we propose to show by these books that they, by the course of their business, were sending their manufactured product out of the State of New Jersey and placing it in public warehouses.

The Vice Chancellor: They have proved that themselves.

Judge Pancoast: Yes; and we want to show the extent of that. Now, of course having sent their product out of the State of New Jersey, they put it out of the jurisdiction of the State of New Jersey.

The Vice Chancellor: You say your testimony is pertinent in the same line in which they produce testimony. I think the offer to prove the fact is clearly admissible. As to the means of proof, that is another matter.

Judge Gaskill: I shall object to the book.

The Vice Chancellor: The witness now turns to book marked "Trial Balances," and under date of January 31, 1900, refers to what?

A. I refer to the last of these consignments to these various warehouses to the amount of $62,373.83.

By the Vice Chancellor:

Q. For what period of time?
A. That was the balance of the goods shown to be in these warehouses on that date.

Further direct.

Q. Where were those different warehouses?
A. They were in Trinidad, Colorado; San Antonia, Texas; Galveston, Texas; Houston, Texas; Dallas, Texas; Tampa, Florida; New York City; Wheeling, West Virginia; Salt Lake City, Utah; Butte, Montana; San Francisco, California; Minneapolis, Minnesotta; Savannah, Georgia; London, England; Philadelphia; Boston; Omaha, Nebraska; Chicago, Illinois; Augusta, Georgia; New Orleans, Louisiana, Kansas City, Missouri; Des Moines, Iowa.
Q. What did the Anderson Preserving Company have besides these entries that you read from its books to show that it had deposited these goods in the various warehouses?
A. They have a working warehouse book, in which a page is devoted to a particular warehouse; that page is sub-ruled with debit and credit columns. On debit columns to be entered the quantity of the line shipped to that warehouse, and the date of the shipment; on the credit side of that column will be entered the sales from those particular places as reported by the people in charge of the warehouses.
Q. What, if any, was the advantage and necessity of shipping this manufactured output to these distant points and depositing them in these different warehouses?
A. It was the custom of that trade to buy in carload lots in certain seasons of the year, particularly in the fall season. During a large portion of the year, after their stock was once bought, they would not as a rule buy in carloads. If

the Anderson Preserving Company were not in a position to supply those people in such lots as they required during the season of the year when the sales were not so active, they would buy other goods from other manufacturers in our line, and our fear was, and that is a very common experience, that by the time we reached them again they would have rival lines on their shelves, and our people would miss their usual sales to them.

Q. What did these different warehouse companies or corporations give to the Anderson Preserving Company by way of receipt, memorandum or otherwise, to show that they had received these goods on deposit?

A. They would give a receipt when they received the car that would specify the number of packages taken in by them and put in their storage.

Q. And that was delivered by the warehouse company to the Anderson Preserving Company?

A. Yes, sir.

Q. What is the usual trade name for such receipts, if they have any?

A. Warehouse receipts.

Q. And it is in relation to such receipts that you have said that it is customary to borrow money on?

A. Yes, sir.

Q. In this line of business?

A. Yes, sir.

Q. Do you know how long, prior to 1900, this Anderson Preserving Company had been accustomed to deposit its goods in these various warehouses?

A. The first warehouse to whom the Anderson Preserving Company forwarded its goods was in the year 1886, in April of that year we shipped eight hundred cases of cranberry sauce to California. Mr. Abraham Anderson went out there to sell the goods. He didn't sell all of them, and he stored the balance of those goods that he didn't sell with William T. Coleman & Company, of San Francisco; he had a warehouse and commission business. That was in 1886. Ship-

ments were made to Coleman during the year 1886 and thereafter, until he was succeeded by another party. The first year the company sent over $8,000 worth of goods to William T. Coleman & Company. That warehouse has been continued since that time to this time under various representatives on the ground.

Q. How late did the Anderson Preserving Company follow this business custom of depositing its output in foreign warehouses?

A. How late?

Q. Yes.

A. Continuously.

Q. Up to what period?

A. Up to the time of its transfer.

Q. To this defendant company?

A. Yes, sir.

Q. Of its plant, books and everything?

A. Yes, sir.

Q. Has the defendant company continued to do the same thing?

A. It has, sir.

Q. Do you know whether or not, at the time of the commencement of this suit, you had borrowed any money on the warehouse receipts, or on the credit of these goods in question deposited in the warehouse in Philadelphia?

A. We had borrowed no money at the beginning of this suit, sir.

Q. Had you deposited some of your goods in a foreign warehouse in Philadelphia?

A. Yes, sir.

Q. In the usual way of the Anderson Preserving Company had theretofore deposited its output in different warehouses?

A. Yes, sir.

Q. Do you know enough about the canning business to be able to say whether or not in the majority of cases canning

companies have to borrow money in one way or another in order to properly and successfully carry on its business?

A. It is commonly done.

Q. Do you know why it is commonly done?

A. Owing to the magnitude of the operations. A canning house packs its goods in about three months; that is, they are perishable goods, and they have got to be taken care of as they come into the market, and it locks up a large amount of money—more than they would be warranted in carrying on such a business. It is better to borrow that money for a limited time than to carry it in the business.

By the Vice Chancellor:

Q. Is it a business that the instant goods are packed they are marketable?

A. Yes, sir.

Q. Is it a business which, in the course of its ordinary procedure, produces sufficiently profitable prices instantly that the packing is concluded to realize by actual sale?

A. No, sir.

Q. Do the periods at which profitable, absolute sale can be obtained vary during the year?

A. They do.

Further direct.

Q. Then, if I understand you, if you hadn't the opportunity to hold your goods for a time in the warehouse you would have to sacrifice them?

A. Yes, sir.

Q. And in order to avoid that result it is a customary thing for the manufacturers of canned goods to put a part of the output into these storehouses and borrow money on them?

A. Yes, sir.

Q. To tide over the stringency of the business, so to speak?

A. Yes, sir.

Q. Are you still canning tomatoes and making soup?

A. Yes, sir; we are.

Q. Mr. Anderson testified that when this Anderson Preserving Company was turned over to this defendant company that they didn't intend to pack any more tomato soup. Do you know whether they did pack any more, or not?

A. They packed ten thousand seven hundred and odd cases after they took the business over from the old company.

By the Vice Chancellor:

Q. The Anderson Food Company did?

A. Yes, sir.

Q. That is during the season of what year?

A. 1901.

Further direct.

Q. Do you know why they did that, made that pack?

A. When the Anderson Food Company took hold of that business they found large contracts for tomatoes, large purchases for tomatoes, outside of the usual contract; large purchases of cans, and they were compelled to pack those goods —they could not do anything else with them.

Q. Do you know how much packed goods the Anderson Preserving Company had in foreign warehouses in January 1, 1901?

A. About $65,000 worth, somewhere along there.

Q. Do you know whether any person going to see these goods in question in this case can tell whether or not they were packed by the Anderson Preserving Company or by the Anderson Food Company?

A. No, sir; no man can tell.

Q. Why not?

A. They are packed precisely alike—in the same cases and same labels—none of our men in the place could tell.

Cross-examination.

By Judge Gaskill:

Q. What do those figures on the left-hand side of that piece of paper that is pasted in the trial balance to which you have referred indicate?

A. They are the ledger folios.

Q. By reference to these ledger pages you can ascertain whether or not these were goods that were on consignment, or whether they were goods that were deposited in a storehouse, can you?

A. They were goods deposited in storehouses; there is no "whether" about it.

Q. This paper is headed consignments?

A. Yes, sir.

Q. Were the goods represented in that paper consigned to certain individual customers of the Preserving Company?

A. No, sir; they were not.

Q. Any of them?

A. All of the names represented on that list are either warehouse companies or agents of the Anderson Preserving Company.

Q. And where they are agents of the company these represent consignments of goods as shipped to them to sell on account of the company?

A. Yes.

Q. What proportion of that $62,000 represents consignments to the agents of the company; and what proportion represents deposits in your own name in various storehouses?

A. I will have to have some paper; it is a matter of bookkeeping now. (After making some computation.) Of this amount, $27,643.66 were consigned to private warehouses—that is, warehouses that were not regularly incorporated warehouses doing a general storage business.

Q. And in whose name were those goods deposited?

A. Which do you refer to?

Q. The $27,000 odd.

A. They were in the name of the party running the warehouse, being our agent.

Q. And is the balance, $62,000, represented by goods consigned to parties to sell for you?

A. They are consigned to warehouses, receipts being taken; the warehouses in many instances had directions from the company to allow the company's representatives at those points to withdraw those goods on their orders, sending us notice of such withdrawal.

Q. Just explain, please, the difference between the depositing in warehouses of your goods in your name and subject to your own order, and that is commonly known in the trade as consignment accounts?

A. A consignment account, as I understand it, is a lot of goods shipped to a grocery house, in our case, where they sell them out and remit to us when they are sold. In the case of our warehouses, we consign goods so that they may be carried for us and we retain the ownership until they are put into the hands of the grocery trade.

Q. And the $27,000 odd is what is represented as the deposit in your name in warehouses, is it not?

A. In warehouses other than public warehouses doing a general storage business.

Q. And the balance of the $62,000 represents what you have described as consignment accounts?

A. No, sir; they represent goods at storage at other warehouses.

Q. Then you haven't, by the figures and answers, given me an answer to the question that I asked originally.

A. Then I failed to understand your question.

Q. My question is, how much of that $62,000 odd represented consignments?

A. It is all consignments, in view of the fact that they are put there for sale.

Q. No; but consignments to agents or customers of yours, or of the firm?

A. I didn't ship to agents; I said to customers.

Q. I ask you how much of that $62,000 odd represented consignments of that character?

A. I have already testified that I didn't see any customers of ours on that list; there are no customers of ours on that list.

Q. For any portion of that $62,000?

A. No, sir.

Q. You say that none of that $62,000 represents consignments to customers?

A. No, sir.

Q. Nor to persons who are customers dealing in and selling your goods for you?

A. That is another thing.

Q. I ask you how much of that $62,000 was consigned to persons who had been engaged in the sale of your goods, and were at the time those goods were shipped to them.

A. The difference between $27,643.66 and the total of those goods in storage went to the storage warehouse, and the $27,000 went to warehouses in care of our agents or brokers.

Q. Now, Mr. Cox, I notice on the paper to which you have referred in giving us the aggregate on what is styled on the paper as consignments, after the word "Philadelphia," the word "Consgn." and the figures $239.40. Please turn to the ledger which contains that and tell me whether that was deposited in any storehouse, or whether that was a shipment to a customer of yours?

A. They don't properly belong there, sir; they are a lot of small sales that have been sold to various customers in the city of Philadelphia; it is a mistake in bookkeeping.

Q. So that this list to which you have referred does not then properly contain any goods in a Philadelphia warehouse?

A. No, sir.

Q. Now, I understand that these goods which were kept outside of the State were kept at points convenient for quick distribution to customers?

A. That is right, sir.

Q. You have stated what amount was in the warehouse, or warehouses, January 1, 1900; will you please tell me how much was in warehouses at the time the Food Company became the purchaser of the plant and assets of the Preserving Company?

A. I can do it by referring to my memorandum.

Q. Please do so.

A. The stock balance for September, 1901, shows $40,332.67 of goods stored at various warehouses.

Q. Outside of Camden?

A. Yes, sir.

Q. Now, please tell me where those goods were?

A. They were at most of these places here.

By the Vice Chancellor:

Q. Which you previously gave?

A. Yes, sir. I can't answer that question with particularity without further reference to our books.

Q. That is, they were scattered all over the various places previously named?

A. Yes, sir.

Further cross.

Q. Can you tell whether or not any of those warehouses had been placed between the date of January 1, 1900, and the time when the new company purchased?

A. Yes, sir.

Q. How many of them?

A. I will refer to my memorandum again?

Q. Yes.

A. This list of January, 1900, shows 24 warehouses, including that Philadelphia concern; while our list for 1901 shows 27.

Q. You have increased the number?

A. Yes, sir; there are some closed, others opened.

Q. Since the Food Company has been conducting this business, have you shipped any of your product to store-

houses other than the goods which were made the subject matter of this suit?

A. Yes, sir.

Q. Where?

A. Philadelphia, Pittsburg, Chicago, Kansas City, San Francisco, New Orleans, Boston. They are the only positive shipments that I recall; there may have been others.

Q. Outside of these seven places that you have just named, I ask you if other storehouses named on that list, and your list of September, 1901, have been closed out, if the deposits have been closed out?

A. Some of them have.

Q. Where have you deposits to-day other than those seven places you have just named, as being the places to which you have shipped since your company has been doing business?

A. Tampa, New York, Dallas, Texas, they are the only ones I remember now.

Q. On these goods which were left over at Tampa, New York, Dallas, did you have warehouse receipts—have you warehouse receipts for them?

A. I don't know.

Q. What about the seven places that you named as being places to which you have shipped goods since the Food Company has been operating the plant; have you warehouse receipts from the deposits at those places?

A. We have an acknowledgement of the shipment. Those points that I spoke of are not storage warehouses, except San Francisco, which shipment went out last week.

Q. Have you borrowed money on any of those goods?

A. Yes, sir; we have.

Q. On the goods in which storehouses have you borrowed money?

A. Philadelphia.

Q. What amount of goods have you on storage in Philadelphia?

A. 5,000 cases, sir.

Q. Of what?

A. Tomato soup.

Q. When was the loan made on that?

A. I think it was sometime in May or June; I don't remember that.

Q. Of this year?

A. Of this year; it may have been earlier.

Q. Was that before the bill was filed in this case?

A. No, sir.

Q. These goods were sent there, however, for the purpose of making them the subject matter of a loan, were they not?

A. Yes, sir.

Q. Were they the same goods which you, or the company, the Food Company, acquired from the Preserving Company?

A. I don't know.

Q. What amount of money has been borrowed on those 5,000 cases?

A. $10,000.

Q. Have you borrowed upon any other goods stored elsewhere?

A. No, sir.

Q. The goods, then, that you have on storage in Pittsburg, Chicago, Kansas City, San Francisco, and so on, are deposited there to meet the demends of your customers?

A. They are.

Q. And not for the purpose of obtaining loans upon them?

A. Well, we haven't done it; we might if we wanted to.

Q. They are not deposited there for that purpose?

A. No, sir.

Q. Who superintended or had charge of the delivery of these goods to the Philadelphia warehouse?

A. Our shipper, Mr. Stoy.

Q. Did you give any directions with reference to it?

A. Gave directions to send them there.

Q. Did you give directions as to the manner in which they were to be sent?

A. I notified our superintendent, Mr. Cook, to have those goods put there. Didn't give him any directions as to how they were to be sent.

Q. Do you know how they were to be sent?

A. Taken over on the wagon.

Q. Whose wagon?

A. Some were on ours and some on a team that we hired from time to time when business demands it.

Q. Were any of them sent over on a wagon other than your own regular team?

A. I can't answer that; I don't know.

Q. You said that there was tomato soup packed after the Food Company acquired the business of the Preserving Company; is that right?

A. Yes, sir.

Q. How much tomato soup was packed after the Food Company thus acquired it?

A. About 10,700 cases—a little more than that.

Q. Of tomato soup?

A. Yes, sir.

Q. Packed after the Food Company took charge of the business, in September, 1901?

A. Yes, sir; that is right.

Q. Did you put them up in the same kind of packages as the Preserving Company's soup had been put up?

A. Precisely.

Q. The same label?

A. The same label.

By the Vice Chancellor:

Q. Within what time after the Anderson Food Company took charge was the business so conducted?

A. What do you refer to?

Q. You say you put the goods up, 10,000 or more cases of tomato soup, in the same way in which the Anderson Preserving Company put them up, with the same label; within what time after the Anderson Food Company had bought the property from the Anderson Preserving Company did you so pack these 10,000 cases?

A. These 10,000 cases were packed between the day on which we took the business and the 6th of October.

Q. And the day you took the business was what?

A. September 20.

Q. So they were packed within the immediate two weeks that you undertook the business?

A. Yes, sir; October 6 was the end of the season.

Further cross.

Q. Was the whole of that 10,700 cases tomato soup?

A. Yes, sir.

Q. And packed by you between the time of September 20, 1901, and October 6, 1901?

A. Yes, sir.

Q. You have spoken about Mr. Abraham Anderson making a loan of money on warehouse receipts for canned goods; such loan was not made by Mr. Anderson to a packer; it was made through a broker, a speculator?

A. Made to a broker representing his principal. I believe I made a loan to the same party—made to the broker representing the principal.

Q. And his principal was not a packer?

A. I can't answer that question; I don't know whether the man who got my money was a packer or not.

Q. You dealt with the broker?

A. Yes, sir.

Q. And Mr. Anderson's transaction to which you referred was a transaction with a broker?

A. Yes, sir.

Q. How much goods have you stored in Philadelphia warehouses, all together?

A. In The Philadelphia?

Q. No; in Philadelphia warehouses?

A. We have some goods stored with our agent there, Mr. E. E. Harding & Company; I presume there is probably anywhere from 600 to 1,000 of stock. We also have some goods in the Pennsylvania Warehouse Company, 5,000.

Q. And those goods are the ones on which the money has been borrowed?

A. Yes, sir.

Q. Was the whole of that 5,000 taken over at one time?

A. No, sir.

Q. When was the first taken over; and how much?

A. There were 3,500 cases taken over there in February and March. They commenced to haul February 27; I don't know how many days it took to get them over.

Q. When were the 1500 cases taken over?

A. In June?

Q. This last June?

A. This last June.

Q. That was after the bill was filed in this case?

A. I judge it was.

Q. Now, Mr. Cox, the money you have loaned on warehouse receipts calling for canned goods has been loaned to brokers, has it not?

A. I so stated.

Q. Have you anything more than 5,000 cases anywhere in Philadelphia other than the Harding consignment?

A. No, sir.

Re-direct.

Q. To whom and in what manner did you make this loan on this deposit in question, about which you have been examined by the counsel on the other side?

A. I didn't make those loans; they were made by the secretary and vice president, Mr. Henderson.

Q. Have you any knowledge of them?

A. I know we borrowed them on our notes, with the certificates as collateral security.

Q. You got them from whom?

A. From banks.

Q. Upon notes?

A. Yes, sir.

By the Vice Chancellor:

Q. Do you refer to the transaction whereby the Anderson Food Company borrowed money?
A. Yes, sir.

Further direct.

Q. In speaking of "our" note or notes, which do you refer to?
A. The Anderson Food Company.
Q. Now, why did you thus borrow money on your company's notes with these goods as security?

Judge Gaskill: Objected to as utterly immaterial, why they borrowed the money. The simple question here is whether they have a right to borrow or not. If they have, it does not make any difference what they borrowed it for.

The Vice Chancellor: You are disputing the right to do this particular transaction, because you say it was not in the ordinary course of its business. The details of the transaction may throw a great deal of light upon it.

A. A sudden demand was made by Mr. V. S. Anderson, who was connected with the Anderson Food Company, and with the old company, for notes that were due him by the Anderson Preserving Company, the liability for which was assumed by the Food Company, to the extent of about $11,000. He demanded them, wanted them to be paid by 12 o'clock the next day. It was to meet this contingency that that action was taken.
Q. Was that demand expected or unexpected?
A. It was unexpected.
Q. What other means had you right at hand to get this money and pay it in answer to this sudden demand?

Objected to as immaterial. Admitted.

A. We had no other means at that time.

Re-cross.

Q. When was this demand made upon you by Mr. Voorhees Anderson for his $11,000?

A. On the 14th or 15th day of January of this year.

Q. 1892?

A. 1892.

Q. And the demand was to pay him that money by noon of the next day?

A. Yes, sir.

Q. Now, when did you send the goods over in storage for the purpose of raising money upon them?

A. I think I have already stated that, under date of February 27.

Q. And when did you pay the note or notes?

A. Sometime in April.

Q. About the middle of the month?

A. I can't tell you that; I didn't handle the transaction; somewhere along during the month of April.

Q. These notes were outstanding obligations at the time the Food Company resumed the business of the Preserving Company?

A. Were demand notes.

By Judge Pancoast:

Q. I would like to show the witness the notes and ask him whether those are the notes. Are these the notes, the payment of which were demanded?

A. These are the notes.

Q. Is there anything there to show that they were paid?

A. No, sir.

[Notes offered in evidence and pinned together, and marked Exhibit D2.]

Q. What is the total?

A. $10,698.40.

Q. What is the total stated on the face of them?

A. $10,519.02.

Q. The total shown on the principal of the notes?

A. The first figure was $10,698.40, which I find written here; the face of the notes, less interest, $10,519.02.

Further cross.

Q. These three notes which you have just identified are demand notes?

A. Yes, sir.

Q. And they bear date October 1, 1901?

A. I presume so.

Q. Just look; they all bear date that day, do they not?

A. That is correct, sir.

Q. At the time of the purchase by the Food Company of the plant and assets of the Preserving Company, Mr. Voorhees Anderson held notes of the Preserving Company then past due, for this sum of money, didn't he?

A. He held demand notes for that same amount of money.

Q. And in the purchase your company assumed payment of these notes?

A. Among the other liabilities; yes, sir.

Q. And at that time when the agreement was made by which the Food Company became the owner of the plant and assets of the Preserving Company, it was understood and agreed that Mr. Voorhees Anderson was to be paid at once —that is, September 20, or thereabouts—the amount due him by the old company at the time your company, the new company, took possession, was it not?

A. No, sir.

Q. And wasn't it made a condition in the agreement between yourself and Abraham Anderson by which you agreed to give him a certain sum of money for his stock, interest in the Preserving Company, that you must have three years

in which to pay him that money, instead of two years, as provided in the previous agreement, as you needed an additional year on account of being pledged to meet at once these notes of Voorhees Anderson?

Objected to as not cross-examination. After some argument the objection was withdrawn.

A. There were a number of trades, or a number of changes in the deal there between the signing of each agreement in which various propositions were brought up; that might have been there; I don't remember any such arrangement covering that particular ground.

Q. You don't deny that such was the arrangement, do you?

A. I don't think that the demand for those notes was the occasion of changing Mr. Anderson's cash payment from two years to three.

Q. Mr. Henderson was your agent in negotiating this transaction, was he not?

A. Yes, sir.

Q. These notes were not paid in the fall of 1901?

A. No.

Q. On the second day of December, 1901, $1,000 was paid of the principal, was there not, on one of these notes?

A. There is an amount paid on those notes and endorsed on the back, whatever it is; I don't know.

Q. $1,074.52.

A. That is probably what was paid.

Q. At that time Mr. Voorhees Anderson was treasurer of the Food Company?

A. What date was that?

Q. At the time this money was paid.

A. What date was that?

Q. 12-2, 1901.

A. Yes, sir.

Q. And remained treasurer up to what time?

A. Until the 15th of January, 1902, I think.

Q. A little over a month thereafter. Didn't Mr. Voorhees Anderson frequently, from time to time, and before this last demand was made, request payment of these notes?

A. He requested something on account from time to time; yes, sir.

Q. And no other payment was made to him in response to his request?

A. The only payment there was is recorded there until the notes were lifted or paid.

Q. Did you secure more than one loan on these goods that was sent over to the warehouse, in Philadelphia?

A. I think we did; I can't specify with particularity as to those loans.

Q. Didn't you borrow on 3,500 cases in the first instance?

A. Yes, sir; that is right.

Q. And the money so borrowed was needed for the purpose of paying for the stock used in manufacturing your product?

A. It might have been, and it might not have been.

Q. Wasn't it borrowed on purpose to pay Mr. Voorhees Anderson this money that he had demanded of you?

A. It might have been—the moneys we borrowed on these goods may have been in the place of other money that we took from the business to pay Mr. Anderson.

Q. Did you borrow on the other 1,500 cases which you subsequently deposited in the warehouse, in Philadelphia?

A. Oh, yes.

Q. How much money did you borrow on that lot of goods?

A. We borrowed, as I testified sometime ago, $10,000 on 5,000 cases.

Q. How much did you borrow on the last lot of goods, the last 1,500?

A. We didn't borrow any amount of money on those specific 1,500 cases.

Q. Only have one loan all together?

A. We had one loan on 5,000 cases.

Q. When you took the other 1,500 cases there, didn't you renew a loan that had been in existence on the 3,500 cases?

A. Oh, yes.

Q. And borrow additional money?

A. We borrowed money, $5,000 in the first place, I think, and paid it off, and later we borrowed more money on those same goods.

Q. And deposited additional goods to increase the amount of the loan?

A. Yes, sir.

Q. And the new loan was made at or about the time the old loan was paid off, and was in renewal of the old loan?

A. I can't say that; I didn't handle it.

Q. Was this new loan, or the additional amount you borrowed on your product, used for the purpose of paying for goods or material used in the manufacture of your product?

A. Some of it may have been; I can't tell.

Q. Wasn't it borrowed for the purpose of paying interest?

A. No, sir; it was not.

Q. Can you tell me how much the loan was increased the second time you borrowed over what it was the first time you borrowed?

A. I think the first time we borrowed $5,000, which we paid. I don't know how long after we borrowed more money on those goods, but eventually we increased the number of cases to 5,000 and borrowed $10,000 on them.

Q. Now, then, let me have, as near as you can tell, the dates on which you borrowed these moneys?

A. I don't know it; I can't tell you.

Q. It was after the goods were sent over there in February?

A. Why, certainly.

Q. Now, then, what vegetables or fruits were you purchasing at that time for the purposes of preserving or canning?

A. Oh, we were constantly buying all the lines of canned goods, dried fruits, at that time of the year.

Q. What were you purchasing at that time?

A. At what time?

Q. At the time you shipped these goods over to the warehouse.

A. I don't know.

Q. In what quantities were you buying, in dollars and cents?

A. I don't know.

Q. These goods that you manufacture are manufactured for the purpose of sale?

A. Yes, sir.

Q. And that is the ordinary course of business, to manufacture and sell the goods.

A. Yes; that is what we are in business for.

Re-direct.

Q. Do you know whether or not, just prior to this suit, your company was expending money in buying machinery or otherwise in betterments of the place?

A. Oh, yes; we spent quite a sum of money in improving the real estate, in adding new machinery to the plant.

Q. Shortly prior to this suit?

A. Yes, sir.

Q. How much money in the aggregate?

Objected to as immaterial and irrelevant.

The Vice Chancellor: I did not suppose that an inquiry of that kind would be pertinent to this investigation, but as the scope of the examination indicates that the argument is to be advanced that the money raised within the construction of the chattel mortgage, to be used for a limited purpose only in the conduct of the company's business, I think I should take in everything that might have been done by the company, to which this money might have been applied. I think it is admissible. I will allow any investigation

which throws any light as to the mode in which this company conducted its business.

A. I presume for machinery, improvement to the building, we expended in the neighborhood of from $10,000 to $12,000.

Q. Does that include all expenditures from the time the mortgage was made down to the suit?

A. Yes, sir; principally so, within reasonable latitude.

Q. Why do you characterize the demand for these overdue notes as sudden?

A. Because we had understood and had an agreement, a verbal agreement with Mr. V. S. Anderson, that we were to have the calendar year of 1902 to pay those notes.

Q. So you were acting upon that understanding and agreement?

A. Yes, sir.

Q. Up to the time this demand was made?

A. Yes, sir.

Q. And that is why you characterize it as sudden?

A. Yes, sir.

Q. And you had to make this sudden shift?

A. Yes, sir.

Adjourned until Wednesday, October 22, 1902, at 10 A. M.

In Chancery of New Jersey.

ABRAHAM ANDERSON,
Complainant,
AND
ANDERSON FOOD COMPANY,
Defendant.

ON BILL, &c.

CAMDEN, N. J., Oct. 22, 1902.

The hearing in this matter was continued pursuant to adjournment. Appearances as heretofore noted.

JOHN COOK, sworn for defendant.

Direct examination.

By Mr. Woodhull:

Q. Where do you live?
A. Merchantville.
Q. What is your business?
A. I am connected with the Anderson Food Company.
Q. In what capacity?
A. General superintendent.
Q. With whom were you connected before your present connection?
A. With the Anderson Preserving Company.

Q. How long?

A. Since the first of October, 1880.

Q. In what capacity?

A. Various capacities; during the latter part of the time I was superintendent of the factory.

Q. By virtue of such employment at the Anderson Preserving Company, can you speak as to their practice as to warehouseing their goods outside of this State?

A. So far as concerns the shipment of goods to warehouses from the factory here, yes.

Q. Did you have direction of that?

A. The local warehouse; yes, I had.

Q. Can you state any particular shipment by the Anderson Preserving Company to warehouses anterior to 1890?

A. Yes; there was a lot of cranberry sauce went to William F. Coleman & Company, in San Francisco, in 1886.

Q. Where was that stored—anywhere except the West?

A. It went to William F. Coleman & Company, San Francisco.

Q. Do you know about that time of any storage nearer here, any warehouses?

A. Subsequently to that in 1893, there were several thousand cases of canned tomatoes stored in the Merchants' Warehouse, Eighteenth and Market streets, Philadelphia.

Q. Had you personal knowledge of that?

A. Yes, sir.

Q. How?

A. It became my duty as superintendent of the factory to take a man over there at sundry times during the winter of 1893 and overhaul those goods and make examination of them, and renail the cases.

Q. Have you a recollection of their quantity?

A. Not definitely—but there is in the neighborhood of 3,600 cases.

Q. Have you stopped the tomato pack at the Anderson Food Company for this year?

A. We stopped yesterday.

Q. Had you or not continued that pack from the time the Anderson Food Company took hold up until yesterday?

A. Continued it during the growing season, the present crop.

Q. Can you state when that pack was stopped in 1901?

A. On the 6th of October.

Q. Can you, of your own knowledge, state approximately how many cases of such pack were packed by the Anderson Food Company, in 1901, after that transfer?

A. There was 10,000 and some hundred cases—seven hundred, I think, something like that.

Cross-examination.

By Judge Gaskill:

Q. When you say there were ten thousand some hundred cases, you mean cases of what?

A. Tomato soup.

Q. Tomato soup that was put up by the Anderson Food Company between September 20 and October 6?

A. Yes, sir.

Q. From what did you get those figures?

A. From the reports made to me by the foreman of department that handled that work, Mr. Weygand.

Q. When did you look at those reports?

A. I have seen those reports at the time, and I have seen them again recently.

Q. And it is your recent examination of them that enabled you to testify here to-day as to the quantity?

A. Yes, sir.

Q. You don't recollect from what occurred a year ago?

A. I certainly do.

Q. That is to say, you have an independent recollection?

A. I certainly have, sir.

Q. And without any reference to the books or reports, can you tell how much had been packed a year ago, from September 20 to October 2?

A. I probably could not tell to the case, but I know within reason.

Q. Then why did you look at the reports recently if you can remember without looking at them?

A. I had the best reason in the world for looking at the reports?

Q. What?

A. To refresh my memory.

Q. Then your memory needed refreshing?

A. It needed refreshing as to the exact number of cases.

Q. What was the exact number of cases?

A. 10,700 and something.

Q. The exact number, can you tell?

A. That is as exact as I can give it.

Q. How much had been packed during the summer and fall of 1901, preceding September 20, of tomato soup?

A. Something over 21,000 cases.

Q. Wasn't there more than that?

A. Up to the time of the transfer?

Q. Have you the books here which show the pack?

A. The books are here.

Q. Please refer to those books and tell me how much had been packed of tomato soup, in the summer and fall of 1901, preceding September 20?

A. Mr. Weygand's time-book.

Mr. Beldon: The book is not here, but it will be produced.

Judge Gaskill: I would like to have that quantity, and it can be furnished to me later.

Q. You are the superintendent of the defendant company, the Food Company?

A. Yes, sir.

Q. And you were the superintendent of the Anderson Preserving Company at the time of the transfer of the business from one company to another?

A. Yes.

Q. So that you now occupy the same position with the new company that you occupied with the old company?

A. Yes, sir.

Q. These goods that you spoke of as being in the warehouse in Philadelphia, were they goods that had been manufactured or packed by the Anderson Preserving Company?

A. No, sir.

The Vice Chancellor: To what date does that apply?

Q. You referred to certain goods that had been stored in Philadelphia in 1893, didn't you say?

A. Yes, sir.

Q. And you stated there was what—1,000 cases?

A. Nearly 3,000 cases.

Q. Now, I ask you if those goods which you thus referred to were goods which had been manufactured, or preserved, by the Anderson Preserving Company?

A. No, sir.

Q. They were goods which either Mr. Anderson or the Preserving Company had taken, purchased and left on storage, where they found them, are they not?

A. I can't answer that question; they were simply on storage there, so far as I was concerned.

Q. Who put them on storage; you don't know?

A. No.

Q. And what you did was to examine them under orders from the Preserving Company?

A. Yes, sir.

Q. As I understand you to say, you repacked some of them?

A. It was necessary in this examination to open the cases—frequently go through an entire block of cases and repack them and renail the cases.

Q. Putting new labels on?

A. In some instances; yes, sir.

Q. Can you tell, Mr. Cook, which goods it was that were sent over to the warehouse this year, in February or later, in May or June, or whether it was goods that had been put up by the Preserving Company, or goods that had been put up by the Food Company?

A. No, sir; I could not.

Q. Did you have charge of the removal and storage of those goods?

A. I had charge of the removal of them; yes, sir.

Q. Is that part of your ordinary work?

A. Yes, sir.

Q. Did you give the orders for removal of all of them, the first lot as well as the second lot, that were sent over to Philadelphia this year?

A. I did.

Q. The first lot were sent over in February, were they not?

A. I think they were; yes, sir.

Q. That is not a very busy season with you in shipping, is it?

A. That usually is a very busy season; yes, sir.

Q. How was it this year?

A. We were very busy at that time.

Q. Were your teams busy at that time?

A. Yes, sir.

Q. Outside of this work of removing goods to Philadelphia, were they busy?

A. Yes, sir; they were.

Q. These goods were not removed over to Philadelphia with your own teams, were they?

A. Part are.

Q. The greater part removed over by what teams?

A. The teams of John Ballanger, which were used from time to time when there is need for any hauling, extra hauling.

Re-direct.

Q. Why could you not tell whether the goods sent to Philadelphia for storage, about February, were packed by the Anderson Preserving Company or by the Anderson Food Company?

A. Because, as the pack progresses, the goods were piled in such manner as it would be impossible for any one to tell at any subsequent date as to what goods they were getting hold of in this storage, whether they were packed previous to September 20, or subsequent.

Q. Was there or not any change in the label at that time?

A. No, sir.

By the Vice Chancellor:

Q. What do you mean by no, sir; that there was no change in the labels?

A. No; there was no change in the labels.

Q. No change from what?

A. I don't understand your question.

Q. Were there any changes from as they were antecedently packed?

A. Not at all.

Q. Do you refer to the labels on the particular cans, are you referring to the fact that there was no change on the labels on the particular cans, or to the fact that there was no change in the marking of the case, which included the cans?

A. Neither.

Q. Neither had yet been changed from those markings and labels used by the Anderson Preserving Company?

A. No, sir; that change didn't occur until September 1, 1902.

Further direct.

Q. Will you please state whether this Mr. Ballanger whom you have mentioned as the one hauling these goods had ever hauled for the Anderson Preserving Company?

A. Yes, sir; he had.

Q. Was that a frequent occurrence or not, for him to haul for the Anderson Preserving Company?

A. Quite frequently—nearly always did our extra hauling, John Ballanger.

Q. That is all.

Mr. Beldon: Judge Gaskill, that book is here. (Handing book to witness.)

Re-cross.

Q. The book showing the pack for 1901 I understand has been brought into Court and is now in your hands?

A. Yes, sir.

Q. Will you please tell me the quantity of tomato soup that was packed by the Anderson Preserving Company during the summer and fall of 1901, prior to the sale and transfer of the business of the business to the Anderson Food Company, September 20, 1901?

A. I have here the record kept by our foreman, and I shall have to ask his explanation of this record to answer that question.

Q. Is the foreman here?

A. He is.

Mr. Beldon: We will be a witness.

Q. That is all.

JOHN A. WEYGAND, sworn for the defendant.

Direct examination.

By Mr. Woodhull:

Q. Where do you live?

A. 536 South Third street, Camden.

Q. Where do you work?

A. For the Anderson Food Company; I am foreman.

Q. Were you connected with the Anderson Preserving Company?

A. I was.

Q. How long were you with both concerns, continuously?

A. As near as I can tell, about 10 or 11 years.

Q. In what capacity?

A. Several different things; laboring around when I first started and worked my way up.

Q. What do you do now?

A. Foreman.

Q. Are you acquainted with the packing of the concern?

A. Yes, sir.

Q. Have you knowledge of the packing of the Anderson Preserving Company?

A. I have.

Q. Have you a book kept by yourself in relation to that pack?

A. Yes, sir; a daily record.

Q. Will you take that book? Will you state what the pack of the Anderson Preserving Company was for the year 1901 up to September 20?

A. It is a little over 21,000, as near as I can tell.

Q. Of what?

A. Of tomato soup.

Q. Is that in the book?

A. Yes, sir.

Q. Have you continued the packing of tomato soup with the present house since September 20, 1901?

A. I have.

Q. Have you knowledge of the extent of that pack of tomato soup since that time?

A. What have you reference to?

Q. Since September 20?

A. Yes.

Q. Can you state what that pack was?

A. As near as I can tell it was ten thousand seven hundred and some odd.

Q. After September 20, 1901?

A. Yes, sir; until October 6. From September 20, on up to October 6, we packed ten thousand seven hundred and some odd cases.

Q. Have you been packing tomato soup this season?

A. Yes, sir.

Q. Is that pack still going on?

A. We quit yesterday; yesterday wound up the season.

Cross-examination.

By Judge Gaskill:

Q. Were you foreman under the former manager of this business, the Preserving Company?

A. Well, I was department foreman.

Q. Did you have charge of the goods that were there in the factory?

A. Yes, sir.

Q. How much tomato soup was left over from the preceding year when you commenced to pack, 1901?

A. None at all; I believe at that time it was cleaned out.

Q. None here in the cannery, or factory or warehouse?

A. None that I know of; I don't know what was in the warehouse, whether there was anything or not; I am not connected in that line.

Q. They have a warehouse here in Camden where they store their goods?

A. In our own factory.

Q. Do you have charge of that?

A. Yes, sir.

Q. That is what I want to get at; was there any storage there of the previous year pack of tomato soup?

A. No, sir.

Q. That is all.

CHARLES H. ELLIOTT, sworn for the defendant.

Direct examination.

By Mr. Woodhull:

Q. Where do you reside?
A. Philadelphia.
Q. What is your business?
A. Bookkeeper.
Q. With whom?
A. At the present time with the Anderson Food Company.
Q. How long have you been there?
A. Very nearly a year.
Q. Have you made an examination of the books of the Anderson Preserving Company in respect to the quantity of warehouse goods stored by such company, outside of the State of New Jersey, during the year 1901?
A. Yes, sir.
Q. Can you state from such examination what that quantity was?
A. Yes, sir.
Q. Please do it.
A. I can give it from a memorandum that I have here.
Q. Taken from the books?
A. Taken from the books of the concern.
Q. From what books?
A. From the ledger; the only place they keep a stock record.

By the Vice Chancellor:

Q. This is a statement of values?
A. Yes, sir.
Q. Of the goods?
A. Of the goods stored in outside warehouses.
Q. By the Anderson Preserving Company?
A. Yes, sir.

Further direct.

Q. Give them by months, please.
A. January, 68,852.83.
February, 64,962.85.
March, 58,178.01.
April, 55,249.44.
May, 53,822.86.
June, 47,141.86.
July, 43,908.47.
August, 41,589.10.
September, 40,332.67.
October, 36,709.94.
November, 40,569.42.
December, 43,793.93.

Q. In what houses, can you state from your examination, were these stored?

Judge Gaskill: Is there any dispute about that? I am not going to dispute the evidence already in.

The Vice Chancellor: Unless it is intended to show some dealings other than the deposition of the goods there, what advantage is there in the inquiry as to the particular warehouse?

Mr. Woodhull: The book that was objected to came from Mr. Cox; this is from the bookkeeper.

The Vice Chancellor: Mr. Anderson and almost every witness examined stated that the deposits were practically from one end of the country to the other.

Cross-examination.

By Judge Gaskill:

Q. Taking your figures, then, from the first of January, down to and including the month of October, 1901, there

was a steady decrease in the quantity deposited in warehouses outside of New Jersey, was there not?

A. Yes, sir; so the figures state.

Q. Running from $68,852 in January down to $36,709 in October?

A. That is correct, sir.

Q. And then after October, the amount increased gradually November and December?

A. Yes, sir.

Q. That is to say, the old company was decreasing continually the amount that was stored outside of the State up to and including the month of October, 1901?

A. So it appears from the list.

Q. Now, only one question as to where these goods were stored. Were any of them stored in the city of Philadelphia?

A. I don't see any Philadelphia storage house among the list.

Q. That is all.

DAVID A. HENDERSON, sworn for defendant.

Direct examination.

By Mr. Woodhull:

Q. Where do you reside?

A. Camden, N. J.

Q. What is your business?

A. I am vice president and secretary of the Anderson Food Company, and also in the fire insurance business.

Q. State whether or not you conducted the negotiations of the purchase of the Anderson Preserving Company with the complainant?

A. Yes, sir; I did.

The Vice Chancellor: Do you propose to examine this witness on the questions raised by the cross bill?

Mr. Woodhull: I do not.

The Vice Chancellor: Very well; proceed.

A. Yes; I conducted the negotiations between Mr. Anderson, the complainant, and the company.

Q. By reason of the negotiations are you conversant with the agreements mentioned at the last hearing, in respect to the two years and three years for the payment of certain moneys to the complainant?

A. Yes, sir.

Q. It was suggested at that hearing that the reason for the change from two years to three years was because of the payment of a note to Voorhees S. Anderson—

A. No, sir; that is not the fact at all.

Objected to.

The Vice Chancellor: Wait until the question is put.

Q. Have you any knowledge in respect to the reason for that change?

A. I have.

Q. Was there conversation between the parties to your knowledge to the respect to the change from two years to three years?

Objected to as irrelevant. Admitted.

A. There was.

Q. State what the conversation was.

Objected to.

The Vice Chancellor: I think you ought to go further, and show between whom it was.

Q. Between yourself, on behalf of Mr. Cox, and Mr. Abraham Anderson.

Judge Gaskill: I object to any of this testimony, because it is totally irrelevant to the issue. The issue here is, have we a chattel mortgage, and if so, what is the force and effect of that chattel mortgage, and any conversation or negotiations between the parties in respect to the payment or non-payment, or the delay in the payment of any outstanding obligations can in no way affect the question which your Honor must decide. It is for the purpose of keeping not only the record straight, but keeping irrelevant matter out of the record, and of obviating the necessity of rebutting things which throw no light on the matter.

The objection was then argued.

The Vice Chancellor: The present objection is made upon the ground that the question seeks to draw from the witness statements of fact which have no relation to the issue here being tried, and are therefore irrelevant. The inquiry here is, as Judge Gaskill has defined it, an inquiry as to what, under the phrasing of the chattel mortgage, was the right or power of disposition of the Anderson Food Company of the products of the factory. The phrasing is wide enough to include all the goods mortgaged, but obviously was not intended to include the fixtures, equipment, tools and appliances, or any of those things which go to make up the paraphernalia of the factory. The phrasing of the chattel mortgage is such that I have been disposed to allow the widest latitude in the bringing in of any evidence which may throw light upon the mode in which the business of this company is conducted, because the extent and power of disposition seems to be applied by the chattel mortgage to the mode in which

the company conducts its business. I am not disposed to limit the evidence on this point. I also think if I rule favorably to the complainant on this objection I might do him an injury, because I would be obliged to rule against any contradiction of Cox's testimony on this point. As the presently offered testimony relates to the conduct of the business of the company, perhaps remotely, so far as the chattel mortgage is concerned, I think I should admit it.

Judge Gaskill: If your Honor will look at the testimony taken the other day, you will find that the cross-examination of Cox was on testimony brought out on direct examination over my objection.

The Vice Chancellor: (Looking at the notes of testimony.) It does appear on examination of the testimony taken on the previous day (shown on page 110) that the same line of examination here put to this witness was introduced by the defendant, was objected to by the complainant, and was admitted over the objection. The cross-examination of the defendant's witness touching the same subject matter was made after the complainant had objected to the admission.

I ruled before that I would admit the testimony on this line, and will admit it now so far as it goes to show the mode in which the Anderson Food Company conducted its business. Whether preceding negotiations, antecedent to the purchase by the Anderson Food Company of the business, would throw any light upon the mode in which the Anderson Food Company, after it had purchased, conducted its business, is, I think, a matter of considerable doubt, and if the question presently put relates to negotiations preceding the undertaking by the Anderson Food Company, I think it ought to be overruled. What the parties did before the purchase would be no indication of the mode in which the company, after it assumed control of the property, conducted its business. I think the examination as to the mode in which

the Anderson Food Company, after it purchased, conducted its business in this transaction is pertinent, and pretty nearly every other transaction in the company's management of its business, if counsel choose to make it wide enough, it might throw some light on the mode in which it conducted it.

I overrule the question so far as it is addressed to the witness to bring out any facts or negotiation preceding the purchase. As to the conversation and negotiation succeeding the purchase, I will admit that.

Judge Gaskill: And the same ruling, I suppose, might be extended to the previous questions—

The Vice Chancellor: If I have already admitted it without objection, I will not now rule it out; but it can be of little weight in throwing any light on the question.

Q. Testimony has been had respecting the warehousing of 3,500 cases by the Anderson Food Company, in Philadelphia; what was the purpose of that warehousing?

A. The intent and purpose was to borrow money, because it was stored over there for the purpose of the usage in the business of the company as it demanded it, and the particular demand at that time was the payment of some notes of V. S. Anderson we had in mind to liquidate.

Q. Were they the three notes testified to by Mr. Cox?

Objected to as immaterial. Admitted.

A. Yes, sir.

Q. Were those loans made by you for the company?

A. Yes, sir.

Q. That is, loans to pay those notes?

A. That was the intended purpose. I negotiated for the loans.

Q. In the conduct of the business at the time, the negotiations of money to pay those notes of V. S. Anderson by rea-

son of the agreement had between Abraham Anderson and John T. Cox, was there any understanding whatever in respect to the reason for the payment of those notes of V. S. Anderson within three years?

A. We had an agreement with V. S. Anderson—

Objected to.

Mr. Woodhull Was there an agreement either with Voorhees Anderson in regard to the conduct of the business?

The Vice Chancellor: You mean after the purchase?

Mr. Woodhull: Yes; when the subject matter of the payment of the notes came up.

The Vice Chancellor: Ask him whether he had any negotiations as to the payment of Voorhees Anderson's notes after the purchase by the Anderson Food Company?

A. Yes; I had.
Q. With whom?
A. With V. S. Anderson.
Q. What were the negotiations?

Objected to.

The Vice Chancellor: It is obvious that the conversation between Voorhees Anderson and these gentlemen is of no significance, unless it is simply to show that there was a demand for money.

Judge Pancoast: Sudden and unexpected.

The Vice Chancellor: Yes; but what negotiations he had are not binding on the complainant here.

Mr. Woodhull: Not at all; but this is the important point of the whole affair, the demand for this money.

The Vice Chancellor: I do not think the conversation between this witness and Voorhees Anderson is admissible. If there was a demand for payment of the notes, that was in the conduct of the company's business, and it does not matter where it came from. The proof that there was a demand for money may show how the business relating thereto was conducted, but conversations between Mr. Voorhees Anderson and the defendant company's representatives cannot be received.

Judge Pancoast: What we want to show is what appears to some extent. We want to show that the arrangement between Voorhees Anderson and this defendant company was to the effect that they should have time to pay these notes; these notes were allowed to lie as a sort of an investment—

The Vice Chancellor: Conversation between strangers to the record and one of the parties to the suit, the other not being present or authorizing it, are not receivable. What was done because of the demand may be offered in proof. I think you would be authorized to show that an unexpected demand was made.

Judge Pancoast: That is just the point now, we want to show why it was unexpected.

The Vice Chancellor: And you want to show that by showing a conversation between the Anderson Food Company and a stranger to the suit?

Judge Pancoast: Voorhees Anderson.

The Vice Chancellor: He is a stranger to the suit, and I think I am obliged to overrule conversation between Voor-

hees Anderson, who is no party to this suit, and the Anderson Food Company. What the effect of these negotiations were, that is another matter; you may prove that.

Q. What was the effect of these negotiations with Voorhees Anderson, in respect to the payment of the money?

Objected to as immaterial.

A. The sudden demands made by him made us look around to get funds to meet the demand.

Q. Did you yourself for the defendent company raise money to pay these notes?

A. I did.

Q. Will you state when they were paid?

A. We negotiated a loan of $5,000; the loan was dated the 31st day of March, 1902. We paid that loan off April 26; that was a short time; $5,000 was the loan.

Q. Were other moneys borrowed?

A. We paid that loan off and didn't have any other until about June 2, when we borrowed the $5,000 again, making in all the sum of $5,000 up to that time borrowed.

Q. When was the demand made by Voorhees Anderson for this payment of these notes?

Judge Gaskill: That is under my objection.

Admitted.

A. January 14, 1902. (The rest of the answer was ordered stricken out.)

Q. What occurred in the conduct of the business in respect to the payment of those notes when demand was made at the bank?

Judge Gaskill: That is also under my objection.

The Vice Chancellor: I will admit it.

A. We went on, or we handed the notes over, or the statement of the bank over to Mr. Woodhull, with the explanation that we didn't have to pay those notes under the agreement.

Objected to.

The Vice Chancellor: You are stating now a conversation in the absence of the parties.

By the Vice Chancellor:

Q. You handed the notes to Mr. Woodhull, your counsel?
A. Yes, sir; the counsel of the company.
Q. What did you do that for, for settlement?
A. No.
Q. For adjustment?
A. Adjustment; after which suit was brought.
Q. By whom?
A. By Voorhees S. Anderson against the company, and the notes were paid April 16, $10,600 odd—that is, including interest.
Q. State whether or not the money raised in the manner it was attempted to be raised, by the warehouse goods, was necessary in the conduct of the defendant company's business?
A. Absolutely so.
Q. State whether or not you raised these moneys spoken of from the banks?
A. Yes, we did.
Q. By direct loan?
A. By direct loans.
Q. With or without security?
A. With security; the negotiable certificates of those goods at the warehouse, in Philadelphia.
Q. State whether you attempted to make them by direct loans without such security?
A. Yes, I did in several instances in the city of Camden.

Objected to as immaterial.

The Vice Chancellor: I think not. I will admit it.

A. I made overtures to one of the trust companies for $5,000. I saw the president of the company. He told me—

Objected to.

Q. What was the result?

A. The result was that after a delay of about a day, or several hours of that day, they said no; they refused it.

Objected to.

The Vice Chancellor: I will admit the refusal.

A. I went to another bank in this town, and they did likewise, after holding it up for two or three days.

By the Vice Chancellor:

Q. What was it you sought to effect?
A. A loan of $5,000 on account of this sudden demand.
Q. On what did you want to effect it?
A. On the regular note of the company.
Q. Of the Anderson Food Company?
A. Yes, sir.
Q. And that is what was refused?
A. Yes, sir.
Q. You tried twice and failed?
A. Yes, sir; I tried three times and failed.
Q. It was an unsecured note?
A. Yes, sir.

Further direct.

Q. Was there any reason assigned by the banking concern to which you applied for the refusal or non-consideration of such loan?

Objected to as immaterial and irrelevant.

The Vice Chancellor: What is the significance of it? They did refuse him. He could not get the money on the unsecured paper.

By the Vice Chancellor:

Q. What did you do when you could not get them?

A. Then we put our goods into the warehouse—we knew it was the ordinary custom.

Q. What did you get?

A. I want to explain. I know that is the ordinary custom.

Q. What did you do? I didn't ask you what your reasons were. What did you do; you put them in a warehouse?

A. Yes, sir; they were there a month before we negotiated any loan.

Q. What did you get for the goods in the warehouse?

A. Negotiable certificates.

Q. What did you do with them, with relation to effecting a loan?

A. About a month after we negotiated the loan, giving these negotiable certificates, showing a certain amount of goods in this warehouse, and received the loan from the bank of $5,000.

Q. Was that one of the banks which had previously refused to take your unsecured paper?

A. No; we didn't go back to see them.

Q. But when you did effect the loan, you had the paper of the Anderson Food Company backed by the warehouse receipts?

A. Right.

Further direct.

Q. What would have been the result, if you can state, of the failure to effect that loan in the conduct of your business?

Objected to as immaterial and irrelevant. Objection overruled.

A. It would have worked irreparable injury to us, it would have worked great injury to us in the conduct of our business, and there is no telling what might have occurred if we had been unable to make these loans, in view of the facts that we had before us at that time.

Q. In what way or manner would it have been an injury to the firm—its credit?

A. Yes; we could not have met our obligations; it would have effected the credit of the company; it would have been in an embarrassing condition. I don't know what we would have done.

Q. What would have been the effect of the impairment to the credit of the company?

A. Nothing more or less than the average business house which cannot meet their obligations—they go under.

By the Vice Chancellor:

Q. That is, you would have failed?

A. Yes, if you want to put it that way.

By Mr. Pancoast:

Q. Is that the way you put it, if you could not get this money?

A. If we hadn't got this particular money, we might have got it some other place, privately or otherwise, but if we could not get any money in the ordinary course of our business to conduct it, and we certainly could not get it.

Q. Was this method of raising the money the best and most available one that your company had at hand?

Objected to. Admitted.

A. Yes, sir.

Cross-examination.

By Judge Gaskill:

Q. Prior to becoming a member of the Anderson Food Company, organized in the fall of 1901, you had been engaged in the insurance business?

A. Yes, sir.

Q. Had you ever been engaged in the canning business prior to your connection with the Food Company?

A. Yes; I should say I was in a measure.

Q. In what way?

A. I was connected with the Food Company which put up liquid coffee in cans.

Q. That was the company that Mr. John T. Cox had organized?

A. That was the company that Mr. John T. Cox, among others, had organized.

Q. You had run that business about a year before this Food Company was organized?

A. I judge so.

Q. But that company didn't put up tomatoes?

A. No.

Q. Nor fruit nor vegetables?

A. No.

Q. It didn't make any soups or preserves?

A. No.

Q. Nor canned goods?

A. No.

Q. And you had had no experience whatever in the conduct or management of a canning or preserving establishment such as you acquired when the Food Company acquired the property and business of the Preserving Company?

A. That is true.

Q. You were the agent who conducted the negotiations between Mr. Cox and Mr. Anderson?

A. Yes, sir; I was.

Q. I ask you whether or not, at the time the Food Company purchased or became the owner or possessor of the plant and equipment and stock of the Anderson Preserving Company, they took over all of the assets of the old company?

A. Yes, sir.

Q. And among the assets was a cash balance in bank of some $19,000?

A. No, sir. I wish it was; it would have been very acceptable.

Q. How much was it?

A. I think about $2,500 or $3,000.

Q. Will you refer to the books of the Anderson Company and answer what it was, exactly?

A. The bookkeeper can do that particularly—he can do that.

Q. There was some cash, but you don't remember the amount?

A. Yes. (The rest of the answer was ordered stricken out.)

Q. Now, Mr. Henderson, at the time you tried to borrow moneys from the bank, before you had deposited these goods in the warehouse, you made an effort to borrow money on the plain paper of the Food Company, as I understand; is that right?

A. Yes, sir.

Q. No endorsement on the Food Company's paper?

A. Other than the regular endorsement that might have accompanied it.

Q. Had you endorsed it personally when it was offered to the bank?

A. No.

Q. Had Mr. John T. Cox endorsed it personally?

A. No; he would have endorsed—

Q. Had Mr. John T. Cox endorsed it personally?

A. No; there was no paper offered to the bank. I was negotiating the loan from the bank to see whether they

would or not, and then we wanted to see whether they would be satisfied.

Q. Did you ever endorse yourself or Mr. Cox?

A. I offered to endorse, and Mr. Cox—that is, he was willing.

Q. Did you tell the bank that?

A. Yes, sir; one bank, at least; the other I don't think I did.

Q. Are you sure?

A. Yes, sir; positive as to that one bank.

Q. Was that the first or second bank, or third?

A. That was the second bank.

Q. To which you made application?

A. Yes, sir.

Q. Did you tell the second bank that you had already made application to another bank and been refused?

A. No, sir; I did not.

Q. To the third bank did you offer any endorsement on the company's paper?

A. No. I asked them relative to the loan, and it was turned down.

Q. Now, the paper on which you finally got the money was paper that had on it as security the negotiable certificates from the warehouse for the goods deposited there?

A. That is very true.

Q. Did it have any endorsement on it in addition to carrying that collateral?

A. What?

Q. Did the paper on which you borrowed the money finally have any endorsement in addition to the collateral security?

A. It had the Anderson Food Company's endorsement.

Q. The Anderson Food Company made the paper?

A. Yes, sir; endorsed by the president.

Q. Was it endorsed individually?

A. Yes.

Q. By whom?

A. By the president of the company.
Q. And by yourself?
A. No, sir.

By the Vice Chancellor:

Q. Was there any other liability incurred on the paper than the company's liability?
A. The company's individual liability and what the president assumed with endorsing it.
Q. Did he endorse it in his individual capacity?
A. Yes.

Further cross.

Q. I desire now to ask you a few questions on cross-examination, subject to the objections that I have already made in reference to the direct examination. You have said that the demand for money by Voorhees Anderson, to the amount of some $10,000, was sudden and unexpected?
A. I did say so.
Q. You knew that he held demand notes against the company?
A. I did.
Q. In the purchase of the interest which Abraham Anderson, the complainant in this case, had in the Anderson Preserving Company there was a payment to be made to him of some $57,000, or thereabouts, was there not?
A. Somewhere about there; yes.
Q. The payment of that was arranged by giving him notes?
A. Yes, sir.
Q. And in the first written agreement, or the first agreement that you negotiated, that payment was to be made within two years, was it not?
A. The first agreement?
Q. Yes.

A. I think it was, yes; and in the second agreement, also.

Q. And in the second agreement?

A. No; the first agreement only.

Q. In the final agreement that time was extended to three years?

A. That time was made three years.

Q. Now, was not the reason for making that three years in order that the new company might be in position to meet the demand notes of Mr. Voorhees Anderson?

A. No; absolutely no; it was not.

Q. And was not that agreement extending the time made with Mr. Abraham Anderson and Mr. Voorhees Anderson?

A. No, sir; it was not.

By the Vice Chancellor:

Q. As to the persons?

A. No; the agreement was only made between Mr. Abraham Anderson only.

Further cross.

Q. Was not the reason for the change in the last agreement made with Mr. Abraham Anderson, stated in the presence of Mr. Voorhees Anderson, to be, that you wanted the additional year in order that you might meet the demand notes of Mr. Voorhees Anderson?

A. It was not, and I can explain why it was not.

The Vice Chancellor: No, you are not asked that.

Q. That is all.

Re-direct.

Q. You can explain now.

Judge Gaskill: Objected to. I do not see how it can be competent evidence in any aspect of any case for a man to give a reason why he didn't do a certain thing.

The Vice Chancellor: On cross-examination you asked several statements, whether the reason was not, &c. I think the whole of it is impertinent to any issue here presented, and that the examination having been permitted, will have to stand as it is. I am hesitant whether I should allow any examination under it.

Judge Gaskill: I am perfectly willing to have the whole of it stricken out.

The Vice Chancellor: No; you have brought it in. I have ruled on the negotiations preceding the purchase by the Anderson Food Company, and you opened those negotiations, and there seemed to be no objection taken, and I was not called upon to make any ruling. I do not see that it has any materiality, and as you now object to the examination-in-chief on this ground, that it is immaterial, I think the objection should be sustained. The effect of it is, however, that your examination of this witness will have to stand without any opportunity of contradicting it.

Judge Gaskill: If your Honor takes that position in regard to it, I will withdraw my objection.

The Vice Chancellor: It is impossible for me to do otherwise.

Judge Gaskill: It was not with respect to the subject matter; but my objection here is upon what did not take place—some undisclosed reason. If he gave any reason, that is another matter.

The Vice Chancellor: Your examination was whether or not the reason why the payment was extended from two to three years was not something which you stated. Now you object to counsel for defendant examining as to what was the reason.

Mr. Gaskill: Didn't I state, "in the presence of Mr. Abraham Anderson?" I withdraw my objection.

The Vice Chancellor: I do not see the materiality of opening up the reasons which affected the preceding action of the party.

A. In our agreement, dated August 14, I think is the date, in those agreements we were to pay off Mr. Abraham Anderson the so-called sum of, say $58,000, in two payments, one-half at the end of this year, or during this year, and one-half the next year; and upon a previous statement made by him, in the presence of Mr. Cox, he stated all the liabilities of the company were $58,000, with the exception of about $1,500 sundry debts, and the books would show; and in accordance therewith we made that agreement. The agreements were to be completed in the early part of September, the fifth or sixth, somewhere along there, and after Mr. Blackwood, the bookkeeper of the Anderson Preserving Company at that time, handed us a statement, we found the liabilities of the company nearly $80,000, instead of what he stated.

By the Vice Chancellor:

Q. The amount Abraham Anderson stated?

A. Yes, sir; and accordingly we said we would not complete this negotiation under this agreement for that reason. And the next agreement, which Judge Gaskill referred to, we made after further negotiation, in which he agreed to allow us to pay that obligation (some $58,000, admitting that the total sum of the indebtedness was, as I first stated, $80,000) in three years, instead of two, and that was the reason only.

Further re-direct.

Q. Was this indebtedness to Mr. Voorhees Anderson, the indebtedness of the Preserving Company, assumed and un-

dertaken to be paid by the Food Company?

A. Yes, sir.

Q. Did that indebtedness to Mr. Voorhees Anderson constitute a part of the indebtedness of the Preserving Company over the $58,000?

A. It was.

Q. And made part of that, which increased it to $80,000?

A. Yes, sir.

By Judge Pancoast:

Q. Can you state whether or not, at the time of the filing of this bill of complaint, last spring, this defendant company was in as good financial condition as it was at the time of the making of this agreement?

Objected to as irrelevant.

The Vice Chancellor: What significance has the statement?

Judge Pancoast: The whole point of this bill is that we are impairing this security.

The Vice Chancellor: Not quite.

Judge Pancoast: Perhaps not the whole point, but what is really the underlying point.

The Vice Chancellor: I have looked over the bill. I do not see in the bill any charges of bad faith in the exercise of right of removal, &c.; nor is it alleged that the operation and effect of the removal is imperilling the security.

Judge Pancoast: No, there is nothing of that kind.

The Vice Chancellor: The complainant's allegations stand upon the construction of the instrument, and it seems to me

the case must turn upon the construction of the instrument as to the right and authority of the mortgagor company under the privilege reserved to it, to dispose of the mortgaged property in the course of its ordinary conduct of its business. Now that right does not seem to me was either extended or narrowed by the general financial condition of the company at the time when the right was sought to be exercised. If the company was in first-class financial standing, it did not extend its right to dispose of its goods, and if it was in very bad financial standing, it did not limit its right. It might explain why it exercised the right; and why, at the time the company acted, it was in its usual and ordinary conduct of its business; because it is readily to be seen that the ordinary conduct of the company's business when it needs money would be different than what would be the ordinary conduct of business when it did not. Either would be the ordinary conduct; but whether its general financial condition was one way or the other, it does not seem to me affects the question.

Judge Pancoast: Only this, that as the company's security is not impaired or affected, he is not entitled to relief here. If the proof shows that the injunction would not do him any good, that his security is being constantly increased by this method of business, it seems to me that he is out of Court.

The Vice Chancellor: I am not called upon to try that question. The harm which is sought to be restrained is a harm and injury to what the complainant asserts is his right. He claims he has a right; if he has that right he may come into this Court to have it protected. The test is not whether the denial and overthrow of his right (conceding that he had it) would be a financial injury to him. If he has a right to have the chattel goods remain unpledged under the terms of his contract, it is no answer to his assertion of that right, that its denial will not ultimately be financially injurious to him. That is not the question. I do not think the line of testi-

mony which goes to show that the ultimate financial result cannot be injurious to the complainant, is one which I can inquire into here. I overrule the offer.

Q. That is all.

Mr. Woodhull: That closes the case on the answer to the original bill.

The Vice Chancellor: What are we to do with the cross bill; are we to try that at this time?

Mr. Beldon: The desire is to try it in connection with this case, but at the time we fixed this date we said Mr. Cox would be unavoidably absent at an important meeting in the West, and I thought while it might be continued, either the complainant would go on with the rebuttal, or that the case might stand over until some other time.

The Vice Chancellor: The proper order is rebuttal of the defendant's case. The questions raised in the cross bill have not been touched upon by anybody, as I understand.

Judge Gaskill: I did not expect that course would be pursued. I suppose their cross bill, being part of their answer, that they had the labor oar, and anything that we might have to offer would come in at the close of their case.

The Vice Chancellor: The cross bill is quite differentiated from the main case; but the relief sought by the cross bill, if granted, will affect the main suit.

If the defendant in the main case should succeed in having the mortgage reformed, that would deprive the complainant in the main suit of any right to enforce the clause in the chattel mortgage relating to the stock of manufactured goods. I think, therefore, before final hearing, that ques-

tion ought to be heard. It is a mere question of the order of proofs in the case. If counsel have witnesses here on any phase of the case, I much prefer not to lay the cause over.

Judge Gaskill: I do not want to lay the case over. To my knowledge the defendant have witnesses to be called on the cross bill. I am not at all sure that I want to offer anything in rebuttal to what you gentlemen have offered. The only question for me to consider would be the question of unexpected demand.

The Vice Chancellor: Why should we not finish the testimony in the main case?

Judge Gaskill: Suppose I do not offer any testimony in rebuttal; can we go on?

Mr. Beldon: We can to the point of our ability.

The Vice Chancellor: Suppose, Judge Gaskill, you call any witnesses you may have on the main case.

Judge Gaskill: The difficulty is, if I have any testimony, it would be the testimony as to the unexpected demand of V. S. Anderson as to that demand, and he is not here.

The Vice Chancellor: Did not he testify that the demand was not unexpected?

(After some further discussion it was decided to postpone the case.)

Mr. Woodhull: I am about to offer the books of the Anderson Preserving Company covering the period testified to by Mr. Cox, and also Mr. Elliott, this morning, relative to the shipment and deposit of goods to warehouses of the company outside of the State of New Jersey.

Judge Gaskill: I am willing, to avoid inconvenience, that a memorandum from the pages of the books of the Anderson Preserving Company, which have been heretofore offered, touching the deposit of goods in warehouses outside of the State, may be taken instead of the books.

Adjourned until Nov. 12, 1902, at 10 A. M.

In Chancery of New Jersey.

ABRAHAM ANDERSON,
Complainant,
AND
ANDERSON FOOD COMPANY,
Defendant.

ON BILL, &c.

CAMDEN, November 12th, 1902.

The hearing in this cause was continued pursuant to adjournment. Appearances as heretofore noted.

DAVID A. HENDERSON, re-called on the part of the defendant.

Direct examination.

By Mr. Woodhull:

Q. In your examination-in-chief to the question, "Were other moneys borrowed?" you responded, "On June second we borrowed $5,000 again, making in all the sum of $5,000 up to that time borrowed."

A. Yes, up to that time; and then August 25 we borrowed $5,000 more, and we have a total of $10,000 there at the present time borrowed.

Q. That is all.

[Counsel for defendant produces memoranda, which, to save the offer of the books, are assented to by counsel for complainant, who waives the production of the books.]

ABRAM ANDERSON, re-called in rebuttal.

Direct examination.

By Judge Gaskill:

Q. Mr. Henderson, when on the witness-stand, testified, on page 152, that you made a statement, in the presence of Mr. Cox, in which you stated that the liabilities of the company were $58,000, with the exception of $1,500 sundry debts, and that subsequent it was ascertained that there was $80,000. Did you make any such statement as that either to Mr. Henderson or Mr. Cox, or in the presence of Mr. Cox, to Mr. Henderson?

A. I didn't make such a statement as to the total liabilities. I made a statement, that I held the company's note for $57,000 to $58,000; I made that statement.

Q. What you said, then, was with reference to the company's obligations to you, and not with respect to the total obligations of the company?

A. Yes, sir.

Q. Do you know of your own knowledge how either Mr. Cox or Mr. Henderson obtained the obligations of the Anderson Preserving Company?

A. When the negotiations first commenced, or were talked of, I told Mr. Cox that he had the privilege of full access to the books of that office, and to take an account of stock

in the factory and the amount of liabilities and assets at any time.

Q. When was it you gave him that privilege?

A. When they first talked of buying the place.

Q. Was that before or after the first written agreement between you?

A. I think it was before any written agreement at all.

Q. It has been testified to in this case that the necessity for taking the goods in question to Philadelphia and borrowing money upon the warehouse receipts obtained thereby was occasioned by a sudden and unexpected demand for the payment of certain moneys due Voorhees Anderson; was there anything done on your part in this agreement to obviate any sudden and unexpected demand for these very moneys?

A. I think not. They wanted to pay Mr. Goldy and Mr. V. S. Anderson their demand notes, and it was expected that they were to pay them on demand, and for that reason I extended my note for three years, instead of two.

Q. When you stated at the first part of your answer, "think not," what do you refer to, that there was no unexpected demand?

A. No; according to the understanding we had.

Q. That there was or was not an unexpected demand?

A. There was not.

Q. Was anything said by Mr. Cox or Mr. Henderson at that time, or subsequently, with reference to provision on their part of an ample capital to meet all these demands?

A. They said they had sufficient capital already obtained, or promised, to run that business without any trouble whatever—that is, as to the financial matters, they had all that arranged.

Q. One other matter, not strictly rebuttal, but it is a matter that is within my knowledge: In addition to the soups that had been put in the quart cans, and the quart cans packed in cases that has been testified to, were there any soups packed by you before the sale to the new company in any other packages?

A. Except in the one-pound tin cans?

Q. Yes.

A. Yes.

Q. What was it?

A. Gallon cans—there was a quantity of gallon cans amounting to about 10,000 cases.

Q. That is, in addition to the quantity that was in the quart cans?

A. In the one-pound cans.

Q. Was there any in three-pound cans?

A. No, I think not.

Cross-examination.

By Mr. Woodhull:

Q. Do you remember Mr. Cox coming to the Anderson Preserving Company when your son, Voorhees, was at the office, you and your son, and talking over the amount of the liabilities of the concern, sometime in July, 1901?

A. He came there a number of times.

Q. Do you remember a time when your son was there, he came and talked with you about the matter?

A. I have no recollection of any particular time; he was there a number of times, and there were a number of conversations; I can't tell just what they were at all.

Q. Do you remember at any time his coming there when a memoranda was made of these liabilities?

A. I believe Mr. Blackwood made a memoranda for Mr. Cox—I think Mr. Cox and Mr. Blackwood were together, our head bookkeeper, and I remember there was a memorandum made of the assets and liabilities.

Q. When was that?

A. I can't tell you.

Q. Do you remember one time before the memorandum was made by Mr. Blackwood, in your presence?

A. They were there a number of times—Mr. Cox was there a number of times. I can't tell you what was done, but

I know that he was there a number of times, and Mr. Blackwood and he were together, looking over the books.

Q. Mr. Cox was there, also, when you were there, and Mr. Blackwood was not, and discussed this matter down at your office, was he not?

A. Yes, sir.

Q. You stated in your direct examination a moment ago that you made no statement as to the total liabilities?

A. No, sir.

Q. Is that correct?

A. Yes, sir.

Q. Do you remember whether there was a statement made as to total liabilities sometime in July, 1901, in your presence?

A. No; I do not.

Q. Look at that paper, please?

A. I remember nothing of this at all.

Q. Do you know whose signature that is?

A. I think that is Mr. Cox's; it looks like it.

Q. Have you no recollection of Mr. Cox making that memorandum in your presence?

A. No, sir.

Q. And in the presence of your son, at the office?

A. No, sir; I do not.

Q. That shows the liability of your own, or does it show total liability?

A. It shows a liability—that is $57,000 there, notes payable. There are current bills there. My statement, just as I say, there was $57,000 or $58,000 indebtedness—that is, that I held the Anderson Preserving Company's notes for that amount. That is all that I said in regard to the liabilities of that concern. The Anderson Preserving Company owes me $57,000 or $58,000.

Q. Have you any recollection in respect to this?

A. No, sir; I have not.

[Paper just examined about was marked Exhibit D7 for identification.]

Q. A moment ago, in response to a question I put, you spoke of a statement having been made by the bookkeeper; is that statement in your hands now?

A. It looks like the bookkeeper's writing; I don't know whether it is or not. I suppose it is.

Q. Do you know his handwriting?

A. Yes, sir; I suppose it is.

Q. What is that you hold in your hand?

A. It looks like a statement.

Q. Of what?

A. It looks like a statement of the Anderson Preserving Company; I suppose so.

Judge Gaskill: I object to this; this is not cross-examination. He is now handing him a paper that was evidently made by the bookkeeper.

(Previous question and answer read.)

A. I will recall that.

The Vice Chancellor: Let him examine the paper again.

A. (Witness examined the paper.) I recognize the paper there in lead pencil; but I don't know whether that is his statement or not.

Q. Did you ever see that particular paper before?

A. No, sir; I never did to my knowledge.

Q. You said Mr. Blackwood made a statement?

A. Mr. Blackwood and Mr. Cox, together, went over the books; I was not present all the time. He was there a number of times, and they went over the books together and made up a statement of their liabilities and assets that I know nothing about.

Q. You said a moment ago that you said to Mr. Cox that he could have free access?

A. Yes, sir.

Q. Didn't you also state to the bookkeeper that he could make such a statement for Mr. Cox?

A. I told Blackwood to go over the books with Mr. Cox and give him whatever he asked for.

Q. Was Mr. Blackwood the bookkeeper?

A. Yes, sir; our bookkeeper.

Q. Was it not because of the amount appearing of eighty odd thousand dollars of liabilities of the Anderson Preserving Company, as stated by Mr. Henderson, that the agreement was changed from two to three years, spoken of in the testimony heretofore?

A. No, sir.

[Paper referred to marked Exhibit D8 for identification.]

Q. The Mr. Cox to whom you refer is your son-in-law?

A. Yes, sir.

Q. What are the relations between you, pleasant or otherwise?

Objected to as immaterial.

The Vice Chancellor: If there is any condition of ill-feeling between the witness on the stand and one of the parties interested in the suit, it is not admissible to affect the interest of the witness testifying.

Objection withdrawn.

A. Do you want me to explain?

By the Vice Chancellor: The question is as to a condition —are the relations pleasant or otherwise?

A. They are not very pleasant, for the reasons that the actions—

Objected to.

Judge Gaskill: I think that is part of the answer.

The Vice Chancellor: Nobody asked for that.

Further cross.

Q. State whether there has been any change in those relations between yourself and Mr. Cox at the time of the inception of this suit and now?

A. Of course, naturally, there would be some change, for the reason that they tried to run our goods off to Philadelphia and borrow money on them—and then there are some other matters.

Mr. Beldon: One second.

The Vice Chancellor: You cannot enter into the other matters unless some question is put.

Q. Were the relations you have spoken of between you pleasant or otherwise, at the commencement of this suit?

A. They were not so very bad at all; there was some dissension.

Re-direct.

Q. You would not be in Court if there was not some difference between you, would you?

A. No, sir; would not want to.

Q. And don't want to be here?

A. No, sir.

Q. About Mr. Blackwood, did you endeavor to secure his attendance here this morning?

A. I did.

Q. What is the reason of his absence?

A. His health is in such a condition that he was not able to be here. I wanted to get him here to-day; I went there yesterday.

ROBERT ANDERSON, having been previously sworn, being re-called in rebuttal, testified further as follows:

Direct examination.

By Judge Gaskill:

Q. What position do you hold in connection with the Anderson Preserving Company?

A. Secretary.

Q. As secretary of that company did you receive any instructions from your father, the president, with respect to giving access to the books to Mr. John Cox, your brother-in-law?

A. Yes; he told me he was about to purchase the place, and that he came in to allow him privileges.

Q. Did Mr. Cox come there?

A. Yes, sir.

Q. When was it that you remember his being there?

A. As near as I can get at it, it was somewhere around the 8th or 12th of August.

Q. Had you been at the office prior to that for some time.

A. Not prior to that; I have been sick.

Q. How long had you been away?

A. I had been away from May.

Q. On what account?

A. Rheumatism.

Q. Sickness that disabled you from business?

A. Yes, sir.

Q. What took place when Mr. Cox came there upon your return?

A. He came there and asked permission to look at the books—first he asked for father; I told him he was not there, Then he asked permission to look at the books, and I referred him to Mr. Blackwood; he and Mr. Blackwood went into the private office, sat at the desk I occupy, and one that my

brother, V. S. Anderson, occupies, and the two of them went over the books together.

Cross-examination.

By Judge Pancoast:

Q. Are your relations with your brother-in-law, Mr. Cox, agreeable or otherwise?

A. They have been and they have not been at times.

By the Vice Chancellor:

Q. The question is, at this time?

A. At the present time I have nothing personally against the man.

Q. The question is, whether your relations are pleasant or unpleasant?

A. I can't say they are pleasant.

Further cross.

Q. How long have they been unpleasant?

A. About 10 years, I guess.

Q. What was the date of the permission to look at the books spoken of?

A. As near as I can judge it was around the 8th or 12th of August, 1901; I came down about that time.

Q. Do you know anything about their coming there to make an examination on or about July 15, 1901, last?

A. No, sir; I do not.

Q. Nothing whatever?

A. No, no; I was not there July 15th.

Q. Nor about that time?

A. No, sir; I was at home.

Q. Do you know anything about the Blackwood statement of September 3rd, 1901?

A. No, sir; I do not.

Q. That is all.

DAVID L. CLIVER, sworn for complainant in rebuttal.

Direct examination.

By Judge Gaskill:

Q. Were you formerly in the employ of the Anderson Preserving Company?

A. Yes, sir.

Q. In what capacity?

A. Bookkeeper.

Q. Were you their bookkeeper in the year 1901?

A. Yes, sir.

Q. Do you remember John T. Cox coming there and examining the books at that time?

A. Yes, sir.

Q. Who was the head bookkeeper?

A. Mr. Blackwood.

Q. How many bookkeepers were there employed there during that year?

A. Only two—Mr. Blackwood and myself.

Q. How many times was Mr. Cox there, to your knowledge?

A. I could not state exactly the number of times; he was there several times.

Q. When did his visits first commence?

A. I think somewhere about the middle of July was the first time he was there; sometime I should think about the 15th; I am not exact as to the date.

Q. Did he have access to the books at that time?

A. Yes, sir.

Q. Who, if anyone, assisted him in the examination of the books?

A. I am not positive whether Mr. Blackwood assisted him at that time or not; I think Mr. Voorhees Anderson was in the office with him.

Q. How long was he there at that time?

A. I should judge a couple of hours, such a matter.

Q. Did he come again?

A. Yes, sir.

Q. How many times afterward, as near as you can tell?

A. He dropped in several times afterwards.

Q. Who assisted him, if any one, at these other times?

A. Mr. Blackwood assisted him at some of the times—was with him in the office.

Q. Of your knowledge was there any effort made at any time to prevent him having full access to the books?

A. No, sir.

Judge Gaskill: Gentlemen, you were served with a notice to present the trial balances here; will you please let me have the book?

Mr. Woodhull: For what year?

Judge Gaskill: 1901.

Mr. Woodhull: The notice was for 1902, and we did not think that you were entitled to those trial balances; still, we have them here.

Judge Gaskill: It is in evidence and I call upon you to produce it.

(Counsel for defendant produced it.)

Q. I hand you a book styled "Trial balances A. P. Co.," and ask you to look at the page on which the balances of June 30, 1901, appear. That trial balance covers how many pages?

A. Seven pages.

Q. With some pasted pieces at the end of it?

A. Yes, sir.

Q. Was that one of the regular books of the Anderson Preserving Company?

A. Yes, sir.

Q. Was that trial balance of June 30 written up in that book at the time Mr. Cox came in there, July 15 or thereabouts?

A. Yes, sir.

Q. Does that trial balance show the indebtedness of the company at that time?

A. Yes, sir.

Q. Please state what the indebtedness is as shown by that trial balance?

A. You want the bills payable?

Q. Yes.

A. Bills payable, $72,597.09.

Q. I hand you, as a matter of convenience, so as not to bring you away from your work again, Exhibit D8, which purports to be a statement made by the bookkeeper of the Anderson Preserving Company, and which was heretofore, this morning, shown to Abram Anderson, said statement bearing date September 3rd, 1901, and I ask you to look at the item of bills payable in that statement, under the head of liabilities, and tell me how it corresponds with that which you have just read?

A. It is exactly.

Q. Exactly the same?

A. Yes, sir.

Q. Please turn to the trial balance of July 31, 1901, as contained in that book?

A. I have it.

Q. Was that trial balance written up in that book on the 12th day of August, 1901?

A. Yes, sir.

Q. What does that show the liabilities or bills payable to be?

A. $72,597.09.

Q. The same amount?

A. Yes, sir.

Judge Gaskill: I offer those two trial balances in evidence.

The Vice Chancellor: The book is in evidence, as I understand.

Cross-examination.

By Mr. Beldon:

Q. Where were the books of the Anderson Preserving Company kept in that factory?

A. In the office, in the safe.

Q. You stated that the first visit of Mr. Cox in the summer of 1901, which you remember, was in July of that year?

A. Yes, sir.

Q. About the 10th, I think you said?

A. About the 15th, as near as I can remember it.

Q. And at that time you said Mr. Cox was closeted with Voorhees Anderson in the office?

A. I am under the impression that Mr. Voorhees Anderson was in the private office with him.

Q. Was that where the book was?

A. They had books in there; they had this book, if I remember correctly, the trial balance, in there at that time.

Q. Was Mr. Abram Anderson there at that time that you recall?

A. I don't think he was in the office at that time.

Q. Do you remember whether he was on the premises?

A. I do not.

Q. You don't recall seeing Mr. Cox or Mr. Abram Anderson in conversation; Mr. Voorhees Anderson being also present on that occasion?

A. I do not.

Q. Do you remember the occasion of the next visit of Mr. Cox succeeding July 15 in that year?

A. I don't remember the next visit particularly as to date I am under the impression that it was in the early part of August—probably between the 6th or 10th or 12th.

Q. Can you recall the next succeeding visit?

A. After the one in August?

Q. Yes.

A. No, I can't; Mr. Cox was there several times.

Q. Do you remember Mr. Henderson being there with him?

A. Yes, sir; I remember Mr. Henderson.

Q. Do you remember upon which of those visits to which you have referred Mr. Henderson was present?

A. I don't think he was with Mr. Cox at either of them.

Q. At either of those in July or August?

A. Yes; I don't think he was with him at either of those.

Q. Was the Anderson Preserving Company regularly conducting its business during the summer of 1901?

A. Yes, sir.

Q. And during that time there was no change made whatever in their comparative assets and liabilities?

A. No, sir.

Q. They paid no bills?

A. They paid bills, but no bills payable; there was no change in July.

Q. No change after June 30th?

A. No change after June 30; they paid off notes in June, I think, but that was previous to June 30.

Q. When you say bills payable, do you mean notes or accounts payable?

A. I mean notes.

Q. Did they have any other indebtedness than notes?

A. They had current bills.

Q. And they had current bills also at the time of the trial balance, in July?

A. Yes, sir.

Q. And the same in August?

A. Yes, sir.

Q. And those current bills are not included in the amount which you have given, $72,597.09?

A. No.

Q. No portion of them?

A. No portion of them; no.

By the Vice Chancellor:

Q. What time, in the mode of your keeping books that you pursued there, did the current bills get in a position to appear in the trial balance of bills payable?

A. They never appeared in the bills payable.

Q. What constitutes bills payable?

A. Notes constituted bills payable.

Q. When you say bills, you mean book accounts, book account debts not acknowledged in the form of a bill or note?

A. That is right; they were paid as they matured or were discounted, from seven to ten days.

Q. That is, the current bills were?

A. Yes, sir.

Further cross.

Q. Did you hear any of the conversation between Mr. Voorhees Anderson and Mr. Cox upon the occasion of Mr. Cox's visit, in July?

A. No, sir.

Q. Is the same true with regard to the visit in August?

A. Yes, sir.

Q. Where were you with relation to them?

A. I was in the office at my desk—that is, in the outer office; they were in the private office.

Q. Referring to the trial balance of June 30, 1901, I ask you whether it shows the amount of cash on hand at that time?

Objected to as not cross-examination.

Mr. Beldon: I understood you offered the trial balance.

The Vice Chancellor: I understood the examination covered the trial balances all the way from June, through July, and I am not sure whether the August one is in.

Judge Gaskill: No; June and July.

The Vice Chancellor: This examination is with reference to the June trial balance. I think it is proper cross-examination.

A. It shows cash, yes, sir; but it is not marked cash; it is on the slip pasted in, the total slip.

Q. Be good enough to give me the amount of that as shown on the trial balance of June 30?

A. $27,740.22.

Q. Will you give me the same item in the trial balance of July 31?

A. $24,970.86, marked cash on this last trial balance.

Q. Are the cash balances shown in any succeeding statement?

Objected to. There was no examination as to any succeeding statement.

Mr. Beldon: The first general question that was asked by Judge Gaskill was what that book is.

The Vice Chancellor: I understand this witness was called with relation to the book, as one of the books which he is familiar with. I think it is pertinent.

A. Yes, sir.

Q. The statements or trial balances of what succeeding dates show cash items?

A. August 31.
Q. What is the cash balance as shown by that?
A. $16,069.74.
Q. What is the date of the next trial balance?
A. After August 31?
Q. Yes.

Judge Gaskill: I object now, because they are coming to a trial balance that is subsequent to the sale by the Preserving Company to the Food Company.

The Vice Chancellor: I will see later. The question is as to the time.

A. The next trial balance is dated October 1st, 1901; there is an error in the date—dated with a stamp.

Q. You say it is an error; what should the date be?
A. The date should be September 30. It is dated October 1st by a stamp.

Re-direct.

Q. You have testified to a decrease in the amount of the cash balances from June 30 to July 31st, and August 31; please look at the items showing manufactured products on hand and tell me whether you find a corresponding increase in those items?
A. From July 31?
Q. Yes; give it to us July 31.
A. It is not here as manufactured product; it would come in the item of merchandise, I presume.
Q. Well, how is that?
A. July 31 the item of merchandise is $68,229.33.
Q. Turn back to June 30 and give us that, if you please?
A. I have it, June 30.
Q. What is it?
A. $52,870.88.

Q. Now, give it on August 31?

A. August 31, $90,288.75.

Q. You said in answer to a question on cross-examination, that the current bills did not appear there among the items that go to make up these liabilities or bills payable of $72,000 and odd. What is there in that that makes up that seventy-two and odd thousand dollars?

A. Notes.

Q. Do the books show what those notes were?

A. The ledger does not show it; bills payable does. There is another book called bills payable and bills receivable; that shows the individual amount of each one put in here as a total.

Q. Without attempting to give the figures of each, can you state from your knowledge of the books what bills or notes it was that aggregated this seventy-two thousand odd dollars?

A. Mr. Abram Anderson, Mr. Voorhees S. Anderson and Mr. Goldy.

Q. Mr. Goldy is a brother-in-law of Abram Anderson, is he not?

A. Yes, sir.

Q. Why was it that the current bills did not appear in there as bills payable; what was the practice of the Preserving Company with reference to its current bills?

A. They were paid in time to take advantage of the discount.

Q. The Preserving Company always discounted its own bills?

A. Yes, sir.

Q. And were there any outstanding bills then, at the time these trial balances were made up?

A. I presume there were a few; they would, however, appear in the individual account of the parties that we dealt with.

Re-cross.

Q. What does the account, or the title, merchandise, for which you have given the figures in the various trial balances represent?

A. Represented goods bought and used in the manufacturing of their products.

Q. Is that all that it represented?

A. I think so.

Q. How was it arrived at for the purpose of being put upon the trial balance?

A. Any person that we dealt with, we paid their bills in seven or ten days; that bill was marked on the cash book as merchandise—the names of the parties appearing on the cash book—but the sum total was charged to the merchandise instead of carrying it on their individual account in the ledger.

Q. Did that merchandise account include the goods that were in warehouses?

A. No, sir.

Q. And never did?

A. I think not.

Q. In those statements?

A. No; I think not.

Q. Was it ever made from an actual inventory?

A. Merchandise?

Q. The merchandise memorandum or account, as included in the trial balance, was that ever made from an actual inventory of the stock?

A. No, sir.

Q. Suppose that an actual inventory of the stock and the account that you carried as merchandise differed, which would be correct as an asset?

A. I should imagine the inventory of the stock would be the correct asset.

Q. So that the merchandise account might or might not include fictitious values; is that correct?

A. It might not, the merchandise account for which money is paid out.

Q. It might and might not include fictitious values?

A. It could not.

Q. Suppose that the inventory of merchandise—that is, the actual inventory of merchandise, showed a less amount than your merchandise account as you carried it showed, would not that mean that the merchandise account as you carried it was inflated to the extent of the difference?

A. I think not.

Judge Gaskill: I don't think this is proper cross-examination.

The Vice Chancellor: It is proper so far as it seeks to draw from this witness testimony as to the mode in which this company's business was conducted. What argument is to be based upon it I cannot anticipate. I think it is admissible.

Q. Then in your opinion, from your knowledge of the books, the actual inventory of the stock and the amount of the merchandise item as recorded there, could not possibly differ?

A. No; my opinion is that they could not agree; the merchandise account was arrived at from the cost of material; the inventory was arrived at from the manufactured product, which would be more valuable still.

Q. And would be from an actual inspection of the goods?

A. Yes, sir.

Q. Then if the amount of the inventory when taken exceeded the amount of the merchandise as you carry it, that would simply show that the merchandise account as carried did not correctly express the amount of the manufactured goods on hand, would it not?

A. Well, no; the merchandise account never did express the actual amount of goods on hand.

Q. The actual value?

A. No, sir. I could make further explanation if you will let me.

Q. I don't care for it just now. I am pursuing my own thoughts. If perchance, then, the actual inventory of the stock as taken showed a less amount than the amount that you were carrying as merchandise, it would show then that the merchandise account in the book was inflated, would it not?

A. Not the way we keep our books; no, sir.

Q. Yet, if the inventory showed a greater amount than the merchandise account, it would show that you had a greater value in goods than was there shown?

A. It would show a difference between raw material and manufactured.

By the Vice Chancellor:

Q. I do not think you understand the counsel's question: The inventory of goods on hand was changing all the time—you had less goods and more goods?

A. Certainly.

Q. Now, the value of the goods, as per the inventory as an asset, was therefore constantly changing, also; you had more or less goods, and if a change was made by selling, then the inventory would show less value and there would be some corresponding credit somewhere for that change?

A. The inventory of goods on hand never appears on the trial balance.

Q. Then it was impossible at any time that the merchandise account—unless made instantly and on the same day—the merchandise account and the inventory never did correspond?

A. Never did.

Mr. Beldon: My queries were with the suggestion that they were made at the same time.

The Vice Chancellor: Or, made in one week.

A. I don't see how they could.

Further cross.

Q. I want to know whether, if an inventory of the stock was taken on the same day that the trial balance was made, whether they would necessarily agree?

A. As I stated to the Vice Chancellor, the inventory does not appear in the trial balance; the trial balance is taken from the books—goods bought and sold; the inventory is taken from goods on hand yet to be sold.

Q. Therefore, the inventory, if taken on the same day the trial balance was made, might show either more or less goods than the merchandise account shows; is that correct?

A. It would show more, I presume; because they are manufactured goods and would be taken in at their value.

By the Vice Chancellor:

Q. You never retain your goods on hand for the purpose of making a trial balance on them, do you?

A. No.

Q. If somebody came along and wanted to buy five hundred cases you would not say: wait until we made our trial balance?

A. Not at all.

Further cross.

Q. Now, I show you this statement, dated September 3, 1901, and marked D8, to which your attention has already been called, and I ask you the amount of merchandise as shown on that as an asset?

A. $70,143.

Q. In whose handwriting is that?

A. In Mr. Blackwood's handwriting.

Q. Is there any additional notation than the word merchandise?

A. That is per inventory.

Re-direct.

Q. Will your merchandise account decrease by reason of sales?

A. No, sir.

Q. How is the merchandise account kept?

A. The merchandise account was kept by the goods bought, included in merchandise.

Q. Suppose you sold some of those goods?

A. Then they were kept in the sold goods department; we had four items—jams, catsups, soups—that is, three items passed from the sold goods each month; that was kept strictly correct and shows in the trial balance.

Q. Assuming that you had on hand $68,000 of merchandise July 31, and no merchandise was bought during August, and there were sales made, how would that account of merchandise show on August 31—do you understand?

A. No; I don't think I do.

Q. I am taking the month of August, and assuming that at the beginning of August there were $68,000 of merchandise, and no merchandise bought during the month of August, and merchandise was sold during that month, how would merchandise appear on your trial balance at the end of that month?

A. It would appear just that much less, amount of goods sold.

Q. In other words, you take the merchandise at one trial balance and add what is bought and deduct what has been sold, and the result is the merchandise shown?

A. Yes, sir; the difference between the two.

Q. And that is shown on the next trial balance?

A. Yes, sir.

Q. You undertook to explain the difference between the value of the merchandise account and the inventory when you were interrupted by counsel, saying that he wished to pursue his own line of thought; please make that explanation now—why there should be any difference.

A. We keep three separate items of goods sold; in other words, when we sell any jams, soups or catsup they are kept in a separate column, and the footing appears in the trial balance of those sold for each month. That would make a difference between merchandise account and the inventory account and the manufactured goods account of the merchandise.

Q. I don't think you understand me. Taking the merchandise account of August 31, and assuming that the inventory was made on that same day, August 31, would that show as much or more?

A. The inventory?

Q. Yes.

A. I don't see as it would agree, because the inventory would be of goods manufactured, still on hand, and the merchandise would be the difference between the goods bought and the goods sold.

Judge Pancoast: I do not see the materiality of all this stuff.

The Vice Chancellor: It is very remote; but I shall not stop counsel.

Q. In other words, is there something in the merchandise account that don't appear in what you term the inventory?

A. No; it is the other way—there is something in the inventory that don't appear in the merchandise.

Q. What is that?

A. The difference between manufactured goods and raw material.

Q. The cost of production?
A. The cost of production.

The Vice Chancellor: I may say to counsel, in order to avoid further details, that if the object of this examination is to present to the Court any question touching the advisability or beneficial effect or good faith of this bargain, I do not propose to listen to argument on that question. There is nothing here which challenges that. The cross bill raises the question as to whether or not the mortgage was, by the agreement of the parties, to include the manufactured stock; but so far as the bargain of purchase is concerned, if this examination is for the purpose of challenging the good faith of that, there is nothing in the case that requires me to look at that.

Judge Gaskill: I have no more questions to ask on that.

VOORHEES S. ANDERSON, previously sworn, recalled in rebuttal.

Direct examination.

By Judge Gaskill:

Q. During the months of July and August of 1901, were you at the place of business of the Anderson Preserving Company?
A. Yes, sir.
Q. Did you see John T. Cox there?
A. Yes, sir.
Q. What, if anything, did you see him do with respect to an examination of the books of the company?
A. I remember on one occasion—
Q. State the date as near as you can.

A. Well, I think it was in July.

Q. What time in July?

A. I could not tell you.

Q. State what occurred?

A. We were examining the trial balance book—and I remember distinctly about it, because there was a sub-leaf, an extra leaf in the book showing the amount in the various warehouses, and some question was asked about it, and I explained it to the best of my ability, and Mr. Cox took a pencil memorandum from the trial balance on that occasion.

Q. Were the trial balances of June 30 and July 31st in that book at the time he examined it with you?

A. July 31st?

Q. Yes.

A. No; June 30 was in; I don't think July 31 was.

Q. Now, then, at any subsequent date to that call of his in July, was Mr. Cox there when you were there and went over these books?

A. I think one night Mr. Henderson and Mr. Cox were down there.

Q. When was that?

A. And the books were examined and a number of questions asked and answered.

Q. Can you remember what date that was?

A. No, sir; I cannot.

Q. What month was it in?

A. I think that must have been the first part of August—from the first to the middle of August, I think.

Q. Something has been said in this case about your demand for the amount due you being sudden or unexpected; was there any sudden or unexpected demand made by you upon this Food Company for the payment of your notes?

A. No, sir.

Q. What, if anything, had been said by Mr. Cox or Mr. Henderson, or both of them, with reference to their arrangement for necessary capital?

A. I was informed on several occasions that they had ample capital back of them; and they went so far as to say on one occasion that even if the obligation to Mr. A. Anderson could not be met at the end of the coming year—that was 1902—through the regular course of business—that is, meaning if the business did not pay for them or could not—they still had ample means on the outside to take care of these obligations.

Q. You mean these obligations coming to whom?

A. Due A. Anderson.

Q. Did you, after the sale to the Food Company, at any time agree with these parties to extend for any indefinite period the payments of your notes?

A. Emphatically no.

Q. Did you agree with John T. Cox that the new company was to have the calendar year in which to make payment?

A. I did not.

Q. Had you as a matter of fact, shortly after the agreement was made and the new company assumed the management of the affairs, asked for a part of your money?

A. Yes, sir.

Q. When was that?

A. I can't give you the exact date.

Q. About when?

A. Shortly after.

By the Vice Chancellor:

Q. After the Anderson Food Company undertook the business?

A. Yes, sir.

Further direct.

Q. How much did you call for at that time?

A. I said I thought I could use in a few days about $4,000, as I anticipated getting a mortgage for that amount,

but I failed to place the money, so that I, of course, didn't draw it out.

Q. Was anything said about the privilege and advantage of leaving your money there, rather than putting it in a bank or trust company?

A. Mr. Henderson and I were talking one day, and he said I don't see why you should be so anxious to draw it out, as we are paying you about the same interest as you could get elsewhere.

Q. What reply, if any, did you make to that?

A. I made nothing of a definite character at all, with the exception, if you will pardon me, that I did inform them that they surely realized that the amount, the total amount of these notes was due September 20th, past.

Q. Now, Mr. Anderson, in any conversation between you and Mr. Cox and Mr. Henderson, or in your presence with them by others, was there anything said about the indebtedness of the company being over $58,000?

A. No, sir.

Q. What, if anything, was said with respect to the indebtedness of the company and what it represented?

A. I can't remember; I do remember that Mr. Cox was there in the presence of father and myself; but I can't say that I remember the details of the conversation.

Q. Mr. Anderson, do you know why the time for the payment of your father's obligations against the company was extended from two to three years?

A. Yes, sir.

Q. Why was that?

A. According to the statement made by Mr. Henderson to me, that the item of something like $15,000 or $16,000, which represented notes due Mr. Goldy and myself, was more than they could pay for at the time of the transfer, and requested me to see Mr. A. Anderson in order to make some arrangement which was, namely, that they be allowed the third year to pay Mr. A. Anderson's note, in order to pay Mr. Goldy and myself on the day of the transfer. If I remember correctly, it was made in Mr. Henderson's office.

Q. What was made there?

A. The request of Mr. Henderson.

Q. That you have just stated?

A. Yes, sir.

Q. And these moneys were not paid to you on the day of the transfer?

A. No, sir.

Q. Was Mr. Goldy's paid him?

A. I believe not.

Q. And after that did you make any agreement with them extending for any definite period the payment of your note?

Objected to as already asked and answered.

The Vice Chancellor: Overruled, because it is repetition.

Cross-examination.

By Mr. Beldon:

Q. You say you had conversation with Mr. Henderson, and he said he didn't see why you should not let your money remain, and you responded that they realized that the amount was due September 20, and they ought to pay it; when was that?

A. I can't give the exact date.

Q. When, with reference to your settlement of September 20?

A. The request was made on numerous occasions; I could not give you any positive date.

Q. I am speaking of this conversation at which Mr. Henderson stated to you that there was no need of taking your money out; that is a definite conversation, and I ask you when that occurred; I am not asking you about these various conversations.

A. I can't give you the exact date.

Q. Before the first of January, 1902?

A. Yes, sir.

Q. How long before?

A. I could not tell you.

Q. Before the unpleasantness had arisen between you and these people?

A. Yes, sir.

Q. Were you pressing for payment at that time before there had been unpleasantness between you?

A. I repeat that I was contemplating—

Q. Were you pressing for payment before the unpleasantness arose between you?

A. No, sir.

Q. You didn't press them at all for payment prior to that time?

A. No, sir.

Q. Then why do you say that Mr. Henderson said to you, before the time that the unpleasantness arose, that he didn't see why you were so anxious to draw your money out, that they were willing to pay you interest; had you been anxious to draw it out?

A. Had I been anxious to draw it out?

Q. Yes; had you?

A. Yes, sir.

Q. How did you exhibit your anxiety for drawing it out if you didn't press them for payment?

A. As I understand the word press—I asked them for the money on several occasions, telling them that I could use it.

Q. And you informed them that it had been due September 20; that was the day of settlement with your father?

A. Yes, sir; and should be paid.

Q. There was an understanding that it should be paid that day?

A. Yes, sir.

Q. With whom was that understanding?

A. Mr. Cox and Mr. Henderson.

Q. I show you three notes—two for $3,874.51, the other for $3,874.52—made by the Anderson Food Company to

yourself on demand, and ask you whether those are the notes which you received from the Anderson Food Company?

A. Yes, sir.

Q. What is the date of those notes?

A. October 1, 1901.

[The notes in question are the notes which have been heretofore marked, the three notes as one exhibit, D2.]

Q. Now, you said in answer to one of the last questions which Judge Gaskill asked you, that Mr. Henderson stated to you that the item of something like $16,000 due to yourself and Mr. Goldy, was more than they would be able to pay for at the time of the transfer; is that correct?

A. I understood that.

Q. Then, if that is true, why do you say you expected to be paid your money in full at the time of the transfer?

A. Because the third year was given by Mr. A. Anderson for that purpose.

Q. What difference would the giving of the third year by Mr. A. Anderson make as to the amount of cash they should pay on the date of the settlement, when it was never proposed that they should pay anything on the day of the settlement?

A. I don't know what arrangements they had made on the outside.

Q. Then you accepted the statement which Mr. Henderson made without any reason on your own part?

A. I don't understand.

Q. You didn't attempt to fix the connection between Mr. Henderson's statement and your own action; is that correct?

A. I don't understand your question.

Q. I can't make it any clearer. Now, referring to these notes which have been shown you, marked Exhibit D2, when did you first make demand for the payment of those notes?

A. A very few days after September 20, the first.

Q. Within ten days after September 20?

A. I could not tell you.

Q. What do you mean by a very few days?

A. Well, as I stated before, on numerous occasions I requested the payment of the notes.

Q. I am speaking to you of the first time; when did you first make demand for the payment of those notes which I have exhibited to you?

A. I say some days after September 20.

Q. Did you make another demand for the payment of the entire sum due thereon on January 14, 1902?

A. I believe that was the date; yes, sir.

Q. And the next day, January 15th, you entered suit on them?

A. I think so; yes, sir.

Q. Now, referring to the occasion of Mr. Cox's visit to the factory, in July, 1901, I believe you say you remember such a visit?

A. Yes, sir.

Q. And you remember being present with your father and Mr. Cox in the inner or private office?

A. Yes, sir.

Q. With the trial balance book present, you say?

A. I don't know that it was present at that time.

Q. At that time was there any conversation between you as to the amount of indebtedness of the Anderson Preserving Company?

A. Most of the conversation was between Mr. Cox and Mr. A. Anderson.

Q. And you say at that time Mr. Cox made some pencil memorandum or memoranda?

A. I think it was on that occasion.

Q. If the trial balance book was not present at that time, what was the basis of the memorandum which was made, your statement or Mr. Abraham Anderson's statement to him?

A. As I said, the conversation was between Mr. A. Anderson and Mr. Cox.

Q. The memoranda which Mr. Cox made were in the course of conversation, and as facts regarding the business were advanced by Mr. Abraham Anderson and yourself; am I correct?

A. As to the pencil statement?

Q. Yes.

A. I can't swear to that.

Q. What occasion would he have to make a pencil memorandum if it was not as to something that was brought out by your conversation?

A. I don't know.

Q. You did discuss the condition of your business and the condition of your assets and liabilities at that time?

A. Yes, sir.

Q. You were treasurer of the company?

A. Yes, sir.

Q. And you were the one who made the statement to him in your conversation about the financial condition of the company, were you not?

A. To a degree.

Q. What is that?

A. To an extent.

Q. And upon the basis of that he made the memoranda which he made?

A. I could not say.

Q. You don't know whether he made it correctly, but it was in the course of that conversation with you and your father that the memoranda were made?

A. I think I remember him making some pencil memorandum.

Q. You spoke of Mr. Henderson informing you that they had ample capital, so that the obligation to Mr. Abraham Anderson that were assumed to be met were not to be met from the income of the business, they would be able to meet them from the outside; that was the gist of your statement?

A. Yes, sir.

Q. Did he say to you the means by which the moneys which they could raise from the outside could be raised?

A. No; I never knew.

Q. He gave you the names of no persons from whom he anticipated raising money?

A. No.

Q. He gave you no intimation whatever as to any business means that might be used for the purpose of raising money?

A. No, sir.

Re-direct.

Q. Just explain to the Court how it is, if the obligations of the Preserving Company to you were to have been met by the new company on the date of the transfer, September 20, it was that you took new notes October 1st?

A. Why, the only reason I can remember is that October 1st being the first, it would be very much easier to figure the interest, compared with September 20; that is the only reason I know of.

Q. Was there anything in taking the notes of the new company instead of the notes of the old company?

A. The reason?

Q. Yes; was that any part of the reason?

A. No, sir.

Q. That is all.

Judge Gaskill: That is all of our rebuttal.

JOHN T. COX, recalled for defendant in sur-rebuttal, having previously been sworn, testified as follows:

Direct examination.

By Mr. Woodhull:

Q. I show you Exhibit D7, marked for identification, and ask you what that is and how you got it.

A. This is a memorandum of the assets and liabilities of the Anderson Preserving Company given to me by Mr. V. S. Anderson, in the presence of his father, on the 15th day of July, 1901; the statement was made from the trial balance book present in the inner office. Mr. V. S. Anderson read me those items; I made a memorandum of them, and I asked for the liabilities. Mr. A. Anderson broke into the conversation and said we had no liabilities. I asked him if that was true. He said yes; we have got everything paid up. I said haven't you some current bills that are outstanding? Oh, yes; we have about $1,500. Not more than that? He said no. I put down the item of $1,500. I said is there anything else that you owe? He said no. Are there not some notes that are due among you folks. He said yes, $58,000. I said is that all. He said yes, that is all. With that I closed my memorandum, and on that statement we made our offer to him.

Q. I show you a paper marked Exhibit D8 for identification, and ask you what that is?

A. This is a statement of the assets and liabilities of the Anderson Preserving Company, given to us by Mr. Blackwood, under date of September 3, 1901.

Q. How did you come to get that subsequent statement?

A. This one?

Q. Yes.

A. Given by Mr. Blackwood?

Q. Yes.

A. We asked for it; I presume it was given to us. I recollect I had Mr. Anderson's permission to get a statement from the books of the company, and this is the answer to it.

Q. Now state whether intervening between the first memorandum you made and the memorandum you hold in your hand, made by Mr. Blackwood, a question as to the exact liability arose, upon which depended a change in the agreement?

A. Do you mean between myself and Mr. Anderson?

Q. Yes.

A. I think not.

Q. Can you state whether the second memorandum, showing the liabilities made by Mr. Blackwood, made any change in the negotiations?

A. Of course it did; there is a matter there of nearly $20,000, and for the time being it up-set our plans. That was a very large item in the purchase of that concern.

Q. Then because of that change was there anything done in respect to the agreement which had then been signed?

A. We threw that deal down, I think, on that account.

[The two papers, Exhibit D7, which is the pencil memorandum made by Mr. Cox, and D8, which is the written statement furnished by Mr. Blackwood, and now offered in evidence, and marked Exhibits D7 and D8.]

Cross-examination.

By Mr. Gaskill:

Q. When was this paper, Exhibit D7, being the pencil memorandum, made by you, written?

A. The date given there, July 15th.

Q. Was it written on that date exactly as it is there, with the exception of this ink mark of the exhibit?

A. I presume it was.

Q. Can you say it was?

A. I think it was written on that day; but not at the office of the company. I took those figures at the office of the company and re-wrote them later on the same day.

Q. Then this is not a memorandum that was made in the presence of Abraham and Voorhees Anderson in the office of the company?

A. No, sir.

Q. You made a memorandum that day?

A. I did.

Q. And that memorandum you copied off on this paper when you got home?

A. That is a faithful copy of the memorandum.

Q. Where is that original paper?

A. I don't know; I haven't it.

Q. You didn't preserve that?

A. No, sir; I did not.

Q. You saw the books of the company there on several occasions, didn't you, and examined them?

A. Yes, sir.

Q. Among other books did you see the trial balance and examine it?

A. I did on the 15th day of July—no; I beg your pardon. I will take that back; that was not the case. The trial balance of the 15th of July was in the hands of V. S. Anderson; not in my hands. I didn't see it.

Q. When did you see it?

A. At the date when we examined the books, in September—about September 13 or 14.

Q. Do you mean to say that you were not at that office examining those books from the time you were there in July up to September?

A. I did not make an examination of those books in the sense as I understand it.

Q. Were you at the office of the Anderson Preserving Company between the middle of July and the early part of September?

A. Several times.

Q. How many times?

A. I don't remember.

Q. On each of those occasions you examined the books to some extent?

A. No, sir.

Q. Didn't you open the books of the company on any of those occasions?

A. I did on one occasion.

Q. Only one?

A. I only remember one.

Q. Was that the occasion that Mr. Robert Anderson sent you into the bookkeeper, Mr. Blackwood?

A. Yes, sir.

Q. And you had all facility on that occasion to make such examination as you wished?

A. Yes, sir.

Q. You had only been out of the Preserving Company a year, had you not?

A. About a year.

Q. Ten months.

A. Yes, sir.

Q. And before you went out of the company you knew that the company had given notes to Mr. Voorhees Anderson as well as Mr. Abraham Anderson?

A. I did.

Q. And you yourself had notes?

A. Yes, sir.

Q. And you knew also that Mr. Goldy had notes?

A. Yes, sir.

Q. And you also knew, didn't you, of the custom or practice of the firm, or company, in respect to the manner in which they kept their books and accounts?

A. Yes, sir.

Q. On the day that you were there with Mr. Voorhees Anderson, do I understand you to say that Mr. Voorhees Anderson falsely read to you from the trial balance?

A. No; I do not infer anything of the kind.

Q. Did Mr. Voorhees Anderson give you from the trial balance and the other books that day answers to all questions that you asked him?

A. I think he did.

Q. Was there anything on that occasion to prevent you from verifying the facts and figures that he gave you?

A. I don't know; I don't know whether they would have allowed me to go into it myself. I took their statement as final, true.

Q. While you were there with Voorhees Anderson, there was no objection made to your looking at the books?

A. No.

Q. And you had an opportunity of doing so?

A. I don't know whether I did or not. I had an opportunity to ask.

Q. And you didn't ask?

A. No.

Q. And you didn't seek to verify by inspection of your own the correctness of what Mr. Voorhees Anderson gave you?

A. No, sir; I did not.

Q. This Exhibit D8, Mr. Blackwood's statement, was handed you when?

A. On the date stamped on there.

Q. September 3, 1901?

A. Yes, sir.

Judge Gaskill: I object, if the Court pleases, to Exhibit D7 being offered in evidence, and ask that every extract from it that appears on the record be stricken from the record, on the ground that it is not an original memorandum; it is not a book account; it is nothing that is evidential in this case, or that is legal or competent to be offered in evidence. It is nothing more or less than an effort to manufacture or state testimony on the part of the defendant, who produced it.

The Vice Chancellor: I do not remember that any of the statements on it are in evidence by the paper alone.

Judge Gaskill: The $1,500 item is.

The Vice Chancellor: That is not by the paper, but by the statement of the witness.

Judge Gaskill: That was put in a question referring to the paper.

The Vice Chancellor: I am of the opinion that the paper is not in itself evidence. I am also of the opinion that it was made as claimed by the witness on the stand on the day when the transaction took place, and that it is such a paper as he might refer to to refresh his memory. I am therefore not willing to strike out from the record statements which may also appear in it. It has no probative force itself, because the paper was not prepared in the presence of the other side, and they have no responsibility for it, and so far as the paper is offered in evidence, I rule it out; so far as it is used as a prompter to the memory of the witness, I do not think I can rule out the statements which the witness makes based upon it.

Exhibit D7 being on cross-examination shown not to have been prepared in the presence of the other side, but to be a copy made by the witness himself, is, so far as it is claimed to have any probative force in itself, ruled out, and is not an exhibit in this case.

Mr. Woodhull: That is all. We rest.

Case on main bill closed.

CAMDEN, N. J., NOV. 12, 1902.

Testimony taken upon the issues joined by the cross bill and the answer thereto. Appearances as heretofore noted.

The Vice Chancellor: There is a notice to strike out part of that cross bill as multifarious, &c., and leave to withdraw part of the answer. I will hear that now.

Counsel conferring regarding the questions suggested by the notice of September 30, 1902, touching the proposed mo-

tion to strike out parts of the answer and cross bill, and without prejudice to the assertion of right, counsel for complainant in the original bill, and defendant in the cross bill, withdraws the notice and the case will proceed upon the pleadings as filed.

DAVID A. HENDERSON, sworn for the complainant in the cross bill (defendant in the main suit).

Direct examination.

By Mr. Woodhull:

Q. Are you connected with the Anderson Food Company, the defendant?

A. Yes, sir.

Q. Who exhibit this cross bill here?

A. Yes, sir.

Q. In what capacity?

A. I am vice president and secretary.

Q. Did the Anderson Food Company succeed another organization?

A. Yes, sir.

Q. What?

A. The Anderson Preserving Company.

Q. At what time?

A. September 20, 1901.

Q. Before the conclusion of that succession, did you personally have negotiations in respect to the purchase?

A. Yes.

Q. With whom?

A. Abraham Anderson.

Q. When did you start those negotiations for purchase with him?

A. About the latter part of July, 1901.

Q. Were you acting on behalf of some one?

A. Yes, sir.

Q. In whose behalf?

A. John T. Cox.

Q. Who was the active man who conducted the negotiations, yourself or Mr. Cox?

A. I was.

Q. Did you in these negotiations deal with Mr. Abraham Anderson, the complainant, or some other?

A. I dealt with Abraham Anderson.

Q. As the result of those negotiations were certain agreements drawn?

A. Yes, sir; they were.

Q. Looking toward what?

A. With a view to the purchase of the Anderson Preserving Company.

Q. By whom?

A. By John T. Cox.

Q. How many agreements were there respecting this purchase?

A. There were three, I think.

The Vice Chancellor: You mean formulated written agreements?

Mr. Woodhull: Yes.

The Vice Chancellor: Then you had better put it that way.

Q. How many formulated, written agreements were there between you before the final one was made?

A. I think there were two main agreements and two supplementary agreements.

Q. Were these two main agreements and the two supplementary agreements all in writing?

A. Yes, sir; typewriting.

Q. Signed by the parties?

A. Signed by Mr. Anderson and Mr. Cox.

Q. I show you a paper purporting to be an agreement, dated August 14, 1901.

A. That is one of them.

Q. Is that one of the agreements?

A. Yes, sir.

Q. Is that the first one?

A. Yes, sir; I think that was the first one.

Q. By whom was the first one signed?

A. John T. Cox and Abraham Anderson.

Q. Executed in your presence?

A. Yes, sir.

Q. Witnessed by you?

A. Yes, sir.

[Paper referred to marked Cross Bill Exhibit C1 November 12-02.]

Q. I hand you another paper purporting to be agreement of September 13, and ask you if that is another agreement between Abraham Anderson and John T. Cox?

A. Yes, sir.

Q. Respecting this purchase?

A. Yes, sir.

Q. Was that executed in your presence?

A. Yes, sir.

Q. And you witnessed that?

A. Yes, sir. Mr. Harned witnessed this one as well as myself.

[Paper referred to offered in evidence and marked Cross Bill Exhibit C2.]

Q. I show you a paper purporting to be an exhibit, dated September 20, 1901, between Abraham Anderson and John T. Cox; was that another agreement in those negotiations?

A. Yes, sir.

Q. Was that executed also in your presence?

A. Yes, sir.

Q. Were you one of the witnesses there?
A. Yes, sir; and Mr. Harned, too.

[Paper referred to offered in evidence and marked Cross Bill Exhibit C3.]

Q. I show you a paper purporting to be an agreement of the 14th day of August, between the same parties, and I ask you if that was one of the agreements respecting this transaction?
A. Yes, sir.
Q. Whether it was executed by these parties?
A. Yes, sir.
Q. And in whose presence?
A. Witnessed by me.

[Offered in evidence and marked Cross Bill Exhibit C4.]

Q. You have stated that you conducted the negotiations yourself on behalf of Mr. Cox?
A. Yes, sir; I did.
Q. Please state whether, as the negotiations progressed, you had an attorney on behalf of yourself, or yourself and Mr. Cox, in the matter?
A. Yes, sir; we did.
Q. Who?
A. Mr. Samuel Beldon.
Q. Can you state in respect to the preparation of these agreements whether they were drawn by Mr. Beldon and Mr. Harned, or who drew them; or don't you know?
A. Yes, I know; the first ones were drawn by Mr. Beldon; but after that there was such an interchange of it I could not say whether Mr. Harned drew the rest or Mr. Beldon.
Q. Can you state what was the period covered in these negotiations of purchase, from their inception?
A. I can't quite catch your idea.

Q. The period which your negotiations covered before the consummation.

A. The agreement—the one of August 14 I feel sure was to be consummated on the 6th of September; but we were waiting in the meantime to get ourselves in shape to make the transfer, and also waiting for a statement from the books of the Anderson Preserving Company, which, up to that time, I hadn't any knowledge of, other than what Mr. Anderson told Mr. Cox in relation thereto, and I was fully believing in that statement until I got the final statement from Mr. Blackwood, which was presumed to be final, from the books of the company, and that shows such an extraordinary heavy liability than what it was first presumed to be that he threw up the first agreement and would not go on, and then further negotiations were carried into effect and we made a new agreement on the 13th of September.

Q. And finally consummated it when?

A. There was another agreement made on the morning of September 20, and consummated in the afternoon of September 20, between two and three o'clock.

Q. Is that agreement made on the morning of September 20 shown here and marked?

A. Yes, sir.

Q. Is that it?

A. Yes, sir.

Q. What is it marked?

A. Cross Bill Exhibit C3.

Q. Is that the agreement, Cross Bill Exhibit C3?

A. Yes, sir; it is dated first the 19th, and afterwards corrected by Mr. Harned and made the 20th.

Q. While these were progressing will you state whether the Anderson Food Company was organized?

A. Yes, sir; the Anderson Food Company was organized August 16, 1901.

Q. For what purpose?

A. For the purpose of purchasing the Anderson Preserving Company.

Q. In pursuance of the agreement?

A. Yes, sir.

Q. Have you the certificate of organization of the Anderson Food Company?

A. Yes, sir; the certificate of incorporation; it is filed August 9. It is marked by the Secretary of State; it is dated the 15th day of August, 1901.

[Offered in evidence and marked Cross Bill Exhibit C5.]

Q. Have you the minute book of the Anderson Food Company?

A. Yes, sir.

Q. Can you state from the minute book when the Anderson Food Company met and organized?

A. August 15th they met; that is the date we were incorporated.

Q. Have you the date of the first meeting in the minutes of the stockholders?

A. September 5, 1901.

Q. That was the first meeting of the company?

Judge Gaskill: What relevancy has that.

Mr. Woodhull: Simply to prove the election of officers.

A. Yes, sir.

Q. Were officers and directors elected at that meeting?

A. Three directors.

Q. Who were they?

A. John T. Cox, Voorhees S. Anderson and myself.

Q. Were officers thereafter elected of the Anderson Food Company?

A. Yes, sir.

Q. When; and who were they?

A. They were John T. Cox, he was elected president; I was elected vice president and secretary, and Voorhees S. Anderson was elected Treasurer.

Q. Did you give the date of their election as officers?

A. September 5.

Q. Of what year?

A. 1901; they were elected on September 5 as directors and also as officers; the directors elected them into their respective offices as well.

Q. Who is the present president of the Anderson Food Company?

A. John T. Cox.

Q. Who is secretary?

A. I am.

Q. After the incorporation of the Anderson Food Company, did you or not see Mr. Beldon in the progress of these negotiations on behalf of that company, before transfer was made to you by the Anderson Preserving Company, under the agreement of September 20, 1901?

A. Yes, sir; I did.

(Recess of one hour.)

Q. After the execution of the agreement of September 20, the agreement you have called final, what action, if any, was taken by the Anderson Food Company, by its stockholders?

Objected to as immaterial, incompetent and irrelevant.

The Vice Chancellor: What action upon what subject?

Mr. Woodhull: Upon the subject matter of the purchase by the stockholders of the Anderson Food Company.

Judge Gaskill: I object to it on the ground that the defence of *ultra vires* cannot be interposed by this company to this mortgage. If the officers of the company, acting with strangers to the company, executed the paper of certain form, it matters not so far as this third party is concerned, it matters not whether they had authority to do that or not; they cannot take advantage of it.

Judge Pancoast: We want to prove that the company never intended to enter into this agreement.

The Vice Chancellor: I think the proof is admissible. whether it should have the effect of charging the other side is a question not necessary to be determined by the admissibility of the proof, because it is quite obvious that if the company did intend that this agreement should be made in the form in which it is presently expressed, that ends it. It, however, claims that it was executed as it did not intend; it then remains a question whether its non-intention to execute this instrument, as it presently appears, can be proved. It is a question of argument. I will admit it on the ground that the criticism suggested by the objection of counsel is one which will have to be passed upon on final argument and not upon the admissibility of the proof.

(Question repeated as follows):

Q. After the execution of the agreement of September 20, the agreement you have called final, what action, if any, was taken by the Anderson Food Company, by its stockholders, upon the subject matter of the purchase?

A. In the meeting of the board of directors they passed a resolution authorizing the purchase of the Anderson Preserving Company property according to those agreements.

Q. I ask you respecting the stockholders; if you will look at the minute book and see what action, if any, was taken by the stockholders of the Anderson Food Company respecting this purchase after the agreement of September 20?

A. There was no action by the stockholders; September 5 there was action by the stockholders, which directed the directors of the Food Company to purchase the Preserving Company.

Q. What is that?

Judge Gaskill: I make the same objection as heretofore. I object to the action by the stockholders, as well as by the

directors of the Anderson Food Company, respecting the execution or carrying out of this agreement or the execution of the mortgage in question.

The Vice Chancellor: Going to raise the question of *ultra vires?*

Judge Gaskill: Yes.

The Vice Chancellor: I will admit the line of examination for the reason above stated. The objection of *ultra vires* is one which can be reserved to the complainant in the cross bill on final argument. I think it is pertinent for the mortgagor in the mortgage to show what was the mortgagor's understanding and intent at the time the instrument was executed with relation to the challenged clause; whether that had any obligatory effect upon the mortgagee, is a very different question, which may be afterwards decided.

By the Vice Chancellor:

Q. Paper book produced by the witness on the stand is shown him, and his attention is called to page 1, and running up to page 12, proceedings and minutes of the stockholders' meeting September 5, 1901, and he is asked: Does that minute contain the first meeting of the Anderson Food Company?

A. Yes, sir; the certificate of incorporation and copy of the by-laws.

Q. Does it also contain its first action relative to the acceptance of the purchase affected for it by Messrs. Henderson and Cox?

A. Yes; under a motion.

Mr. Woodhull: Minutes offered in evidence.

Objected to for the reasons above stated.

The Vice Chancellor: I overrule the objection and admit the minutes for the reasons above stated. Mr. Woodhull, do you care to have the minutes at length entered upon the testimony?

Mr. Woodhull: Only the resolution.

A. (Reading.) Referring to part of the minutes on page 12, as follows: "Upon motion it was resolved and ordered, that the board of directors be authorized to purchase from the Anderson Preserving Company its entire plant, including all of its assets, and subject to its liabilities for a consideration of $1,000 in cash, $149,000 in capital stock *for* this Anderson Food Company, and a bond and mortgage be given by this Anderson Food Company upon said plant for the sum of $100,000, payable at the expiration of 10 years, with interest at the rate of 5% per annum.

"The president then put said motion before said directors and said motion was carried."

Further direct.

Q. After this action of September 5, was there further action by the stockholders respecting this purchase than that just read?

A. No, there was not any.

Q. After the agreement of September 20, and the consummation of the purchase on that date, as you have testified to, was the execution of the mortgage authorized by the stockholders at this meeting of September 5th done in pursuance of the resolution just read?

A. Yes, sir.

Q. What action, if any, was taken, and when, by the directors of the Anderson Food Company in respect to this purchase or the execution of the mortgage authorized by the stockholders?

Judge Gaskill: This is all understood as being under my objection.

The Vice Chancellor: Yes.

A. On September 5 the directors held a meeting immediately after the stockholders' meeting and in terms passed that motion there. It is practically the same as the stockholders.

Q. Which may be found on what page?

A. Page 13 of the minutes above referred to.

By the Vice Chancellor:

Q. Turn to page 13; this is the proceedings of the meeting of the board of directors?

A. Yes, sir.

Q. Following and consequent upon the preceding authorization of the stockholders?

A. Yes, sir.

Q. And at the meeting of the board of directors, on page 13 of your minutes of your corporation, the following motion appears to be put:

"The president then put this motion and it was carried."

"It was moved and seconded that this company purchase the plant and assets of the Anderson Preserving Company and issue therefor $149,000 in capital stock, and pay $1,000 in cash, and make the mortgage authorized by the stockholders of $1,000 to the Anderson Preserving Company, and that the proper officers are authorized to execute the said bond and mortgage. The president put this motion before the board of directors and it was carried."

Further direct.

Q. Was action taken in respect to this subject matter by the directors after the meeting just read, of September 5?

A. Yes, sir.

Q. If so, what was the action?

A. Then we had a special meeting September 16, when the directors rescinded the previous resolution of the board of directors as to the purchase. That appears on page 16.

The minute referred to appears in the minute book in these words: "It was moved and seconded that the order to the directors, under date of September 5, in which it was stated that this company purchase the plant and assets of the Anderson Preserving Company and issue therefor $149,000 in capital stock and pay $1,000 in cash, and make the mortgage authorized by the stockholders of $100,000 to the Anderson Preserving Company, and that the proper officers are authorized to execute said bond and mortgage, be rescinded. The president put this motion before the board and it was carried."

Q. After the rescission by the board according to the minute just read, was there further action respecting this same subject matter by the board?

A. On September 20.

Q. What was the action?

A. September 20, there was action taken by the board reinstating practically the minute of the meeting of the 16th, which was rescinded, as stated on page 17.

Q. Reinstating the order?

A. Reinstating the previous resolution.

Q. That is on page 17 of the minutes here before the witness?

A. Under date of September 20, 1901.

The reinstating resolution is as follows:

"The president stated that this meeting was called to take action with a view of purchasing the plant of the Anderson Preserving Company, and upon motion it was ordered that the board of directors purchase the plant and assets of the Anderson Preserving Company, and issue therefor $149,000 in capital stock, pay $1,000 in cash, and make the mortgage authorized by the stockholders of $100,000 to the Anderson Preserving Company, and the proper officers are authorized to execute the said bond and mortgage."

Q. Will you state whether this was the final action of the board respecting the matter of the purchase and execution of the mortgage?

A. This was the final action.

Q. It appears to be upon the day of the execution of the final agreement?

A. The very day.

Q. You were secretary of this meeting, the minute of which was just read?

A. Yes, sir.

Q. Is this authority restoring the rescinded motion read antecedently a resolution of purchase under the stockholders' resolution of September 5?

A. Yes, sir.

Q. Can you state whether or not this resolution of the board of September 20, of the board of directors, was made pursuant to the final agreement of September 20, between Abraham Anderson and John T. Cox?

A. It was.

Q. Did you or not, as one of the officers of the Anderson Food Company, after its organization, having continued, as you have already sworn, Mr. Beldon as attorney, employ him, among other things, to draw the mortgage authorized?

A. Yes, sir.

Q. Can you state what the papers were, all of the papers, and what their character was, which were drawn on your behalf by Mr. Beldon, or on your behalf as an officer of this company?

A. At that time?

Q. During these negotiations?

A. No; I did not know what they were.

Q. Under these agreements, when was the final action, if any, taken in respect to the purchase of the Anderson Preserving Company and the consummation of that purchase?

A. September 20, 1901.

Q. At that time were papers passed between the parties, Abraham Anderson and the Anderson Food Company, in consummation of that purchase?

A. Yes, sir.

Q. Where was the meeting for the final conclusion held?

A. At the office of John F. Harned.

Q. Did you attend that meeting at which the papers were passed?

A. Yes, sir.

Q. In what capacity?

A. As secretary of the Anderson Food Company.

Q. Who were there besides yourself representing the company?

A. John T. Cox.

Q. In what capacity?

A. As president of the Anderson Food Company; Mr. V. S. Anderson in the capacity of treasurer of the company.

Q. Which company?

A. The Anderson Food Company—that is, as far as myself is concerned.

Q. Who else was there?

A. Mr. Harned, Abraham Anderson and Robert Anderson, Mr. Beldon.

Q. Anybody else?

A. That is all.

Q. Do you remember what papers were signed there?

A. Not all of them, I don't.

Q. Do you remember whether or not a mortgage was signed there?

A. Yes, a mortgage was signed.

Q. Do you remember how long you were there in the office of Mr. Harned?

A. About an hour and ten or fifteen minutes, I should judge.

Q. Have you any way of fixing the time?

A. Yes; our minute book will pretty nearly tell that, I think. (Consulting the minute book.) We had a special meeting of the board of directors September 12, at 12 o'clock, at the office of D. A. Henderson & Company, 312 Market street, Camden.

Q. Have you any way of fixing the time?

A. I have answered how long we were there, one hour and fifteeen minutes, about. We held a special meeting at the office of David A. Henderson & Company, 312 Market street, of the board of directors of the Anderson Food Company, and after that meeting Mr. Cox and myself went to lunch, and we had an appointment at Mr. Harned's office to meet at 2 o'clock in the afternoon.

Q. About this business?

A. Yes, sir; to consummate this deal according to the agreement; and it says "Special meeting of the Anderson Food Company held at 3.10 P. M. at the office of Mr. Harned, 426 Market street;" and that was after the consummation of the deal, so that would show about an hour and ten minutes.

Q. Then you arrived there about 2 o'clock?

A. Yes, sir.

Q. Did you or not immediately proceed to the business which you were there for?

A. When Mr. Cox and myself got there, Mr. Beldon was not there, and I went cross the street to his office to get him to come over, and it took probably two or three minutes to do that, and then they proceeded to finish up the business according to the agreement.

Q. Did any one leave during that hour and ten minutes you speak about?

A. Yes, sir; Mr. Abraham Anderson left and I left.

Q. What for?

A. To get his stock certificate; he said he hadn't it, and he said he didn't think the deal was going on so quick, and he telephoned V. S. Anderson to get a cab, and he was gone probably 15 or 20 minutes; and I went down to 312 Market street to get the stock book and came back with that and the seal of the company.

Q. So that broke up the continuity of the time between 2 o'clock and 3.10?

A. Yes, sir.

Q. Will you state whether, in your capacity as secretary at that meeting, September 20, on behalf of the defendant company, you signed that mortgage?

A. Yes, sir.

[Paper shown witness is the mortgage of the Anderson Food Company to the Anderson Preserving Company, marked Exhibit C2 in the original suit on the main bill, and is the paper set out in the bill of complaint, on which he bases his equity.]

Q. At that time did Mr. Cox also sign on behalf of the company?

A. Yes, sir.

Q. In what capacity?

A. As president of the company.

Q. When you signed this mortgage, the complainant's mortgage, as you testified, did you or not have knowledge of the inclusion in that mortgage of the words "and also all moveable machinery, machines, tools, kettles, pots, pans, jars, cups, belting, gearing, stock manufactured and unmanufactured or in process of manufacture," down to office furniture?

Judge Gaskill: Objected to. The paper must speak for itself; and if he acknowledged it, he acknowledged it as it is.

The Vice Chancellor: The question is not what are the contents of the paper, but as to the knowledge of the party executing it at the time it was executed. Admitted.

A. No, sir; I did not.

Q. When did you first have knowledge of the inclusion of those words, "stock manufactured and unmanufactured and in process of manufacture," in this complainant's mortgage?

Objected to for the same reasons. Admitted for the same reasons.

A. About October, the early part of October, 1901; that is the first I knew of it.

Q. After your information in respect to the inclusion of such stock in this mortgage what did you do?

A. I protested and said it was not fair; it should not have been in there.

Q. Where?

A. At Mr. Harned's office in the presence of Abraham Anderson, in Mr. Harned's office.

Q. On what date was the protest made?

A. October 8, 9, or 10th, probably.

Q. How long after the time you heard of its inclusion did you protest?

A. Right after the time.

By the Vice Chancellor:

Q. How long after you discovered the inclusion of the words, how long after did you protest?

A. Immediately; as soon as I learned it. I learned it in Mr. Harned's office from him, and I immediately protested. (The balance of the answer was stricken out by order of the Vice Chancellor.)

Further direct.

Q. Will you kindly state whether you protested respecting this matter to the complainant in writing?

A. Yes.

Q. For the Anderson Food Company?

A. Yes, sir.

Q. The attention of the witness is called to paragraph 27 of the cross bill in this case, to the letter there copied, dated Camden, N. J., November 11, '01; addressed, Mr. A. An-

derson, Cooper street, Camden, and signed "Anderson Food Company, D. A. Henderson, secretary," the letter being admitted to be a copy by the defendant's answer to the cross bill, and is asked whether that is a copy of the letter—the first one which you spoke of as a written protest touching the insertion of the words affecting the stock in the mortgage?

A. Yes, sir.

Q. That is the first one?

A. Yes, sir.

Q. I show you the agreement of September 20, 1901, heretofore referred to as the final agreement between Abraham Anderson and John T. Cox, and ask whether the complainant's mortgage here shown you was the mortgage executed, or intended to be executed, under that agreement of September 20?

A. Yes, sir; it is.

(The Vice Chancellor calls attention of counsel for complainant in the cross bill to the correspondence set up in the cross bill, and counsel for defendant says that correspondence is admitted in their answer to the cross bill.

Cross-examination.

By Judge Gaskill:

Q. From your appearance I take it you are past 21 years of age?

A. I am a few years over that.

Q. How old are you?

A. Thirty-three in February next.

Q. Have you been engaged in active business since you were 21 years of age?

A. I have.

Q. What character of business?

A. I have been in the fire insurance business and have done some little real estate.

Q. Engaged in such business as would direct your attention to the execution of contracts of importance?

A. Yes, sir.

Q. And you have been party to contracts of considerable importance?

A. Yes, sir.

Q. Prior to this transaction?

A. Yes, sir.

Q. You were present when this mortgage was executed?

A. I was.

Q. And on behalf of the company you executed it as secretary of the company?

A. Yes, sir; I did.

Q. Attested the seal of the Food Company?

A. Yes, sir.

Q. You were present in Mr. Harned's office during the whole consummation of the deal at the time these papers were executed and delivered?

A. Except the time I left to go down to the office, as I testified, to bring back the seal and the stock book.

Q. That occupied only a few moments?

A. About 5 or 10 minutes.

Q. The distance between Mr. Harned's office and yours is not very great?

A. No.

Q. It is on the same street, and on the same side of the street?

A. Yes; but, nevertheless, I was not there all the time.

Q. You were accompanied on this occasion by your counsel, Samuel W. Beldon?

A. He came in after we were there, and I presume he was there when I went out.

Q. He was there when these papers were executed, was he not?

A. Yes, sir.

Q. And he had on your behalf prepared all these papers?

The Vice Chancellor: What are all these papers?

Judge Gaskill: That is what I will get at.

Q. He prepared the deed from the Anderson Preserving Company to the Anderson Food Company?

A. I think he did.

Q. And he also drew the bond and mortgage on which the complainant's bill is founded in this case?

A. That I didn't know whether he did or not.

Q. Wasn't he employed by your company to do that?

A. He was employed to draw the papers.

Q. All the papers?

A. Yes, sir; but you want to bear in mind relative to the agreements—there were agreements being made both by Mr. Harned and Mr. Beldon, so it mixed us up as to who was doing it.

Q. Mr. Harned was not in this transaction at the outset?

A. No, sir.

Q. Mr. Beldon was in a measure representing both parties to the deal, was he not?

A. He was representing us.

Q. During the early part of these negotiations, so far as you know, Mr. Anderson did not have any other counsel?

A. Not as I know of.

Q. At that period of these negotiations was it that Mr. Anderson brought in Mr. Harned as his counsel?

A. Within a few days after the first agreement of August 14th, I think it was; you will find a supplemental agreement drawn by Mr. Harned. Mr. Beldon drawing the first and Mr. Harned drawing the supplemental.

Q. Who drew the first agreement?

A. Mr. Beldon.

Q. Are you sure?

A. Yes, sir.

Q. Didn't Mr. Woodhull draw the first one?

A. He was out of town; he was not here at all.

Q. You are positive of that?

A. Yes, sir.

Q. And the second and third agreements that you recall were drawn by Mr. Harned?

A. I just told you a bit ago I didn't know who drew them; they were drawn between the counsel.

Q. Now, Mr. Henderson, when you got to Mr. Harned's office on the day when these several papers were executed, the first paper that was executed was the deed by the Preserving Company, was it not?

A. That I could not answer; I do not know.

Q. You remember as a fact, however, do you not, that the Anderson Preserving Company on that day and at that place executed a deed of all its property to the Anderson Food Company?

A. That is my presumption.

Q. You received a deed that day, didn't you?

A. No, we didn't receive a deed that day; didn't get it until about October 23.

Q. Why not?

A. Simply because it was sent for record at the Register's office.

Q. It was sent from Mr. Harned's office to the County Register's office for record?

A. I presume so.

Q. I hand you the deed from the Anderson Preserving Company to the Anderson Food Company, dated September 20, 1901, and recorded September 20, 1901, at 4.05 P. M., and ask you, by refreshing your recollection from that paper, if you cannot now say that that deed was executed and delivered to your company on that day at Mr. Harned's office?

A. It has got Mr. John F. Harned's name on the back of it under date of September 20, and I would judge, my mind would probably tell me, it was done at his office.

Q. You understood that part of the transaction?

A. Yes, sir; but I don't have any recollection of seeing the paper executed; it may have been executed while I was out.

Q. Were any of the papers executed before you went in?

A. No; they were not.

Q. Did Mr. Beldon remain there while you were out, so far as you know?

A. So far as I know.

Q. That is, you left him there when you went out and found him there when you got back?

A. Yes, sir.

Q. You were there, I understand, when Mr. Beldon came in, were you?

A. I went over for him; he came in a little while afterwards.

Q. Do you remember being in Mr. Beldon's office on the morning of the day when these several papers were executed at Mr. Harned's office?

A. Yes, sir.

Q. Do you remember Mr. Harned coming into the office while you were there?

A. No, sir; not that morning; we had a little meeting there, I think, Mr. Beldon's office.

Q. You mean the Anderson Food Company?

A. Yes, sir.

Q. Don't you remember that on the morning of September 20, while you were in Mr. Harned's office, Mr. Beldon came in there, and in your presence said to Mr. Beldon, by the way, have you put that matter that had been omitted in the mortgage?

A. No, sir; never did.

Q. And didn't Mr. Beldon then turn to you and say, by the way, Mr. Henderson, I have added these words to the mortgage; and indicated the part which has been read to you from the mortgage, about its being a loan upon the goods and chattels, &c.?

A. No, sir.

Q. Did you see the mortgage in Mr. Beldon's office before it was brought over to Mr. Harned, on the afternoon of the 20th?

A. No, sir.

Q. Had you had any conversation with Mr. Beldon concerning the mortgage?

A. As to its contents?

Q. Yes.

A. No, sir.

Q. What instructions, if any, did you give Mr. Beldon as your counsel concerning the mortgage?

A. The drawing of it?

Q. Yes.

A. Draw a mortgage on the real estate, which I presume was the way to do.

Q. Did you specify to him that it was a mortgage on the real estate?

A. No, sir; I didn't specify other than it was to be a regular mortgage; what I call a regular mortgage is a mortgage on real estate.

Q. I didn't ask you that; you didn't tell Mr. Beldon specifically that this was to be a mortgage on the real estate only?

A. No, sir.

Q. You told Mr. Beldon to prepare the deed from the Preserving Company to the Food Company?

A. I told him to draw the papers.

Q. And draw a bond and mortgage from the Food Company back to the Preserving Company on the same property?

A. I told him to draw the papers, whatever they were, and the bond and mortgage are part of it, so was the deed.

Q. And there was also a bill of sale?

A. Yes, sir.

Q. Of the personal property?

A. Yes, sir.

Q. I hand you a paper passed to me by your counsel, and I ask you if that is not the bill of sale covering the manufactured goods, etc., that was conveyed to the Food Company as part of this transaction?

A. Yes, sir; that is right.

Judge Gaskill: We will offer the bill of sale in evidence as part of the papers connected with this transaction.

[Marked Cross Bill Exhibit D1.]

Q. You knew that a large sum of money was involved in this transaction?

A. I did.

Q. And you knew the papers covering a large sum of money and a large transaction were being executed?

A. Yes, sir; I did.

Q. And yet you say you took no pains to read them over or acquaint yourself with their contents?

A. I didn't look them over.

Q. You had your attorney present and relied upon him, did you?

A. Yes, sir.

Q. At the time that mortgage was executed, did not Mr. John F. Harned say to you, or in your presence, that this mortgage is a mortgage upon the property conveyed by the Preserving Company to the Food Company, as shown in the deed and in the bill of sale?

A. No, sir, he did not; just merely indicated—

Q. You have answered my question. Do you not recall the fact that before it was executed, or just at the time Mr. Harned called attention to the fact that an affidavit had to be made by the taker of that mortgage so as to show its consideration as a chattel mortgage, and that the proceedings were delayed while it was written off by Mr. Harned's typewriter under Mr. Harned's dictation?

A. He called my attention to nothing of the kind; if he did it he must have done it outside in the other office with Mr. V. S. Anderson; it was not in my presence.

By the Vice Chancellor:

Q. None of the incidents recalled to your attention by Judge Gaskill happened between you and Mr. Harned; is that so?

A. That is right.

Q. You were quite well pleased with the consummation of this transaction on September 20?

A. According to the agreements, I was.

Q. And you showed considerable exuberance of feeling that afternoon?

A. In Mr. Harned's office?

Q. Yes.

A. No, I don't think so; it was a business transaction with me.

Q. Were you not feeling pretty happy and showing it by your manner?

A. I was not dancing around.

Q. That is what I want to ask you; were you not whistling and dancing around over this matter?

A. No, sir; the proposition is absurd, Mr. Gaskill.

By the Vice Chancellor:

Q. In looking at your note of November 11, 1901, addressed to Mr. Anderson, which you have referred to as your first written protest against the inclusion in your mortgage of the clause stated to you by your own counsel, you say, "We did not know that portion thereof (the mortgage) contained the clause that it covered goods manufactured, unmanufactured or otherwise, chattels on your property;" and again your letter says, "We understood by the meaning of the word plant in said mortgage that it was the building and permanent fixtures now erected, or that might possibly be erected in the future, on the ground described, &c., and that mortgage to be executed would cover same alone." Did you mean by that to protest against the mortgage including any personal property?

A. All personal property.

Further cross.

Q. How was it, if you had no knowledge of that clause being in the mortgage, that you say in your letter of November 11 that you understood the mortgage was to be given to cover the plant of the Anderson Food Company, with no mention that it should cover the chattels of the same?

A. My understanding of the word plant is to cover the building.

Q. That is what I asked you; how is it that you had no knowledge at the time the paper was executed that that clause was in it; why do you say in your letter that you understood at that time, when the paper was executed, what your meaning of the word plant was?

A. That is what I mean, covering the real estate, the agreement was specific to cover the plant.

Q. Then you did understand, on September 20, that there was a clause in that mortgage covering the plant?

A. No, I didn't understand it at all.

Q. Then why do you say in your letter of November 11th that on September 20 you understood the word plant to cover the real estate?

A. I am speaking relative to the agreement when I say that; it says in there plant in all the agreements.

Q. You say you had no knowledge on September 20 that the mortgage covered the plant; do you say so?

A. I understood the mortgage covered our property, such as the building and the permanent fixtures connected with it.

Q. Did you understand that on September 20 that you were to give a mortgage on your plant?

A. On our property down there?

Q. On your plant?

A. Yes; down there—that is my understanding.

Q. And you understood, on September 20, that there was a clause in the mortgage covering the plant?

A. I didn't know what clauses were in the mortgage, as I have told you two or three times, but my understanding and presumption was that it covered our property.

Q. If you didn't know it was in the mortgage at that time, how is it you say in this letter of November 11, that at the time you gave the mortgage you understood that what was in it covered certain things?

A. That was my presumption, that it covered the plant down there, and I was only speaking of the agreements, and I read them two or three times to note.

Q. In your letter of November 11 you say, "we understood by the meaning of the word plant in said agreement," &c., do you not; you didn't use the words "we understand;" you used the words "we understood," didn't you?

A. The point is, as I told you before, I knew not what the contents of that mortgage was.

Q. I asked you as to the words.

Mr. Beldon: The word is there.

A. I was not referring to the mortgage; only to the agreement. It says here—

Q. I didn't ask you what was in the letter further than that. I only asked you whether you used the word "understood" or whether you used the words "we understand?"

A. "Understood" is here.

Q. And that is the word you used?

A. Must have.

Q. Now, then, why, in November, did you say that you understood a thing in the preceding September, when you say you had no knowledge that that thing was in existence?

A. I was referring to the agreement, "we understood by the meaning of the word plant in said agreement, that it was the building, plant and permanent fixtures now erected."

Q. Now, your next written protest is under date of March 10, is it not, addressed to Mr. Anderson, March 10, 1902, at Pasedena, California?

A. Yes, sir.

Q. And that protests with reference to the payment of interest on this mortgage?

A. The interest was about falling due March 20, and we wrote him a letter again on March 10, protesting against the inclusion in the mortgage of the chattels.

SAMUEL W. BELDON, sworn for the complainant in the cross bill (defendant in the main suit).

Direct examination.

By Mr. Woodhull:

Q. Where do you live?
A. Bordentown, N. J.
Q. What is your business?
A. I am a lawyer by profession.
Q. Did you or not represent Mr. Henderson in respect to negotiations to purchase on behalf of Mr. Cox the Anderson Preserving Company sometime in February last, 1901?
A. I represented, as I understood it, Mr. Henderson and Mr. Cox; I understood Mr. Henderson at the time was Mr. Cox's representative in fact, and I was retained or employed as Mr. Cox's representative from a legal standpoint. I would like to add to that—but I never did represent Mr. Anderson, nor was it assumed by anyone for a moment that I did. I had no dual capacity whatever in the matter.
Q. I show you complainant's mortgage already in evidence, Exhibit C2 of the main case, and ask you if you have any present knowledge how the words "and also all movable machinery, machines, tools, kettles, pots, pans, jars, cups, belting, gearing, stock manufactured and unmanufactured, or in process of manufacture," was inserted in that mortgage?
A. The mortgage was, I think, drawn at my office, and either under my dictation or supervision to at least some extent; those words were included, so far as I can now recall, after a conference with Mr. Harned. I am quite sure that they were included after a conference with Mr. Harned; but as to whether I had not, before the conference with Mr. Harned, prepared a clause somewhat similar, and then some changes made in it after our conference, I cannot positively state. But I am quite sure that we had a conference; but I think there was some independent action of my own.

Q. You mean Mr. John F. Harned?

A. Yes, sir.

Q. Was he at your office about this time in respect to this purchase?

A. Prior to September 20, at which the matter was consummated, he was at my office several times, but I could not say when or how many.

Q. Can you state whom he represented?

A. I understood he represented Mr. Abram Anderson and his interest in the negotiation.

Q. You remember, Mr. Beldon, the incident of the execution of this mortgage, complainant's mortgage, in conjunction with other papers, at the office of Mr. Harned, September 20?

A. I remember the occasion at Mr. Harned's office to which you make reference; that I have any extremely distinct recollection of the execution of the mortgage, I can't say.

Q. Can you say from your present recollection, affirmatively say, whether this mortgage in evidence, the complainant's mortgage, was read before execution to Messrs. Cox and Henderson, at the office?

A. Not by me or in my presence.

Q. Can you state with any degree of precision presently whether this mortgage of the complainant's, as executed, was read by you to either Cox or Henderson, the officers of the defendant company, anterior to the time of its execution?

A. According to the best of my recollection, it was not.

Cross-examination.

By Judge Gaskill:

Q. Do you recall the fact that before you saw Mr. Harned in connection with this transaction you, at the request or understanding of Messrs. Cox and Henderson, went to Mr. Abram Anderson's house several times, did you not?

A. I went there; but I could not say whether it was several times or not.

Q. Do you not recall that it was before Mr. Harned was called into the matter?

A. It was; your first question assumed that, and I answered in accordance with your question.

Q. Do you recall whether or not Mr. Anderson was ill at that time?

A. He appeared to be not in the enjoyment of full health.

Q. Do you recall whether, on the occasion of your first visit, you took an agreement there for execution—maybe this will help you—which you read over to Mr. Anderson, but which was not signed and which you left there, saying that you had an errand across the river and would return?

A. No, I don't recall that, sir, at all.

Q. You don't say that it didn't take place, do you?

A. I don't say that it did not, but I am fairly confident that it did not.

Q. When did you first meet Mr. Harned in connection with this matter?

A. Do you mean the date or its relation to the beginning of my connection with it?

Q. Either.

A. I can't remember the date, but it was some little while after I first went into the matter. There was an agreement drawn, which was signed by the parties; that agreement was drawn or dictated by myself. My recollection is, that it afterwards became necessary that some changes should be made. There was some dissatisfaction between the parties and the agreement was not to be consummated.

Q. Even though it had been signed?

A. Even though it had been signed, as I recollect; and it was about that time that I became acquainted with the fact that Mr. Harned was representing Mr. Anderson in the matter.

Q. The agreement you referred to was the so-called first agreement of August 14, was it not?

A. I suppose it is; I don't remember the agreements, and as that seems to be the first, I have to assume that it is.

Q. Will this aid you: Were there two agreements at that time, what has been called by Mr. Henderson the main agreement and a supplementary agreement drawn by you?

A. I see on inspection of the papers that there are two agreements, which, from their appearance, I am quite sure were drawn in my office.

Q. That is, two agreements of August 14th?

A. Yes, sir.

Q. Mr. Henderson asked you, on behalf of the Food Company, to prepare the papers to consummate this deal, didn't he?

A. I was engaged in the matter prior to the time of the drawing of the first agreement. And so far as the consummation of the matter is concerned, I was practically its engineer, and in consequence of that I drew the papers; whether there was a particular request to draw the papers or not, I can't say. I rather think there was, because of the fact that Mr. Schuyler Woodhull, who had at some time represented some or all of the parties, was away, and the question possibly arose whether the paper should be drawn before he returned or not, so possibly there was a particular request made to me.

Q. You drew the deed which has been shown here?

A. It was drawn in my office.

Q. And under your supervision and direction?

A. Yes, sir.

Q. And you also drew, or had drawn in your office, the mortgage in question in this case?

A. Yes.

Q. And the whole of that mortgage, with the exception of the signatures and the typewriting paper annexed on the last page, and the filling up of the acknowledgment, was drawn in your office?

A. The entire body of the mortgage, with the exception of the date, was drawn in my office.

Q. And that includes that part of the mortgage, as a matter of course, which is in dispute in this case?

A. Oh, yes.

Q. In addition to the mortgage you drew a bond, as a matter of course?

A. I presume I did.

Q. Or had one drawn. I show you the bond accompanying this mortgage and ask you if that also was not prepared in your office?

A. I have no doubt of the fact—the body of the bond—the date excepted.

Q. I show you the deed from the Preserving Company to the Food Company, and ask you if that also was prepared in your office?

A. Yes.

[The deed referred to marked Cross Bill Exhibit D2 for defendant on cross bill.]

Q. Did you also draw the bill of sale that has been produced and identified in this case?

A. Yes, sir; I did.

Q. That was also prepared in your office, was it not?

A. Yes, sir. I answer more from the character of the typewriting than from my general knowledge of the transaction, that I have no doubt that it was.

Q. You recall the fact that there was a bill of sale from the Preserving Company to the Food Company?

A. Yes; and I have no doubt that I drew it, and that is it.

Q. After you drew these several papers, what did you do with them?

A. I confess I can't recall; my impression was—

Q. I want your recollection, if you can recall?

A. I supposed that impression would cover that. My impression was that they were all drawn sometime prior to the day on which the matter was consummated. There was by some previous agreement a day fixed for the consummation of the affair, and we went down to Mr. Henderson's office,

as I understood it, to consummate it. Mr. Henderson was there and Mr. Harned was there—I forget whether Mr. Cox was there or not—and I was there. My recollection is that the meeting was more formal than anything else, because it had already been announced that another breach had occurred, and Mr. Abram Anderson would not carry the matter out in the way the other parties wanted it; but we met there for the purpose of doing business.

Q. When was that?

A. I can't recall that; but it was sometime prior to the final consummation.

Q. Was it not prior to the so-called second agreement, prior to the 13th day of September?

A. That I would not say; but my impression would be that it was not, and yet I won't be positive about it.

Q. Did you leave the papers at Mr. Henderson's office that day?

A. My impression is that I did.

Q. Do you recall that, on the morning of the 20th of September, Mr. John Harned came over to your office to speak with you about these papers and their form?

A. No, sir; I don't recall that.

By the Vice Chancellor:

Q. I understand you to say that the papers having been drawn in your office were by you or under your direction as yet unexecuted and left with Mr. Henderson?

A. My impression is that they were left at his office on the day when we went down there to consummate the matter; but whether they were all the papers, or whether there were some further agreements, I can't remember.

Q. Was the mortgage, the complainant's mortgage, on which he bases his equity in this suit, was that one of the papers which, having been drawn in your office, was by you sent to Mr. Henderson?

Whatever papers there were, were left and not sent, but I don't recollect specifically the mortgage being among them.

Q. Left at Mr. Henderson's office?
A. Yes, sir.

Further cross.

Q. You took with you the day you went to Mr. Henderson's office all the papers you had been directed to prepare, and which were necessary to consummate this transaction?
A. Whatever was necessary to consummate—whatever was to be consummated at that time I had prepared to be there.
Q. Do you recall of having in your possession any of the papers between that time and the 20th day of September?
A. I don't recall it.
Q. Do you recall having any of the papers in your office, or in your possession, after the meeting at Mr. Henderson's office, before September 20?
A. I don't recall any specific time having any papers in my possession.
Q. When do you recall having last seen that mortgage, the mortgage in question, the complainant's mortgage?
A. I saw it undoubtedly on the 20th of September.
Q. When before that last?
A. That I can't tell you at all.
Q. Had you seen it before September 20; and after the time, you say, you went to Mr. Henderson's office?
A. Well, I am not sure that that was one of the papers that was left at Mr. Henderson's office; I don't know when it was prepared.
By the Vice Chancellor:
Q. You say that sometime prior to the meeting at Mr. Henderson's office, September 20, there was an effort to come to an agreement, and a failure, because the parties did not come to a common mind. Mr. Anderson, you say, was not willing to execute the agreement in its then existing form; is that so?
A. That is my recollection of it.

Q. Did that disagreement touch the frame or form in which the mortgage of the complainant was expressed?

A. My recollection is that it had no reference to the form of the mortgage at all, but was a question of terms altogether.

Q. Was the mortgage drawn before the arising of that disagreement?

A. That I can't remember. If I could, then I could say whether or not I left it at Mr. Henderson's office.

Q. You say the disagreement did not touch or effect the framing, or the manner in which the mortgage was expressed?

A. My recollection is that it did not; I don't remember just what it was.

Q. And you say you went to the meeting, up to the point of finding out that Mr. Anderson would not agree to it?

A. That is my recollection.

Q. Then you went to that meeting prepared to carry it out if Mr. Anderson had been willing?

A. Yes, sir; but I am not positive whether it was fully carried out, one of the provisions, or whether there having a dispute arisen over a previous agreement, it was a question whether he would sign a further agreement.

Q. Up to the time you found Mr. Anderson was not willing to carry out, hadn't you prepared to carry the agreement into effect; you understood Mr. Anderson would not carry it out. Hadn't you prepared to carry it out to that point; was not the mortgage drawn at that time when you found Anderson would not carry out the other elements of the agreement, and it was not executed?

A. I can't remember that.

Q. I do not see how you could have gone prepared to carry it into effect, and had been prevented from carrying it into effect by his refusal, and his refusal not having affected the mortgage, or the incidents of the mortgage, how it could have been that you prepared to carry it into effect, without you had the mortgage drawn. Can you explain it

how it could be that you had prepared for the Anderson Food Company, to carry out the agreement, Mr. Anderson refusing to carry it out upon a matter not connected with this mortgage, and yet I cannot get from you a statement as to whether the mortgage had, at the time when you came to that meeting, been prepared?

A. That I don't recall, because I don't now recall what the purpose of our appointment at Mr. Henderson's was, whether it was for the final passing of the papers, or whether it was for some matter preliminary to it, or whether it was for the purpose of signing a further agreement, I am not at all certain about that. I do know that sometime prior to that date it was reported and generally understood among those who were managing it, including Mr. Harned and myself, that nothing was going to be done on that day, and I remember Mr. Harned coming and stating nothing would be done. But I cannot remember the specific papers at all. I will say this in response to your Honor's question, that if that appointment included the passing of the papers, they were either done at that time or else it had been understood that they were not needed to be done, because it would not be carried out—one or the other.

Judge Pancoast: That seems to be reasoning rather than testimony.

The Witness: The Vice Chancellor's question to me was reasoning.

Further cross.

Q. Showing witness agreement marked Cross Bill Exhibit C3, being agreement heretofore referred to as that of September 20; that bears date September 20?

A. Yes, sir.

Q. And the word twenty is written in there; the rest of the paper being in typewriting?

A. Yes.

Q. The word "November" has been erased and that word "twenty" written over it?

A. I should not think it was November.

Q. What was it?

A. It looks to me like nineteenth.

Q. The word nineteenth has been erased and the twentieth written over it?

A. That is not in my handwriting.

Q. I call your attention to Article 5 of this agreement, and ask you if that does not stipulate that the agreement was to be consummated on the nineteenth day of September?

A. Yes.

Q. Now, was not the nineteenth the day before the twentieth that you were down at Mr. Henderson's office, and after you failed, the word nineteenth at the beginning of this paper was crossed out and the word twentieth put in on the next day?

A. Well, my answer must be that I have no distinct recollection with regard to it. If you want to know my impression, I can give you that, and that I will if you wish. My impression is to the contrary, because I thought there was a longer time elapsed between our formal meeting, as you might call it, at Mr. Henderson's office, and the patching of it up by which the final consummation was made possible.

Q. Do you not recall the fact that on the morning this deal was finally consummated, Mr. Harned coming to your office and having a conversation with you about this mortgage, in the presence of Mr. Henderson?

A. No, sir; I don't.

Q. Don't you remember Mr. Harned coming and talking with you about the contents of this mortgage with you at any time?

A. I think he did; and I feel fairly positive in my own mind, not only by recollection, but by inspection of the papers, that he did.

Q. Don't you recall that Mr. Harned came to you and said, as a matter of course, this mortgage is to be a mort-

gage on the personal property as well as a mortgage on the realty, and you saying to him in reply, that is so; and that you then sketched or suggested some phraseology to insert in the mortgage?

A. I don't remember the conversation, but I have an indistinct recollection of sketching out some phraseology in his presence as the result of the conversation which we had.

Q. And don't you recall Mr. Harned objecting to that phraseology to some extent, with the result that you copied from the bill of sale, which had been theretofore drawn, the phraseology which now appears in the mortgage in the clause that has been read?

A. I don't remember that such is the case, and I don't remember that it is not.

Q. Didn't Mr. Harned say to you that this mortgage was to be a mortgage on the chattels as well as the realty, on the whole thing that was sold, and didn't you reply that that is as you understood it, and then you sketched off something?

A. I don't remember any conversation that occurred between myself and Mr. Harned. I know we had conversations, but I don't recall them.

Q. And that immediately thereafter you took this bill of sale and directed certain phraseology from that, to be copied into the mortgage?

A. I think that after a conversation with Mr. Harned I took the bill of sale and dictated the portion to be included in the mortgage; whether it was in Mr. Harned's presence or not I don't know.

By the Vice Chancellor:

Q. Will you state what was the portion which you so dictated to be included in the mortgage?

A. It had reference to the personal property.

Further cross.

Q. Was it that portion which has been heretofore read to you?

A. I presume that it was either that or a portion of it.

Q. Wasn't it the whole of the last two paragraphs of the typewritten part on the second page commencing with "and also all movable machinery?"

A. (Complainant's mortgage being handed to witness, he examines it on the question put to him.) It is useless for me to attempt from memory to state what it was, for I have now, as it comes to me, an indistinct recollection that I said to Mr. Harned that I had a regular clause for including property which might come into the premises afterwards, and that I would use that clause; and I don't remember whether it was dictated in his presence or not, whether it was done at that time.

Q. And you don't remember anything further than the insertion of that clause?

A. I know that I caused that clause to be inserted.

Q. You are unable to state, as I understand, how the deed, the bond and mortgage, the bill of sale, got from your office after they were drawn to Mr. Harned's office, where they were executed?

A. It may seem incredible, but it is a fact.

Q. Whether you gave them to Mr. Henderson or whether you gave them to Mr. Harned, you can't say, or whether you sent them by one of your office boys?

A. I can't think that any suggestion could help me; my mind is absolutely blank as to how they got from my office to Mr. Harned's office.

Q. After this mortgage had been completed in your office, and before it left your possession, as a matter of course, you examined the mortgage to see that your instruction to your subordinates had been carried out?

A. I don't recall doing it; but I presume that I did it.

Q. That is your practice?

A. Yes, sir.

Q. And in a very important matter like this, involving a large sum of money, you feel quite sure that it was done, do you not?

Objected to.

The Vice Chancellor: I will admit it. This is perhaps the only way transactions of this character can be proved. The certifying officer has hundreds of instances in which he takes acknowledgments. In the very nature of his memory it is impossible that he can recall the detail of each instance. His statement of his invariable custom that he makes known the contents to the party signing it, &c., &c., is the only way he can truthfully narrate what happened, save as the face of his certificate shows it.

(Question read.)

A. I don't think it is possible that papers of this importance could have gone out of my office without having been read by me, either every word or substantially through.

DAVID A. HENDERSON, recalled.

Direct examination.

By Judge Pancoast:

Q. Did you, or any other officer of the Anderson Food Company, to your knowledge, ever direct or consent to the inclusion in the mortgage in question the goods and chattels or personal property of the company?

Same objection.

The Vice Chancellor: I will admit it.

A. No, sir; I did not.
Q. And no other to your knowledge did?
A. No, sir.

Adjourned until November 13, 1902, at 10 A. M.

CAMDEN, N. J., November 13, 1902.

The hearing in this case was continued pursuant to adjournment. Appearances as heretofore noted.

JOHN T. COX, sworn for complainant in cross bill (defendant in the original bill).

Direct examination.

By Mr. Woodhull:

Q. What is your present relation to the defendant company?
A. I am president and treasurer of that company.
Q. Were you president on September 20, 1901?
A. Yes, sir.
Q. As such president state whether or not you executed the complainant's mortgage?
A. I did.
Q. I show you four several agreements already in evidence and ask you to examine them and say whether or not you were a party to those agreements on the one part with Abram Anderson on the other?
A. Yes, sir; those are the agreements. (Being Exhibits Cross Bill C1 and Cross Bill C2, Cross Bill C3 and Cross Bill C4.)
Q. Will you please look at that paper heretofore marked C2 on the main bill and state whether or not that is the mort-

gage covenanted to be executed by virtue of the terms of these agreements?

A. Yes, sir; that is the mortgage.

Q. In the negotiation for the purchase leading up to the purchase of the Anderson Preserving Company, who conducted the negotiations on your behalf under these agreements?

A. Mr. David A. Henderson.

Q. State whether or not you had personal knowledge of the details of those transactions anterior to September 20?

A. Yes, sir; I had full knowledge of those details.

Q. Do you remember the date of the consummation of the agreements of purchase?

A. Yes, sir; September 20, 1901.

Q. Where were the papers signed, the consummation?

A. At Mr. Henderson's office.

Q. Of September 20, I mean—the final consummation?

A. Oh, you mean the transfer?

Q. Yes.

A. At the office of Mr. John F. Harned.

Q. On what date?

A. On the afternoon of September 20 1901.

Q. Have you recollection of going to the office for the purpose of executing the papers?

A. I have, sir.

Q. Executing the mortgage that I have just shown you?

A. Yes, sir.

Q. Did you sign that mortgage that day?

A. I did.

Q. In what capacity?

A. As president of the Anderson Food Company.

Q. Have you or not a clear recollection as to the incidents surrounding the signing of that paper?

A. Yes, sir; I have.

Q. Will you state whether or not, before you signed the complainant's mortgage, Exhibit C2, the mortgage was, by Mr. Harned, or any one at his office at the time, read over to you?

A. No, sir; it was not.

Q. Will you state whether or not any declaration was made by Mr. Harned, or by any one at that time, prior to the signing, in respect to the contents of the mortgage?

A. No, sir.

Q. Will you state whether, at the time you signed this mortgage, it was your understanding, as president of the defendant company, that the same was signed pursuant to the agreement shown, as you have already stated, by virtue of the resolution of the defendant company here offered in evidence yesterday?

The witness' understanding is objected to.

The Vice Chancellor: I will admit it.

A. Yes, sir.

Q. Will you please state when you first saw the complainant's mortgage here in evidence?

A. I saw it in Mr. Harned's office on the day of the transfer. He produced it from somewhere; I don't know where. I first saw it in his hand. He said this is the mortgage, laid it on the table, turned back the flap and said, this is the place to sign; I accordingly signed it.

Q. In that answer you have just given, have you given the whole details as you recollect them, incident to the signing by yourself as president of the defendant company?

A. I believe I have.

Q. Will you state whether or not any declaration as to the form of this mortgage was made to you, or read to you, before the execution?

A. Not to my knowledge; I remember no such incident.

Q. By anyone?

A. By anyone.

Q. Did you or any of the officers of the Anderson Food Company, to your knowledge, ever direct or consent to the inclusion in the mortgage of the complainant, of goods man-

ufactured and to be manufactured, or in the process of manufacture?

A. No, sir; I did not.

Q. When did you first become apprised of the inclusion of the words in question, goods manufactured, etc., and to be manufactured, in the mortgage?

A. About the 10th of October, I think. Mr. Henderson at that time went up to the office of Mr. Harned in reference to the insurance on the mortgage. He came back and reported to me that he met Mr. Harned and Mr. Anderson there—

Conversation is objected to.

The Vice Chancellor: The question is when you first obtained such knowledge; you have answered it when you say that.

Q. Such report having been made to you by Mr. Henderson, what was done by you, if anything, in respect to it?

A. We immediately consulted our counsel in the case. Mr. Henderson had told me—

Objected to.

The Vice Chancellor: You cannot give the conversation.

Q. Having had a consultation, what did you do, if anything?

The Vice Chancellor: You consulted counsel; what else did you do?

A. We protested against the inclusion.

Q. Verbally, or in writing?

A. Mr. Henderson protested verbally, and we also protested by letter in writing.

Q. Will you state, Mr. Cox, why you didn't suppose the mortgage of the complainant included would be inclusive of goods manufactured, and to be manufactured, or in process of manufacture?

Objected to.

The Vice Chancellor: You are asking for the reasons within the thought and mind of this gentleman. What he did or did not suppose is provable, because it goes to show that he was acting under a mistake. The undisclosed reasons why he supposed seem to be too remote. I think the objection is good.

Q. Can you state why a protest was made, as testified to by you, of the inclusion of these words in that mortgage of the complainant?

Objected to for the same reason.

The Vice Chancellor: I think that is a step nearer the case. In cases of this kind where there is an allegation of a mistake, and it is made the basis for reforming an instrument, it is obligatory on the part of the one who seeks to reform to show that there was a mistake; that is, that he signed the instrument under the belief that it was one thing, when, in fact, as it was expressed, it was another. The question proposed is why did you protest? and it will call for an answer as to the facts which led the party to make the protest. I will admit it.

A. For the reason that the mortgage as drawn was not in accordance with the terms of the agreement with which I was thoroughly familiar.

Q. Have you recollection of the incidents of the attempted consummations under these agreements, in the office of

Mr. David A. Henderson, sometime anterior to September 20?

A. I have.

Q. Do you remember when that was?

A. It was on September 5th or 6th.

Q. Will you state whether you saw exhibited there at that meeting any papers in this cause, which papers were taken up and considered at that time?

A. There were no papers exhibited at that meeting beyond the agreement in question. I think the agreement was under date of the 14th—the only one under consideration at that time.

Q. The 14th of what?

A. August 14, 1901.

Q. Who were there in the office at the time?

A. Mr. Harned, Mr. Beldon, Mr. V. S. Anderson, Mr. David A. Henderson and myself.

Q. The complainant was not there?

A. No, sir.

Q. State whether or not at that time there was any suggestion of final settlement that day?

Judge Gaskill: How is that material?

Q. That is, whether there was anything done in the way of execution of the papers looking toward a consummation of the agreement of purchase?

A. No, sir.

Q. Did you see the complainant's mortgage at that time?

A. No, sir.

Q. Have you knowledge whether at that time such a mortgage was drawn?

A. No, sir; I didn't know anything about it.

Q. I think you said that you had never read the complainant's mortgage?

A. I never read that mortgage until I saw it in the bill in this case.

Q. How do you account for that?

A. I left the matter in the hands of Mr. Henderson and our attorney.

Cross-examination.

By Judge Gaskill:

Q. You have been engaged in business for quite a number of years, haven't you?

A. Yes, sir.

Q. How many years?

A. Well, about 22 or 23.

Q. And during that time the business that you have been connected with has had large and important matters to deal with?

A. Yes, sir.

Q. And you are accustomed to disposing of business matters involving considerable amounts of money?

A. Yes, sir.

Q. And involving large interests?

A. Yes, sir.

Q. Is it your custom or practice to sign important papers involving large amounts without reading them?

A. It depends upon circumstances surrounding the signing of those documents.

Q. I ask you if that was your custom to sign such papers without reading them?

A. My custom is controlled by the circumstances.

Q. That is, if you have your attorney present, who has had charge of the matter, engineering it for you, you sign such papers as are presented to you in his presence, without reading them?

A. Yes, sir; I have done that a number of times.

Q. And in this case you signed this paper without reading it because of the fact that Mr. Beldon, your counsel, was present?

A. I presume that follows the other reason that I stated.

Q. You knew Mr. Beldon was to prepare all of the papers for you?

A. Yes, sir.

Q. Or that were necessary in this transaction?

A. Yes, sir.

Q. Including the deed, this bond and mortgage, and the bill of sale?

A. Yes, sir.

Q. You also knew that Mr. Beldon had drawn the original agreement between the parties to this matter?

A. The first agreement; yes.

Q. And the various other agreements were submitted to him as they were drawn, were they not?

A. I believe they were; Mr. Henderson could testify more particularly upon that point.

Q. Are you positive you have never seen this mortgage before the afternoon of September 20?

A. I am positive.

Q. The objection that you have to the mortgage, as I understand is, that it includes in the property covered by the mortgage, goods manufactured and goods in the process of manufacture?

A. Yes, sir.

Q. In all other respects the mortgage is right as you understand it?

A. I believe so.

Q. How do you fix September 5th or 6th as the time when you were at Mr. Henderson's office with the gentlemen you have named?

A. That is the date that appears in the agreement of August 14, as the date on which the transfer should take place.

Q. Now, the agreement of August 14 had been practically set aside by mutual consent before the day arrived for its consummation, hadn't it?

A. I think we understood that it would not go through; but we met for that purpose all the same.

Q. Did you meet for the purpose of carrying out the agreement or for the purpose of negotiating a new agreement?

A. I don't know; we were there by appointment on the day specified in the agreement.

Q. Did Mr. Beldon bring in papers there that day?

A. I didn't see any.

Q. What papers, if any, were produced at that meeting, or talked over?

A. I don't think there was any talk about any papers there at all—in fact, the only papers that I can remember was the agreement itself.

Q. That is the agreement that has been offered in this case, styled the agreement of August 14?

A. Yes, sir.

Q. Was a new agreement entered into on that day?

A. No; I think the whole deal went off on that day.

Q. I understand Mr. Anderson was not present—that is, Mr. Abraham Anderson, the complainant?

A. No, sir.

By the Vice Chancellor:

Q. In what sense did it go off—in the sense that it was absolutely abandoned, or only the terms and arrangement which had theretofore been contemplated went off, with the understanding that a new deal was to be proposed and considered. Was there an entire abandonment of the whole transaction?

A. That was my conception of it.

Q. On the 6th of September?

A. Yes, sir.

Further cross.

Q. That is to say that, notwithstanding the fact that two agreements had been signed by you and Mr. Abraham An-

derson on the 14th of August, those two agreements, by mutual consent, were abandoned or annulled, were they not?

A. Whether or not by mutual consent, I can't say. (The balance of the answer was ordered stricken out by the Vice Chancellor.)

Q. And after those two agreements of August 14 were abandoned or annulled, there was a second agreement embodying the features of both of the agreements of August 14, signed on the 13th of September, was there not?

A. Yes, sir.

Q. Called the second agreement in this case?

A. Yes.

Q. And by mutual consent that agreement was also abandoned or annulled prior to the agreement in question, that of the 20th of September?

A. Yes, sir.

Q. What time in the afternoon of September 20 did you reach Mr. Harned's office?

A. The appointment was for two o'clock; I think we were there on time.

Q. Are you clear about that?

A. Yes, sir.

Q. Then you will positively say that you were there at 2 o'clock?

A. Yes, sir.

Q. Who was there when you reached the office?

A. Mr. Abraham Anderson, Mr. V. S. Anderson, Mr. R. L. Anderson, Mr. Harned; Mr. Henderson went with me.

Q. Was Mr. Beldon there?

A. No, sir.

Q. How soon did Mr. Beldon come in?

A. Mr. Henderson went after him, and he came back; I don't know; probably 10 or 15 minutes; may not be as long as that.

Q. How soon after you reached Mr. Harned's office was it that Mr. Henderson went after Mr. Beldon?

A. Probably four or five minutes; only a short time.

Q. Had you been to Mr. Beldon's office between the 13th of September and the 20th of September to discuss this matter of the transfer from one company to the other?

A. Yes; we went in there and negotiated that matter.

Q. And Mr. Beldon advised you of the progress that was being made from time to time, didn't he?

A. There was more or less conversation concerning the progress of the deal; the negotiations with Mr. Beldon were not conducted by myself.

Q. But when you signed the paper in question in this case, Exhibit C2 of the main case, what did you understand you were signing?

A. A mortgage.

Q. How did you receive that information or knowledge?

A. I think I have testified that Mr. Harned took this paper in his hand, the first time I saw it, it was about in that shape. He said this is the mortgage, laid it on the desk.

Q. Is that all that was said which advised you as to the character of the paper that you were signing?

A. All to my knowledge.

Q. Were any other papers signed there that day?

A. Oh, yes.

Q. Did you sign any other papers?

A. I believe I did.

Q. What other papers did you sign?

A. I signed a certificate of stock, signed a bond.

Q. How many times did you sign the bond?

A. I don't know; I can't tell you.

Q. What else did you sign?

A. I must have signed it—no, I could not have done that; I am not familiar with this kind of a transfer.

Q. I am not asking you from your familiarity, but from your recollection.

A. I don't know.

Q. How did you know that you were signing a bond?

A. Because I saw the word "bond" printed on it.

Q. Is that all you knew about it?

A. Yes, sir; that is what I knew about it.
Q. Nobody told you that it was a bond?
A. I don't remember it; no.
Q. And you didn't read it over?
A. No, sir.
Q. But Mr. Beldon was present at that time?
A. He was in the room; yes, sir.
Q. When you signed both the bond and the mortgage?
A. That is right.
Q. Which was signed first, the bond or the mortgage?
A. I can't tell you.
Q. Which was signed first in order of time, the bond and mortgage made by your company, the Food Company, to the Preserving Company, or the deed from the Preserving Company to the Food Company?
A. I can't tell you.
Q. In what order of time, with respect to the signing of these several papers, was the bill of sale for the goods manufactured and unmanufactured and other chattels of the Preserving Company signed?
A. I can't tell you; I signed these documents as they were indicated to me.
Q. You didn't sign the bill of sale?
A. I don't know.

By the Vice Chancellor:

Q. Just think a moment. The bill of sale is a bill of sale from the Anderson Preserving Company to the Anderson Food Company; can you recollect whether you signed that or did not; you say you don't know?
A. I don't recollect that document.

Further cross.

Q. You remember as the president of the Food Company receiving a complete transfer from the Preserving Company

of all its interests in the real estate and goods manufactured and other personal property?

A. Those matters were in the hands of our attorney, I presumed, and I trusted that the transfer would be completed in all its details.

Q. You had given to your attorney full instructions as to what would be done, as you understood it?

A. It was entirely in the hands of Mr. Henderson, the secretary of the company.

Q. I mean your company when I say you.

A. Yes, sir.

Q. You said that your understanding was that when you signed this mortgage that it was to the same purport and effect as the agreement and resolution of your company?

A. Yes, sir.

Q. And if it is to the same purport and effect as the agreement and resolutions of your company, you have no exception to take to it, have you?

Mr. Beldon: I do not think that is a fair question. That is simply a determination of this suit. If it is according to the agreement and resolution of this company, I presume that settles the entire matter, and that is asking him in effect whether he is willing to submit to the determination of the Court.

The Vice Chancellor: The question does not seem to call for any answer which can aid in settling the questions in issue. It does not make any difference whether this witness makes exception to the agreement or not if it accords with the obligation of the Food Company, for which he was acting. That is the final result at which the Court must arrive, an ascertainment whether the disputed clause was a mistake or a fraud, and not the intention of the parties.

If I find on the whole case that the expression in the mortgage of the clause, including the property now challenged, was in accordance with the agreement of the Food Com-

pany, then it is quite obvious that the personal criticism of this witness, outside of the matter referred to, is of no importance. The question is not relevant and should be overruled.

Q. At the time you received the deed you say you also received a bill of sale for the property. I hand you Exhibit D8 of the main case, being the statement which was furnished by Blackwood, the bookkeeper of the Preserving Company, with a stamped date of September 3, 1901, on it, and ask you what, according to that exhibit, the amount of merchandise and goods in warehouses amounted to?

Mr. Beldon: Where is that proper cross-examination?

Judge Gaskill: I suppose it would be objectionable on another ground; the paper is already in and speaks for itself.

The Vice Chancellor: That may be so, but I cannot see that it is cross-examination.

Judge Gaskill: What I want to do was to get on the record, independent of the exhibit, what that amounts to.

The Vice Chancellor: The proper way is to call him as your witness; it is not proper cross-examination.

Question withdrawn.

Q. You say that your company, the Food Company, received from the Preserving Company a bill of sale for the personal property of the Preserving Company. What was the inventory value of the personal property that you thus had conveyed to you by that bill of sale?

A. I don't know; I can't remember.

Q. Can't you give me any idea from recollection?

A. No; I can't tell you what was the value of that bill of sale. I know the value of the items on our books.

Q. Can you tell me from recollection how much of the property covered by that bill of sale represented merchandise and unmanufactured goods and goods in the warehouse?

A. No; I do not.

Q. It was in the neighborhood of $100,000?

A. I presume so.

Re-direct.

Q. You stated on cross-examination that you deemed that there was an abandonment of negotiations on the 5th or 6th of September, when the meeting took place at Mr. Henderson's office. Can you state why you deemed there was such an abandonment?

Judge Gaskill: I object to that; it seems to me that now, by introducing that, it will necessarily call for testimony on our side as to the reason why these different agreements were abandoned and set aside and will not aid us on the main issue.

The Vice Chancellor: I cannot see wherein the reasons why, unless they were expressed, are important. The fact that there was an abandonment is shown, and the agreements which had been past were abandoned. I think the question is not relevant.

Q. That is all.

DAVID A. HENDERSON, having previously been sworn, recalled on the part of the complainant in the cross bill (defendant in the main bill).

Direct examination.

By Mr. Woodhull:

Q. I show you a paper purporting to be a certificate of stock No. 52 of the Anderson Preserving Company, and ask you how that came into your possession?

A. It was handed to me by Mr. Anderson on the day of our transfer, September 20, 1901.

[The certificate is dated the 14th day of September, 1901, and is No. 52, for 2250 shares; is signed Abraham Anderson, V. S. Anderson, treasurer, with the seal of the Anderson Preserving Company attached. On the back is an executed power of attorney, dated September 20, 180—; signed A. Anderson and David A. Henderson; the grantee, &c., being in blank.]

[Offered and marked Cross Bill Exhibit C6.]

A. The execution of the original document is dated September 14.

Q. At the time you made your original protest to Mr. Harned, at his office, as to the inclusion of the goods manufactured, &c., in this mortgage, state whether there was anything said by you by way of protest as to the effect of such provision on the insurance of the goods?

A. Yes, sir; I protested in very loud terms to Mr. Harned in the presence of Mr. Anderson, and told him the inclusion of that in the mortgage should not have been and would menace the insurance on the plant; there was no insurance company in the State of New Jersey, that has regular license, would care to insure property that had a chattel mortgage; it is absolutely prohibited by the insurance contracts of the State of New Jersey.

Q. Had you knowledge of such provision in any policies at the time you executed this mortgage?

A. I certainly had.

Q. At the time of the execution of the mortgage, will you state whether you or any one made any protest. Was there any controversy about the form of the papers?

A. No, sir.

Q. After this original protest to Mr. Harned and the complainant, did you or not see your attorney?

A. Yes, sir; I went immediately to him.

Q. What did you do, if anything?

A. I asked him about it and he told me—

Objected to.

The Vice Chancellor: You consulted him on the question.

Q. What did you do?

A. Then we made an appointment to go to the Register of Deeds office later in the day to see whether it was correct, as Mr. Harned said relative to the inclusion in the mortgage, of the chattel end of it, and we there discovered that it was correct.

Q. You examined the register of this mortgage?

A. Yes, sir.

Q. And found this clause included?

A. Yes, sir; that was about October 10, 1901; and I protested to Mr. Harned after that several times, at the office and on the street, and then we wrote letters to Mr. Anderson.

Judge Gaskill: I think that has all been gone into.

Q. You remember a meeting at your office during the progress of these negotiations attended by Mr. Harned and not by Mr. Anderson, the result of which was that it appeared that an end had been reached in the negotiations?

A. Yes, sir; I remember such a meeting.

Q. State, if you can, for how long a time it had been understood the contract of August 14 would not be carried out?

A. About two or three days previous to that time, upon the discovery by us—

Objected to.

Q. Will you state, if you can, whether there were any other papers prepared before that meeting in your office looking to further agreements?

A. We were negotiating more or less to see if we could not modify the agreement of August 14, and my impression is Mr. Beldon was then framing other agreements, so as to give it according to our idea.

Objected to as not responsive.

The Vice Chancellor: I do not understand that the answer is outside of the question.

A. And we were present at our office at that time, but it was not agreeable to Mr. Harned's idea. So Mr. Beldon said he saw there was no further use for him and he went away, supposing, I presume, that we might take it up later.

Q. When was this?

A. September 5 or 6.

Q. Those agreements that you have just mentioned, were they executed at that meeting?

A. No, sir; Mr. Abraham Anderson was not there.

Q. State, please, whether or not Mr. Beldon produced at that meeting, at the 5th or 6th, any deed or bond and mortgage?

A. No, sir.

Cross-examination.

By Judge Gaskill:

Q. Then Mr. Beldon prepared agreements which were not executed?

A. Yes, sir.

Q. And he was to prepare agreements, as you say, in accordance with your ideas?

A. Yes, sir; according to our thought of getting the transaction through.

Q. And with respect to the agreements that were subsequently signed—that is, signed after September 5th or 6th, they were submitted to Mr. Beldon?

A. Yes, sir.

Q. And signed after he had gone over them and understood what your ideas were?

A. Yes, sir; correct.

Q. And Mr. Beldon also understood what your ideas were at the time you met in Mr. Harned's office for a final consummation of this matter, on September 20?

Mr. Beldon: I do not think this gentleman can speak as to my understanding.

The Vice Chancellor: Yes; the frame of the question is improper. What was said between this gentleman and Mr. Beldon, indicating knowledge of any transaction subsequently carried out, I think, is admissible; but not what Mr. Beldon understood. The question is overruled because the framing is objectionable.

Q. You directed Mr. Beldon to prepare final papers for execution in this matter?

A. I did according to the agreements.

Q. And with these agreements Mr. Beldon was familiar, by reason of his having gone over them with you and participating in these negotiations with you and for you?

A. He hadn't gone over any of the papers in the case other than the agreement with me.

Q. That is what I mean.

A. I testified to that before two or three times.

Q. In addition to going over the agreements with you, I say that he was familiar with and took part in all these negotiations?

A. I should think he would be familiar with the agreements—at least, up to the time the papers were prepared.

Q. And he took part in all those negotiations?

A. Not in all, but in a great many of them.

Q. There were a great many meetings other than the meeting when these four papers were signed?

A. Yes, sir.

Q. There were a number of occasions when you and Mr. Beldon went to Mr. Abraham Anderson's house while he was ill—before he went to California?

A. We went there once to my knowledge, and possibly a second time.

Q. You and Mr. Beldon, together?

A. Yes, sir; and Mr. Cox.

Q. The protest that you make is, as I understand it, that this mortgage includes in it the stock manufactured and unmanufactured or in the process of manufacture?

A. That is correct.

Q. And in all other particulars the mortgage is correct, as I understand it?

A. Well, I should think it would be.

Q. Was there more than one meeting at your office?

A. With whom?

Q. With the parties?

A. No; not altogether.

Q. Well, with any other parties?

A. I think off and on Mr. Cox stopped in with me quite frequently—

Q. I don't refer so much to conferences between you and your associates as I do to conferences between you and the other parties, or any of them.

A. There was no designated meeting other than that time, September 5th or 6th, when we arranged to meet at that time.

Q. Didn't you and Mr. Harned have several conferences?

A. He came in there; I was up to see him off and on, the same likewise with Mr. Beldon, and likewise Mr. Anderson. To say as to the particular time, it is hard to say.

Re-direct.

Q. Did Mr. Beldon visit Mr. Abraham Anderson with you after Mr. Harned was introduced into the negotiations?

A. No, sir.

Q. After Mr. Harned's introduction into the negotiations, did Mr. Beldon meet with you and the other parties in the actual negotiations, out of which the agreement grew?

A. Other than with us, looking after our interest.

Q. Who is us?

A. It is Mr. Cox and myself.

Re-cross.

Q. Don't you recollect Mr. Anderson meeting Mr. Harned at Mr. Abraham Anderson's house on one occasion when Mr. Beldon accompanied you?

A. No, sir; Mr. Cox was there.

Q. You and Mr. Cox?

A. Yes, sir.

Q. Mr. Beldon was not present?

A. No.

Q. On one occasion with Mr. Harned?

A. No, sir.

[Complainants in cross bill offer in evidence the deed made by the Anderson Preserving Company to the Anderson Food Company and heretofore marked for identification Cross Bill Exhibit D2, and the same is now marked Cross Bill Exhibit C7.]

[Also offered in evidence the bill of sale heretofore marked for identification Cross Bill Exhibit D1, and the same is now marked Exhibit C8.]

Complainants in cross bill rest.

JOHN F. HARNED, sworn on the part of the defendant in the cross bill (complainant in the original bill).

Direct examination.

By Judge Gaskill:

Q. You are an attorney-at-law and a member of the Bar of the State of New Jersey?

A. Yes, sir.

Q. And you have been practicing your profession in the city of Camden for a number of years past?

A. Yes, sir.

Q. Are you the John F. Harned, or the Mr. Harned, that has been referred to in these proceedings?

A. I believe I am.

Q. In the negotiations between the parties to this controversy did you represent the Anderson Preserving Company and Mr. Abraham Anderson?

A. I represented Mr. Abraham Anderson, and incidentally the Preserving Company.

Q. Were you called into this matter to assist, or to take part, at what stage?

A. Well, just before the execution of the first agreement.

Q. Had the agreements offered in this case, dated August 14, been executed at that time?

A. They had not.

Q. Had they been drawn?

A. I don't think the first agreement had ever been drawn; other agreements had been, but the agreement that was signed as the first agreement, I don't think it had been drawn.

Q. That is to say, when you were brought into the matter there were certain written papers purporting to embody the agreement between the parties in existence?

A. There were.

Q. And they were discarded and these agreements of August 14 drawn and executed after your employment?

A. I think that is the situation.

Q. Who drew these agreements of August 14, if you know?

A. Let me see the agreement.

Q. Agreement handed to witness.

A. I don't know who drew that agreement.

Q. Did you draw them?

A. I think it is likely I had some part in them; but I don't think I directed the writing of that agreement.

Q. Those agreements of August 14 were set aside and a new agreement was entered into on September 13, I think.

A. Yes, sir.

Q. And that in turn was set aside and a new agreement—an agreement under which the papers were executed, now in controversy, dated September 20, was made?

A. That is right.

Q. Who drew the agreement of September 20, if you recall?

A. I dictated it to my stenographer and it was written in my office.

Q. Following what language?

A. Following in part the language in the first agreement, and suggestions that were made from time to time by both parties as we went along.

Q. So far as that part of the agreement is concerned, which affects the matter in controversy—that is to say, this mortgage, and the character of the mortgage, is that original work on your part, or is that a copy from the first agreement?

A. That is copied from the first paper that was handed to me. I had nothing to do with framing the language of that section. I adopted it, however.

Q. I hand you the agreement of September 20, and call your attention to the fact that the word twenty is written over an erasure on the top of that page; who wrote that?

A. I did.

Q. The word twenty is in your handwriting?

A. Yes, sir.

Q. What word is erased to give room for that?

A. Nineteenth, I think.

Q. The word nineteenth?

A. Yes, sir.

Q. I notice that this paper (referring to the agreement of September 20), as originally drawn, provided for the carrying out of this agreement on the 19th day of September?

A. It does.

Q. Will you explain how a paper dated September 20 could provide for the execution of papers in furtherance of it, on September 19?

A. The paper was originally drawn several days before, with the intention of carrying it out on the 19th. Some other little hitches occurred in the matter, and it was not actually signed until the 20th, and it was executed on the 20th; and the date the 19th, on the day in which it was to be carried out, was simply allowed to remain in there by oversight. I want to make a correction in my former testimony. The last agreement was not written in my office.

Q. That is, the agreement of September 20?

A. Yes, sir. I remember that an agreement substantially the same was written in my office; but the agreement of September 20 was not written in my office.

Q. Cross Bill Exhibit C3 you refer to?

A. Yes, sir.

Q. I hand you the one of September 13, and ask you whether or not that was the one that was dictated in your office?

A. Yes; that was dictated in my office and was written there on my typewriting machine.

(Showing witness another paper.)

A. The one dated September 13 was written in my office.

Q. What time of the day, of the 20th of September, was the agreement in question signed by the respective parties?

A. I don't think the parties were together when they signed it. I ain't sure what part of the day it was.

Q. Do you know anything about the signing?

A. I am not certain just when it was signed; my impression is that it was signed by Mr. Abraham Anderson.

Judge Pancoast: He didn't ask you that.

Q. I note you witnessed the signature of Abraham Anderson and Mr. Henderson witnessed the signature of John T. Cox in the agreement of September 20, Cross Bill Exhibit C3; were those two signatures made at the same time, and both in your presence?

A. I think they were.

Q. Do you know what time of the day, as near as you can recollect, those signatures were appended to that paper, the agreement of September 20?

A. If they were signed together it must have been after 2 o'clock in the afternoon.

Q. How long before the other papers consummating that agreement were executed and delivered?

A. The execution of the transaction began at 2 o'clock in the afternoon of that day.

Q. Then was there any interval, and if so, how long between the execution of this agreement of September 20 and the execution and delivery of the deed, the bond and mortgage and the bill of sale?

A. My impression is that they were simultaneous.

Q. Please state the number of interviews, as near as you can, that you had, either alone, representing Mr. Anderson, of the Preserving Company, or with Mr. Anderson or his son, Voorhees Anderson, with the other parties, those representing the Food Company, Mr. Cox or Mr. Henderson or Mr. Beldon, or all of them?

A. I don't recollect but one interview with Mr. Abraham Anderson at which any of the other parties were present.

Q. Where was that?

A. At Mr. Anderson's house.

Q. What was Mr. Anderson's condition at that time, as to health?

A. He had been quite under the weather and was improving, getting better at that time.

Q. Who was present at Mr. Anderson's house?

A. Mr. Henderson and Mr. Cox.

Q. What other interviews did you have with these gentlemen, or any of them, or their representatives?

A. Numerous; I should say at least two dozen.

Q. And where were those different interviews?

A. Those interviews were, I think, entirely at either Mr. Henderson's office or my own. Sometimes I would go and see him, sometimes I would met Mr. Cox there, sometimes Mr. Henderson would come to see me.

Q. Were there any conferences at Mr. Beldon's office?

A. I don't remember ever being at a conference at Mr. Beldon's office.

Q. That is, with Mr. Henderson and Mr. Cox?

A. With Mr. Henderson and Mr. Cox. I remember upon one occasion meeting Mr. Henderson there, if you call that a conference. I didn't go there by any appointment; didn't go there for the purpose of consulting him, and so I didn't consider it a conference.

Q. Did you, as the attorney of Mr. Anderson, meet with Mr. Beldon, the attorney of the other parties, at any time?

A. I did on several occasions.

Q. Where were those interviews or conferences?

A. Principally at Mr. Beldon's office. I think he came in to see me once or twice. I remember several times going to see him.

Q. After the final arrangement had been made between these parties, which resulted in the agreement of September 20, did you understand from the parties who was to prepare the papers necessary to carry out that agreement?

A. Yes.

Q. Who was to do that?

A. Mr. Beldon.

Q. And what papers were to be prepared?

A. The necessary papers to carry out the settlement—a deed, a bill of sale, a bond and mortgage, some resolutions

of the Food Company authorizing the execution of the papers, other matters of detail that I don't remember.

Q. Any resolutions by the Preserving Company authorizing the sale on their part?

A. Yes.

Q. I hand you the minute book, styled on the back "Record," and handed me by counsel on the other side as the minute book of the Anderson Preserving Company, and call your attention to some typewriting papers pasted in the book between pages 166 and 167, and ask you if they are the papers which you thus prepared for the Preserving Company in order to carry out this transaction?

A. Yes; I prepared these resolutions.

Q. And were they shown to Mr. Beldon?

A. They were not.

Q. Was he consulted with reference to them?

A. He was not.

Q. Were those resolutions prepared pursuant to any arrangement or conference between you and Mr. Beldon as one of the necessary steps?

A. I don't know that it was ever suggested between us that the resolutions should be prepared; I don't remember any such suggestion.

Judge Gaskill: I want those resolutions now marked for identification, and later I will offer them.

[Typewritten and manuscript corrected copy of resolutions signed by John T. Cox and other stockholders of the Anderson Preserving Company; witnessed by David A. Henderson, offered and marked Cross Bill Exhibit D3.]

The resolutions are as follows:

"We, the undersigned, all of the stockholders of the Anderson Preserving Company, do hereby agree and consent to a sale by the Anderson Preserving Company of all its personal property and real estate, buildings, improvements,

good will, stock, fixtures, machinery and assets to the Anderson Food Company for the sum of two hundred and fifty thousand dollars, and to receive back in part payment therefor a purchase money mortgage of one hundred thousand dollars upon the Anderson Food Company assuming all the indebtedness and obligations of the Anderson Preserving Company.

"JOHN T. COX,
"V. S. ANDERSON,
"A. ANDERSON,
"L. W. GOLDY,
"R. L. ANDERSON.

"'And do agree' crossed out before signing.

"Witness, DAVID A. HENDERSON."

[The other resolution is a resolution without signature of the Anderson Preserving Company annexed to the first, and both fastened in the minute book of Preserving Company, on page 166.]

Cross Bill Exhibit D4 as as follows: "Resolved, that this company sell to the Anderson Food Company all its personal property and real estate, buildings, improvements, good will, fixtures, machinery and assets for the sum or price of two hundred and fifty thousand dollars. One hundred thousand dollars of which is to be paid by a purchase money mortgage upon the property above sold; one thousand in cash and one hundred and forty-nine thousand dollars in stock of the Anderson Food Company's at par, upon the Anderson Food Company assuming all the indebtedness and obligations of the Anderson Preserving Company.

"Resolved, that the officers of this company be and they are hereby directed to carry out the terms of this resolution.

"Resolved, that the mortgage of $100,000 made by the Anderson Food Company to the Anderson Preserving Com-

pany, when executed, be assigned to Abraham Anderson, in payment to him for 1,000 shares of the capital stock of this company by him held and surrendered."

Judge Gaskill: I offer them in evidence subject to cross-examination.

Objected to as immaterial.

Judge Gaskill: My point is, in the first place, it shows the intention of the parties, and in the second place it binds the defendants in the main bill, and the complainant in the cross bill, by actual knowledge as to what the mortgage was to be: that it was to be a purchase money mortgage on the property, because John T. Cox is one of the stockholders who signed that consent; and in the third place, I submit that it is part of their title to this property, and that they, in taking the deed for the property, necessarily looked to the resolutions of the board of directors authorizing the conveyance; and that it is a necessary link in their title, and on all those grounds it is admissible. I am free to admit that I have not yet called the secretary and proved that they were adopted.

The Vice Chancellor: They are not challenging the form of the proof; they deny its relevancy.

Judge Gaskill: I propose to connect it later. And another thought, when we first commenced taking testimony, it was conceded that some of the matters which counsel thought would have important bearing upon the case, and which they would want to use, not only before your Honor and in the higher Court, if it was taken there, ought to come in, and I would like for that reason to have these resolutions appear upon the record in this case.

The Vice Chancellor: Go on, and I will pass on them later.

Q. With this understanding on your part, that Mr. Beldon was to draw these papers, consummating the agreement of September 20, state whether or not, before the papers were executed, and shortly before, you saw Mr. Beldon with respect to the form and effect of any of the papers, and if so, what took place between you, and when?

A. This matter had been dragging along for some weeks previous to the final settlement, and both sides were uncertain as to whether the matter was to go through or not. Two or three days—at the most three days—before the matter went through, I went over and saw Mr. Beldon—his office is right across the street from mine—and told him, in my judgment, it looked very much as if the parties were going to get together and the transaction consummated, and I asked him whether he had drawn the papers.

Q. When was this, did you say?

A. At the most three days before; I can't say whether it was the second or third day before. He called his clerk and got the papers out, and then commenced to explain to me the description of the real estate mentioned in the mortgage. It seemed that the title that the Anderson Preserving Company held came by several titles, and he had had a little map of it made, and consolidated it in one description, and he explained that to me. And then we took up the subject of inserting in the mortgage a description of the personal property. I told him that I understood that under a fair interpretation of the intention of the parties it was to cover the property that was being sold; that it was necessary, to give any validity to the mortgage, it would necessarily have to be a purchase money mortgage, as no money was passing between the parties, only property, and that it should cover the property that was actually being transferred. He agreed with me in that. He understood that to be the intention of the parties, and called a stenographer, picked up the bill of sale, which he had lying with the other papers, and read from the bill of sale a description of the personal property in the bill of sale, and directed that that be inserted in the mortgage.

He then said that a mortgage of that kind would interfere with the management of the business unless they were authorized in some way to dispose of it. I said that seems reasonable, and then he added the form authorizing the disposal of the property in the ordinary course of business, remarking at the time that he had some kind of a form of his own that he used in those cases.

Q. Was the mortgage finished in your presence?

A. It was not.

Q. Can you tell by looking at the second page of the mortgage offered in this case, Exhibit C2 of the main case, how much had been done, or what part was done, at the time you saw it before this conversation?

A. Down to the end of the description of the real estate; and if I remember right, some of the other filled in; he just had the skeleton part, the description and the names of the parties and the time it was to run, and all matters of detail at that time were not in it.

Q. Was the date in it at that time when you saw it?

A. I could not say.

Q. The word twentieth, in the date of twentieth of September is written in?

A. That is written in in handwriting.

Q. Was that part of the mortgage which now appears on the second page, commencing with the words, "and also all movable machinery, machines, tools, kettles, &c.," and ending with that page, in the mortgage at that time?

A. It was not.

Q. After you left Mr. Beldon's office, please state when you next saw this mortgage?

A. At that time I told Mr. Beldon that I thought the matter would be settled the next day. We all of us had some misgivings, and the next morning I went over and told him that I still believed the matter would go through, and the parties had agreed to meet at 2 o'clock in the afternoon, and I then asked him whether he had inserted in the mortgage the clause to which I referred.

Q. Relative to the personal property?

A. Yes, sir; and he called for the mortgage again to see whether it was there, to see whether his instructions were called out; and Mr. Henderson was there in the office and he turned to Mr. Henderson and said, "By the way, Mr. Henderson, here is something Mr. Harned has suggested should go in this mortgage," and he read that clause to him in the office, and Mr. Henderson very politely bowed that it was all right, and I left.

Q. That was in Mr. Beldon's office?

A. Yes, sir; on the morning of the execution of the mortgage; and I left the papers with Mr. Beldon at that time.

Q. Do you recall how the papers got to your office on the afternoon of the twentieth?

A. I do not. My impression is that Mr. Beldon came to my office about a quarter to two and brought those papers with him and went away; because I remember very distinctly, before all the parties arrived, that I compared the description in the mortgage with the description in the deed with my typewriter, and I could not have done that unless the papers were there at the time.

Q. Now, Mr. Harned, please state the occurrences from the time that the several parties reached your office that afternoon of September 20?

A. The parties arrived by appointment about 2 o'clock. The papers in the meantime had gotten there in some way. We commenced a discussion of the matter, and Mr. Henderson remarked that Mr. Beldon was not there, and he went after him, and in a few minutes they appeared; in examining the papers I had discovered that there was no affidavit of consideration on the chattel mortgage, and I suggested to Mr. Beldon that it would be necessary to put an affidavit on it to make the chattel mortgage valid, and he acquiesced in that, and I called in my typewriter and she sat at the desk in front of me.

Q. Who was present at that time?

A. Mr. Cox and Mr. Henderson sat to my left, and Mr. Voorhees Anderson to my right, and Mr. Robert Anderson, I think, was to my left.

Q. Where was Mr. Beldon?

A. Right in front—kind of walking around in the room; the typewriter came in and I dictated loud enough to everybody in the room to hear the affidavit which now appears upon the chattel mortgage.

Q. The affidavit of consideration?

A. The affidavit of consideration.

Q. I show you a mortgage and ask you if the typewritten paper, being an affidavit, pasted on the last page thereof and signed by yourself as Master in Chancery of New Jersey, is the affidavit in question?

A. That is the affidavit in question. The typewriter then retired to the front office, wrote the affidavit on the typewriting machine and brought it in. I went over it—whether aloud or—I don't remember—to see that it was as dictated, and started to affix it to the top of the last page of the mortgage, when Mr. Henderson came out and very kindly suggested that he thought he could do that his way, and he took hold of it and pasted it the way it now is. I said Mr. Henderson; I meant Mr. Beldon.

Q. How large is your office in which this transaction took place?

A. A big office, good size office; it is 18 by 30.

Q. Where is your table?

A. In the rear end of the office.

Q. Is it a table or desk?

A. It is a large flat desk, table.

Q. Standing against the wall or out from the wall?

A. Out from the wall.

Q. Were all of the parties within hearing distance at the time you dictated this affidavit?

A. Every one of them, beyond a question.

Q. Now, then, after that was done, please state what took place?

A. We then proceeded to execute the papers. Of course, during all this time there was more or less conversation going on. I gathered all the papers together and proceeded to execute them in the order in which they would naturally come. I first took up the deed from the Anderson Preserving Company to the Anderson Food Company, and stated to the parties that it was a deed for the property in question. They executed that. Then I took up the bill of sale and said that was a bill of sale for the personal property about to be transferred from Preserving Company to the Food Company; and that was executed. Then I took up the bond and mortgage and said that it was a purchase money bond and mortgage upon the real estate and personal property that had just been transferred by the Preserving Company to the Food Company; and that was executed. I didn't read any of the paper aloud.

Q. This mortgage in question, as executed by the corporation, and the affidavit of the secretary, David A. Henderson, appears to be taken before John F. Harned, M. C. C. of N. J.; is that yourself?

A. Yes, sir.

Q. Is that your signature?

A. That is.

Q. Did you take Mr. Henderson's affidavit to the facts stated above his signature?

A. I did.

Q. And did he swear that the contents of that affidavit were true?

A. He did.

Q. Do you remember whether or not Mr. Henderson seemed to be delighted with the consummation of this deal there that afternoon?

A. I thought he seemed to be very much pleased; that is, his natural disposition—

Judge Pancoast: Is that relevant or competent? They brought that out on cross-examination, asked Mr. Hender-

son about that on cross-examination. Certainly it is an immaterial matter.

Judge Gaskill: I will not press it if objection is made.

The Vice Chancellor: There is no question on either side that at the time when the transaction was concluded in Mr. Harned's office both parties were satisfied. I think it is surplusage.

(Question withdrawn.)

Q. You are the solicitor who filed the original bill in this case?

A. Yes, sir.

Q. Is there anything within your knowledge pertinent to this issue that is legal and competent for you to speak about that I haven't asked you about?

Judge Pancoast: I object to his acting as counsel and witness, both.

The Vice Chancellor: That is not a proper question.

Judge Gaskill: That is withdrawn.

Q. Is there any other fact in connection with the consummating of this matter that you can recall as to which you have not testified?

Objected to.

The Vice Chancellor: I think counsel must put questions which may be the subject matter of objection. I cannot see how a consultation between counsel and the witness on the stand is proper.

Judge Gaskill: I don't remember anything.

A. I didn't finish the last answer. I was asked to state what took place, and I got as far as the execution of the mortgage. After the mortgage was executed I immediately, and while all of the parties were present, handed it to my clerk, with instructions to take it to the Register of Deeds and have it recorded as a real and chattel mortgage.

Q. Did you give those directions in the presence of the parties?

A. They certainly were there; whether they heard them or not, I don't know; but the directions were given to the young man and were carried out. That happened at about four o'clock, so that the whole matter occurred between two and four o'clock.

Cross-examination.

By Judge Pancoast:

Q. Did you mean to say that no money passed, no purchase money passed, between the parties?

A. No, I didn't say no purchase money passed between the parties; I said no purchase money passed between the Anderson Food Company and the Anderson Preserving Company, and therefore there was no consideration for the mortgage other than the purchase money.

Q. There was a certified check given for cash, was there not, to Mr. Anderson?

A. Yes; Mr. Cox gave Mr. Anderson a certified check for some $50,000.

Q. Fifty odd thousand dollars?

A. Yes, sir.

By the Vice Chancellor:

Q. That had nothing to do with the mortgage money?

A. No, not at all; that was the cash in payment of the stock of the Anderson Preserving Company.

The Vice Chancellor: I did not understand that there was no money passed between the parties, but only that the mortgage was not given and did not stand for any money consideration passing between the parties, but for property passing between them.

Q. That is all.

ABRAHAM ANDERSON, sworn for defendant in the cross bill.

Direct examination.

By Judge Gaskill:

Q. You are the complainant in the original bill and defendant in the cross bill, are you not?

A. Yes, sir.

Q. And you are the Abraham Anderson referred to in the four agreements referred to by the other side?

A. Yes, sir; I am.

Q. Without giving us any of the details preceding the last agreement, who consulted you, if any one, from time to time with respect to this transfer?

A. Mr. Henderson—him and Mr. Cox together.

Q. Who first approached you—what was the very inception of the matter; who presented it?

A. Mr. Henderson was the first, I think, to approach me.

Q. Where were you at that time?

A. I think I was in my house.

Q. What was your condition of health at that time?

A. It was not in very good condition, and has not been this last five or six years.

Q. Did Mr. Henderson come to your house more than once?

A. Yes; a number of times.

Q. Was he at any time accompanied by anybody?

A. Yes.

Q. Who?

A. With Mr. Beldon, Mr. Cox, and I think once or twice with Mr. Harned.

Q. Was Mr. Beldon there more than once as you recall?

A. I think he was more than once.

Q. Did Mr. Beldon bring any papers there for you to sign?

A. Yes; he brought an agreement there for me to sign, and as he was going over the river he brought it there for me to sign about eleven o'clock in the morning.

Q. Was that before or after the first of these agreements, that of August 14, was executed?

A. I think before.

Q. Was the paper which he brought you at that time afterwards signed?

A. No, sir.

Q. When did you bring counsel into this matter as directly representing yourself?

A. At that time.

Q. Whom did you employ?

A. I employed Mr. Harned.

Q. John F. Harned?

A. Yes, sir.

Q. And he acted for you throughout this transaction, did he?

A. Yes, sir.

Q. I want to omit the details of these various agreements and why they were set aside, and come down to this agreement of September 20, the one that was finally executed. When did you learn that that agreement was to be carried out, and how?

A. On the 19th, it was to be carried out, of September, and it was carried out on the 20th.

Q. When did you learn that it was to be carried out?

A. Some days previous; I don't know just how long.

Q. Did you have any conversation with any one with respect to the character of the mortgage that was to be given to you, and if so, with whom?

A. With Mr. Beldon. Mr. Henderson was at my house —I don't know whether Mr. Cox was present or not; but I asked the question whether a chattel mortgage and a real estate mortgage would be made in one or separate. Mr. Beldon replied that a mortgage of that sort was usually made in one.

Q. Had you any intention at any time to accept anything else than a mortgage which should cover the whole of the property which was conveyed by the Anderson Preserving Company?

A. No, sir.

Q. Was there at any time, or in any conversation, any agreement, or talk, or discussion about your accepting any other than the mortgage on the whole property that was to be conveyed?

A. No, sir.

Q. Do you remember the afternoon when the papers were finally executed?

A. I do.

Q. Where was that?

A. At Mr. John F. Harned's office.

Q. Who were present?

A. Mr. Cox, Mr. Henderson, Mr. Beldon, Mr. V. S. Anderson, Mr. Robert Anderson and Mr. Harned.

Q. Please state now what occurred.

A. The deed was signed there and executed, and also the mortgage during that afternoon—

Judge Pancoast: I hope parties present on the other side will not make any gestures or signs to the witness while the witness is on the stand.

Judge Gaskill: We have not done so.

Judge Pancoast: I am credibly informed that it has been done.

Judge Gaskill: I understand Mr. Voorhees Anderson did inadvertently, when Mr. Abraham Anderson mentioned a name, motion with his hand to Mr. Harned. It was improper for him to do it.

The Witness: I didn't see it.

The Vice Chancellor: That sort of thing is often instinctively done. The parties interested must not manifest any opinion or advice to any witness on the stand. He is, when on the stand, as sacred as when at his private devotions. He must not be prompted. It is a pretty serious matter for a man to be in a position where a misstatement is perjury. All present in Court must respect his position.

The Witness: I did not notice it at the time.

Q. Mr. Anderson, you have stated who were present?
A. Yes, sir.
Q. Who was there when you reached the office, if you recall?
A. I think they were all there. I was late getting around.
Q. Who went with you, if any one?
A. I don't think there was any one went with me.
Q. You were president of the Anderson Preserving Company?
A. Yes, sir.
Q. And also the largest and controlling stockholder of the company?
A. Yes, sir.
Q. Prior to your meeting there on the 20th day, had there been any action taken by the Preserving Company with respect to this sale and transfer?
A. Yes, sir.
Q. What action had been taken?
A. The Anderson Preserving Company passed resolutions—

Judge Pancoast: The minutes will speak for themselves.

Q. They had passed resolutions?

A. Yes, sir.

Q. When was that done?

A. I don't just remember the date, can't remember the date.

Q. Who prepared the resolutions for you?

A. Mr. John F. Harned.

Q. In addition to a resolution that was passed, was there any paper signed by the shareholders?

A. I think there was.

Q. Are you acquainted with the signature of John T. Cox?

A. I am.

Q. I show you a paper marked Cross Bill Exhibit D3, purporting to be the assent of the stockholders of the Anderson Preserving Company to the sale to the Food Company, as found pasted in the minute book of the Preserving Company, between pages 166 and 167, and ask you if the signature of John T. Cox to that paper is in Mr. Cox's handwriting?

A. It appears like his handwriting.

Q. Have you any doubt about it at all?

A. No, sir.

Q. Who was the secretary of your company at that time?

A. Mr. Robert Anderson.

Q. Do you remember whether or not Mr. Robert Anderson, your son, had been at the office and about the place of business for some time?

A. At what time?

Q. Prior to September 20?

A. Yes.

Q. During that summer?

A. Yes, sir.

Q. Had he been there all that summer?

A. No.

Q. For what reason had he been absent?

A. He was laid up with inflammatory rheumatism the fore part of the summer.

Q. Who acted as secretary for the company in his absence?

A. I think the treasurer.

Q. Mr. Voorhees S. Anderson?

A. Yes, sir.

Q. Now, after executing the deed, was there a bill of sale presented for execution?

A. Yes, sir.

Q. What was done with that?

A. It was delivered with the other papers.

Q. Now, what took place with reference to the mortgage?

A. The mortgage was put on record and was afterwards assigned to me.

Q. I mean what took place that afternoon with respect to the mortgage—give us all that took place about that mortgage as you recall it?

A. The affidavit that Mr. Harned drew was signed.

Q. Where was that affidavit drawn up?

A. In Mr. Harned's office.

Q. Who drew it up?

A. Mr. Harned dictated it to the stenographer.

Q. And who was present when that dictation took place?

A. We were all there, all the parties that I have already mentioned.

Q. After that was dictated, then what took place?

A. The pasting in of the paper.

Q. Who pasted the affidavit on the mortgage?

A. I could not say who did that.

Q. You don't recollect?

A. No.

Q. What took place at the time the mortgage was executed; what did Mr. Harned say to the parties who signed it?

A. He said that was a chattel mortgage, and he sent it up with the young man to be put on record that afternoon.

80

Q. What did he say at the time the parties were about to sign the paper with reference to the character of the paper, if you recall?

A. What did the parties say?

Q. What did Mr. Harned say to Mr. Henderson or Mr. Cox at or about the time they signed it?

A. I can't recall what they did say; I can't recall that.

Not cross-examined.

ROBERT ANDERSON, sworn for the defendant in the cross bill.

Direct examination.

By Judge Gaskill:

Q. You have already testified that you were secretary of the Anderson Preserving Company?

A. Yes, sir.

Q. I hand you the book purporting to be the minute book of the Anderson Preserving Company, having pasted in it opposite page 166 a certain assent and form of resolution, and ask you if that is the minute book of the Anderson Preserving Company in which the regular minutes of the company were kept?

A. Yes, sir; that is the book.

Q. I call your attention to the minutes of September 13, commencing on page 163 and continuing to page 167, and ask you if that minute is in your handwriting?

A. No, sir; it is not.

Q. In whose handwriting is it?

A. Mr. V. S. Anderson, I judge.

Q. Were you present at that meeting?

A. Yes, I was.

Q. Did the company on that occasion pass the resolutions which appear on the minutes, pages 163, 165 and 166?

A. They did; yes, sir.

Q. Were you present at Mr. Harned's office on the afternoon of September 20, 1901?

A. Yes, sir; I was.

Q. Please state all that you can recall of the occurrence with reference to the execution of the mortgage in question.

A. To the best of my knowledge and belief—

Q. Leave out the belief and give us the best of your recollection.

A. To the best of my recollection we left the house, Third and Cooper, as near to two as I can come to it, and went to Mr. Harned's office, and were there some time. I don't know whether Mr. Cox or Mr. Henderson were there when I went in, but they were there, and V. S. Anderson and Mr. A. Anderson and Mr. John F. Harned and myself. As stated, I sat to the left of Mr. Harned, and Mr. Cox sat on the left of me, and Mr. Henderson was walking around the room—I don't think he sat anywhere—simply walked around the room. Mr. Beldon stood kind of in front of the table or desk, and Mr. A. Anderson sat to Mr. Harned's right, and Mr. V. S. Anderson sat at some place; on the table or desk were the papers, and among these papers were the bill of sale from the Anderson Preserving Company to the Anderson Food Company, and a deed from the Anderson Preserving Company to the Anderson Food Company unsigned, which I examined and read and signed afterwards as secretary of the Anderson Preserving Company, transferring to the Anderson Food Company. At that time there was a mortgage signed; that I remember. Mr. Harned stating it was a mortgage, signed by Mr. Cox and, I think, Mr. Henderson to Mr. A. Anderson.

Q. What was said by Mr. Harned about it at that time?

A. Mr. Harned said it was a mortgage from the Anderson Food Company to A. Anderson.

Q. To A. Anderson or to the Anderson Preserving Company?

Objected to as leading.

The Vice Chancellor: You are examining-in-chief; ask him what was said.

A. As near as I can say it was from the Anderson Food Company—no; it was from the Anderson Food Company to the Anderson Preserving Company, and they to A. Anderson—that is the way it was.

Q. What, if anything, was said by Mr. Harned at the time that mortgage was executed?

A. My mind was not clear exactly on that.

Q. You don't recall it?

A. I don't recall exactly what Mr. Harned said in reference to it.

Q. What, if anything took place with reference to the affidavit being dictated?

A. I heard there was something said—something being dictated, but just what it was, I don't remember. There was something being dictated by Mr. Harned to his stenographer at that time, and I think it was the time I was looking over these papers that I had to sign, and therefore didn't catch what was being done.

Q. What was done with that paper which Mr. Harned dictated to his stenographer?

A. I think it was pasted on the mortgage.

Q. There in the presence of the parties?

A. In the presence of the parties.

Judge Pancoast: Please don't do that; that is infringing the rules.

The Vice Chancellor: I do not think that suggests anything; he may answer either yes or no.

Q. What was done with the deed and the bond and mortgage after they had been severally executed?

A. They were sent to the Recorder's office for record.
Q. Who sent them there?
A. Mr. Harned.
Q. By whom did he send them?
A. I think the boy in the office; the office boy took them up.
Q. Where was the office boy given his instructions by Mr. Harned?
A. At his desk in the office, called in from the outer office.
Q. Who was present when he gave the instructions?
A. All of the parties concerned, as I mentioned before; I will mention them again if you desire.
Q. No. Cross-examine.

Not cross-examined.

VOORHEES S. ANDERSON, sworn for the defendant in the cross bill.

Direct examination.

By Judge Gaskill:

Q. You have already testified that you were the treasurer of the Anderson Preserving Company. I show you the minute book of the Anderson Preserving Company and call your attention to the minute, pages 163 to 167, and ask you in whose handwriting those minutes appear?
A. My own.
Q. Can you state how it is that you wrote out the minutes instead of your brother Robert; do you recall the fact or the reason?

Judge Pancoast: That is not necessary.

(Question withdrawn.)

Q. Were you present on the afternoon of September 20, in Mr. Harned's office, when this matter was consummated?

A. Yes, sir.

Q. Please state what you recall of the circumstances.

A. I know that a number of the papers were executed, among them being a mortgage for $100,000, and I was called upon to sign an affidavit that was attached to the mortgage.

Q. Who prepared that affidavit?

A. Mr. Harned.

Q. How?

A. By dictation to his stenographer.

Q. When was that dictation done; who were present?

A. In the presence of all the parties concerned, Mr. Cox, Mr. Henderson, Mr. A. Anderson, Mr. R. L. Anderson, Mr. Beldon, Mr. Harned and myself.

Q. Were all the parties within hearing distance at the time that was done?

A. Yes, sir.

Q. Mr. Beldon was present at that time, was he?

A. Yes, sir; I am quite sure.

Q. Can you recall what, if anything, Mr. Harned said to the officers of the Food Company at the time or before the execution of mortgage with respect to the mortgage?

A. No, I can't; any more than he discovered that no affidavit had been prepared to attach to the mortgage, as heretofore stated.

Q. After the papers had been prepared, have you any knowledge as to what was done with the deed and the mortgage?

A. No; I have not.

Q. You don't recall that?

A. No.

Not cross-examined.

DAVID A. HENDERSON, re-called for the defendant in the cross bill.

Direct examination.

By Judge Gaskill:

Q. I show you paper marked Cross Bill Exhibit D3, purporting to be the assent of the stockholders of the Anderson Preserving Company to the sale to the Anderson Food Company, as found in the minute book of the Anderson Preserving Company, pasted in on page 166, and ask you if the name David A. Henderson as witness to the signature to that paper is in your handwriting?

A. Yes, sir.

Q. And it was signed by those persons in your presence?

A. Yes, sir.

Q. That is all.

Judge Gaskill: I now offer the assent of the stockholders of the Anderson Preserving Company to the transfer and ask to read the same on the record.

The Vice Chancellor: Does this claim to be the assent under which the subsequent action was taken?

Judge Gaskill: Yes, sir.

Mr. Beldon: There is no proof that touches the case, and it is antecedent to the final agreement.

Judge Pancoast: If it is material, the burden is on the other side to show it.

The Vice Chancellor: The testimony on the point I do not recall. I cannot remember that any witness testified to connect this paper now presented with the conveyance to the Food Company.

Judge Gaskill: It may be necessary to ask a further question, and I ask your Honor's indulgence in that respect.

ABRAHAM ANDERSON, having been previously sworn, recalled on the part of the defendant in the cross bill.

Direct examination.

By Judge Gaskill:

Q. You have already testified to certain action by your company on the 13th of September, 1901. I ask you that if that action of your company was pursuant to the assent signed by the stockholders, which appears in the minute book, page 166?

A. It was.

Q. Was the resolution which was passed at that time passed pursuant to the consent or assent?

A. Yes, sir.

Q. And was the deed of conveyance which the Preserving Company made to the Food Company in pursuance of that resolution passed at that meeting?

A. Yes, sir.

Q. That is all.

Not cross-examined.

Judge Gaskill: I offer it in evidence. I offer in evidence the typewritten assent of the stockholders of the Anderson Preserving Company, signed by them and marked Cross Bill Exhibit D3.

Also the partial typewritten and corrected manuscript resolution pasted in the book at the same page, 166, marked Cross Bill Exhibit D4.

Also offer in evidence the resolutions passed by the Anderson Preserving Company at its meeting September 13, 1901, as shown on pages 163, 165 and 167 of the minute book.

Objected to.

The Vice Chancellor: I think the paper offered has been shown to be so connected with the final conveyance and the resulting mortgage that it is admissible, and I will admit it. It may be written in at its proper place.

Mr. Woodhull: Objection is made to the last offer, on the ground that an incomplete minute, ending in an incomplete resolution, unsigned by the secretary, on the further ground that it is immaterial and irrelevant.

Judge Gaskill: I have proved by the officers of the company that the minutes correctly show the resolution which was adopted at that time, the president, secretary and treasurer.

[Exhibits D3 and D4 are copied in on page 285 of this record.]

The following is a copy of the resolution of September 13:

"Camden, N. J., Sept. 13, 1901.

"A special meeting of the stockholders of this company was held at the office of the company at 4 P. M.

"Stockholders present were A. Anderson, L. W. Goldy, R. L. Anderson, J. T. Cox and V. S. Anderson.

"The following resolution was offered by L. W. Goldy:

"'Resolved, that the company accept the tender of two dollars (2.00) per acre made by James R. Brewer for a quit claim deed of the Penniscott, Mo., lands, and that the president be authorized and empowered to execute and deliver to him a deed therefor.'

"Upon motion of R. L. Anderson, which was seconded by V. S. Anderson, the resolution was accepted as read and the president authorized to act accordingly.

"The following consent was received and ordered spread upon the minutes:

"'We, the undersigned, all of the stockholders of the Anderson Preserving Company, do hereby agree and consent

to a sale by the Anderson Preserving Company of all its personal property and real estate, buildings, improvements, good will, stock, fixtures, machinery and assets to the Anderson Food Company for the sum of two hundred and fifty thousand dollars, and to receive back in part payment therefor a purchase money mortgage of one hundred thousand dollars upon the Anderson Food Company assuming all the indebtedness and obligations of the Anderson Preserving Company.

"JOHN T. COX,
"V. S. ANDERSON,
"A. ANDERSON,
"L. W. GOLDY,
"R. L. ANDERSON.

" 'And do agree' crossed out before signing.

"Witness, DAVID G. HENDERSON.

"The following resolution was offered by L. W. Goldy:

" 'Resolved, that this company sell to the Anderson Food Company all its personal property and real estate, buildings, improvements, good will, stock, fixtures, machinery and assets for the sum of price of two hundred and fifty thousand dollars, one hundred thousand dollars of which is to be paid by a purchase money mortgage upon the property above sold, and $1,000 in cash, and $149,000 in stock of the Anderson Food Company at par assuming all the indebtedness and obligation of the Anderson Preserving Company.

" 'Resolved, that the officers of this company be and they are hereby directed to carry out the terms of this resolution.

" 'Resolved, that the mortgage of $100,000 made by the Anderson Food Company to the Anderson Preserving Company, when executed, be assigned to Abraham Anderson in payment to him for 1,000 shares of the capital stock of this company by him held and surrendered.'

"By unam—"

JOHN F. HARNED, re-called for defendants in the cross bill.

Direct examination.

By Judge Gaskill:

Q. Please state to the Court the facts with reference to the so-called protest made to you by Mr. Henderson with respect to this mortgage, after its execution and delivery and recording?

A. The mortgage provided that insurance should be delivered to the mortgagee, but did not provide the amount.

Q. I call your attention to the mortgage itself, and ask you if the blank in the mortgage on the third page, which provides for the amount of the insurance to be assigned, was ever filled in?

A. It was not.

Q. Now, then, please state the facts with reference to that.

Judge Pancoast: With reference to what?

The Vice Chancellor: The conversation to which Mr. Henderson testified touching insurance on the mortgaged property.

A. Mr. Beldon first called my attention, some days after the matter had been settled, to the effect that the blank—

Judge Pancoast: That is not responsive.

A. It leads up to it.

Judge Pancoast: Just get to the point.

The Vice Chancellor: The question is, as I understand, with relation to the conversation at which Mr. Henderson testified, he made a protest, and you have asked Mr. Harned to state—

Judge Gaskill: I ask to withdraw that question.

Q. Mr. Harned, to go back to the conference between yourself and Mr. Beldon, with reference to the preparation of these papers, please state what, if anything, was said with respect to the insurance?

A. Mr. Beldon called my attention to the fact that in the execution of the papers we had omitted to place in the mortgage the amount of the insurance to be given. We had conversation—Mr. Beldon, Mr. Henderson and I—at Mr. Beldon's office sometime previous, in which the amount of the insurance was discussed, and Mr. Henderson said, of course, you would not want $100,000, and I said no; the proper amount of insurance to place in the mortgage was the amount that the Anderson Preserving Company had usually been carrying on their plant. We all agreed that that was right. I said that I was informed that that amount was $75,000. Mr. Henderson said, I don't think it was that much. He thought $55,000; and it was agreed that that matter should be deferred and he should find out how much it was. The matter afterwards escaped our attention, and it was not inserted. Several days after the execution of the mortgage Mr. Beldon came over to the office, and I spoke to him about it, and said, however, it would not make any difference; they would give the insurance just the same. I saw Mr. Henderson about it, and he assured me that it would be done. It was not for several days, and I then wrote him a letter calling his attention to the fact that we would like to have the insurance, and in response to that letter he came to my office and protested against the including of the personal property in the mortgage. Mr. Anderson happened to be present at the office at the time.

Q. That is the manner in which the protest came about?

A. Yes, sir.

Q. Did you ever get that insurance?

A. I did not.

Not cross-examined.

VOORHEES S. ANDERSON, re-called on the part of the defendant in the cross bill, having been previously sworn.

Direct examination.

By Judge Gaskill:

Q. I hand you the minute book of the Anderson Preserving Company and call your attention to the resolutions contained on page 163, 165 and 167, and ask you if they are there in your handwriting?

A. Yes, sir.

Q. And were those resolutions passed at that meeting?

A. Yes, sir.

Q. How do you account for the fact that the minute on page 167 appears to be unfinished?

A. If my memory serves me, I made some memorandum on small sheets, and in order to get the thing correct and condense it as much as possible, I consulted Mr. Woodhull, who was our attorney at that time.

Q. Mr. Schuyler Woodhull, counsel for the complainants in the cross bill, was counsel for the Anderson Preserving Company at that time?

A. Yes, sir.

Q. And he dictated those minutes to you from your notes?

A. He helped me a great deal in order to give me the correct language and condense it.

Q. Did you leave them just as he stopped his work with you?

A. Yes, sir.

Q. That is all.

Not cross-examined.

Judge Gaskill: We offer all the various papers, books and documents that have been referred to and marked as exhibits and offer this book of minutes.

Judge Pancoast: That is a very omnibus offer.

The Vice Chancellor: Yes; he must specify everything that has not already been marked.

Judge Gaskill: On the cross-examination of your witness I could not make any offer; I could simply have matters marked for identification, and those are the matters that I offer, in addition to the matters that I have already offered.

The Vice Chancellor: I will admit the minutes of the Anderson Preserving Company. I am satisfied that the proof justifies the admission of them. They were proven to have been the minute of the company made at the time.

Defendants in cross bill (complainant in main bill) rests.

DAVID A. HENDERSON, re-called in rebuttal on the part of the complainant in the cross bill.

Direct examination.

By Mr. Woodhull:

Q. Mr. Harned stated in his testimony that you were present in Mr. Beldon's office when he was there, during the progress of these negotiations, not at an arranged meeting, but casually there, and that at that time there was read over to you a clause in this mortgage under consideration, "goods manufactured," &c., and that you acquiesced therein; what have you to say in respect to that statement?

A. Why, I was in Mr. Beldon's office on one or two occasions when Mr. Harned happened in, but there was nothing ever said in relation to the mortgage whatsoever, or any part thereof, at any time.

Q. I direct your attention to a statement by Mr. Abraham Anderson, at a meeting at his house, when you and Mr. Beldon called there during these negotiations, in which statement he said that the chattel mortgage feature was raised, and that he spoke to Mr. Beldon about the inclusion—whether the chattel mortgage should be separate, or whether it should be with the real estate mortgage; what have you to say with respect to that?

A. Mr. Abraham Anderson never raised the question whatsoever; neither did Mr. Beldon. The word chattel mortgage was never mentioned in my presence by Mr. Abraham Anderson during any of the negotiations from the beginning to the end.

Q. That is all.

Not cross-examined.

SAMUEL W. BELDON, re-called in rebuttal on the part of the complainant in the cross bill.

Direct examination.

By Mr. Woodhull:

Q. I direct your attention to a statement of Mr. Harned in respect to meeting Mr. Henderson in your office during the progress of these negotiations, and the statement by him or by you, in the presence of Mr. Henderson, of the scope of this mortgage, being inclusive of the goods manufactured, &c., the clause, I think you called it, and ask you what recollection, if any, you have of any such statement in respect to the mortgage to be prepared?

A. I heard the testimony of Mr. Harned this morning, in which he stated that the chattel feature was added to this mortgage upon a certain occasion, and that upon his afterwards visiting my office, as I recall his statement, it was

shown to him as being in, and was then and there read to Mr. Henderson by me and assented to by Mr. Henderson. I say with regard to that, I don't recall any such occurrence.

Q. Did you hear Mr. Abraham Anderson's statement in respect to the chattel mortgage in his testimony this morning?

A. Yes.

Q. At the meeting at which you were present at his house with Mr. Henderson?

A. Yes; I heard his statement. I don't recall any such occurrence there.

Cross-examination.

By Judge Gaskill:

Q. You recall pasting the affidavit on the mortgage do you not?

A. I can't say that I do definitely, Judge Gaskill. I know that it was pasted there. I knew that it was a chattel mortgage; I knew that it required the affidavit, and I did not need the declaration of the requirement of the affidavit to inform me that it was a chattel mortgage.

Q. That is all.

Complainant in the cross bill (being defendant in the main bill) rest.

Case closed.

Adjourned until December 15, 1902, at 9.30 A. M. for argument.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,
Complainant,

AND

ANDERSON FOOD COMPANY,
Defendant.

ON BILL AND CROSS BILL, &c.

FINAL DECREE.

This cause coming on to be heard in the presence of John F. Harned, solicitor of and of counsel with the complainant, and Schuyler C. Woodhull, solicitor and of counsel with the defendant company, upon bill, answer, cross bill, answer to cross bill and replication, and the pleadings and proofs and the argument of the respective counsel having been heard and duly considered, and the Court being of the opinion that the bill of complaint filed in this cause should be dismissed with costs, and the defendant's cross bill filed in this cause should also be dismissed, with costs,

It is, on this twenty-ninth day of June, nineteen hundred and three, by William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the complainant's bill filed in this cause be and the same is hereby dis-

missed with costs; and it is further ordered, adjudged and decreed, that the defendant's cross bill filed in this cause be and the same is hereby dismissed, with costs.

And it is further ordered and decreed, that the complainant pay to the defendant the costs of this suit to be taxed on the original bill of complaint; and it is further ordered, that the said defendant pay to the complainant the costs to be taxed upon the cross bill by it filed.

W. J. MAGIE,
C.

Respectfully advised,

M. P. GREY,
V. C.

[A true copy]

E. C. STOKES,
Clerk.

In Chancery of New Jersey.

Between

ABRAHAM ANDERSON,

AND

ANDERSON FOOD COMPANY,

ON BILL AND CROSS BILL.

NOTICE OF APPEAL.

The National State Bank of Camden, N. J., The Hazel Atlas Glass Company, Richard J. Rogers, Walter Wheatley, The Cox & Sons Company, and other creditors of the Anderson Food Company, an insolvent corporation and the defendant in the above suit, hereby appeal from the whole and every part of the final decree made in this Court in the above stated cause, as declares the mortgage of the said complainant, Abraham Anderson, in the pleadings in the cause mentioned, to be a valid and existing encumbrance as a chattel mortgage, or otherwise, upon the goods and chattels of the defendant company, or any of them, and as refuses the relief prayed for in the said cross bill of the said defendant, the Anderson Food Company, to the Court of Errors and Appeals in the last resort in all causes.

Dated January 8th, 1904.

S. C. WOODHULL,
Solicitor of Anderson Food Co. and the Creditors of said Company, above named.

E. G. C. BLEAKLY,
Of Counsel.

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

D. J. PANCOAST,
Of Counsel with Anderson Food Company and said creditors.

New Jersey Court of Errors and Appeals.

Between	
ANDERSON FOOD COMPANY, Appellant (Defendant below),	ON BILL, &c.
AND	DECREE.
ABRAHAM ANDERSON, Respondent (Complainant below).	PETITION OF APPEAL.

The humble petition of Anderson Food Company and National State Bank of Camden, N. J., the Hazel Atlas Glass Company, Richard J. Rogers, Walter Wheatley, The Cox & Sons Company, and others, creditors of Anderson Food Company, the appellant in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the twenty-ninth day of June, nineteen hundred and three, wherein the said Abraham Anderson was complainant, and the said Anderson Food Company was defendant, in this respect, to wit, that the said decree adjudges that the defendants' cross bill in said cause be dismissed, with costs, and your petitioners appeal from the whole and every part of said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that,

First. By virtue of said decree dismissing the defendants cross bill, the defendant was refused relief to which it was

lawfully entitled, in accordance with the principles of equity and good conscience (upon the proofs and evidence produced before the Court) in respect to the reformation or annulment of a certain deed of mortgage mentioned and set forth in the pleadings in said cause, upon the ground that as to the inclusion in said mortgage of "goods manufactured, unmanufactured, and in process of manufacture," with power of substitution, &c., in the mortgagee therein, said mortgage was *pro tanto*, not the mortgage of the defendant, and that said relief should have been granted defendant in accordance with the prayer of said cross bill of the said defendant.

Second. Because said decree was unlawful, in that, by its operation it held and declared, as a valid and subsisting encumbrance upon the goods and chattels of the defendant, the mortgage of the complainant.

Third. Because, by the proofs, the defendant was shown to be entitled to a decree in its favor, in accordance with the prayer of its cross bill.

Fourth. Because the said decree is, in divers other respects, irregular and unlawful and was wrongfully adjudged against the defendant, to its prejudice.

Your petitioners, therefore, pray that the said decree of the said 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.

S. C. WOODHULL,
Solicitor of Appellants.

D. J. PANCOAST,

E. G. C. BLEAKLY,
Of Counsel with Appellant.

85

New Jersey Court of Errors and Appeals.

Between

ABRAHAM ANDERSON,
Appellant,

AND

ANDERSON FOOD COMPANY,
Respondent.

ON BILL, &c.

ANSWER.

The answer of Abraham Anderson, respondent, to the petition of appeal of the above named appellants.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for his answer thereunto, nevertheless, says and admits that a decree was, on the twenty-ninth day of June, 1903, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition, as is therein stated, but as to the substance and form thereof prays to refer thereto when the same shall be produced, and this respondent is advised and believes that the said decree is agreeable to equity, and prays that the same may be affirmed with costs to be adjudged to this respondent.

JOHN F. HARNED,
Solicitor and of Counsel with Respondent.

[EXHIBIT C1.]

KNOW ALL MEN BY THESE PRESENTS, that Anderson Food Company, a corporation of the State of New Jersey (hereinafter called the obligor), is held and firmly bound unto Anderson Preserving Company, a like corporation (hereinafter called the obligee), in the sum of two hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee, its certain attorney, successors or assigns; to which payment well and truly to be made the said obligor does hereby bind and oblige itself and its successors firmly by these presents. Sealed with the seal of the said Anderson Food Company and dated the fourteenth day of September, in the year of our Lord one thousand nine hundred and one.

The condition of this obligation is such, that if the above bounden obligor or its successors shall and do well and truly pay, or cause to be paid, unto the above named obligee, its certain attorney, successors or assigns, the just sum of one hundred thousand dollars, lawful money aforesaid, at the expiration of ten years from the date hereof (the said obligor being privileged, however, to pay the said sum within said period in instalments of not less than one thousand dollars each), together with interest thereon, payable semi-annually, at the rate of five per cent. per annum, and together with all taxes, or charges in nature thereof, that may be laid or levied on this obligation, or the principal and interest moneys hereby secured, immediately upon their assessment, without any fraud or further delay; and for the production to the said obligee, its successors or assigns, on or before the thirty-first day of December of each and every year, of receipts for all taxes of the current year assessed upon the premises described in an accompanying indenture of mortgage; then the above obligation to be void, or else to be and remain in full force and virtue; *provided*, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid, for the space

of thirty days after any semi-annual payment thereof shall fall due. or in the payment of any tax or charge as aforesaid, for the space of ninety days after the same shall become payable, or in such production of tax receipts as aforesaid on or before the day aforesaid, then and in either such case the whole principal debt aforesaid shall, at the option of the obligee therein named, its successors or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, shall be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

JOHN T. COX,
President.

Sealed and delivered in the presence of, and attested by

DAVID A. HENDERSON,
Secretary.

To any Attorney of any Court of Law in New Jersey, or elsewhere:

This is to authorize you to appear for the Anderson Food Company in any court of competent jurisdiction in case of the breach of the condition of the above bond and confess judgment for the penalty therein contained, as of the last or any subsequent term, with costs of suit and release of errors; and this shall be your sufficient warrant.

In witness whereof, the said Anderson Food Company has hereunto caused these presents to be signed by it and attested by its secretary this twentieth day of September, in the year of our Lord one thousand nine hundred and

JOHN T. COX,
President.

Sealed and delivered in the presence of, and attested by

DAVID A. HENDERSON,
Secretary.

[The bond secured by this mortgage bears a fifty dollar U. S. Rev. stamp duly cancelled.]

[EXHIBIT C2.]

THIS INDENTURE, made the twentieth day of September, in the year of our Lord one thousand nine hundred and one, between Anderson Food Company, a corporation of the State of New Jersey, party of the first part, and Anderson Preserving Company, a like corporation, party of the second part.

Whereas, the said party of the first part, in and by its certain obligation or writing obligatory, under its seal duly executed, bearing even date herewith, stands bound unto the said party of the second part in the sum of two hundred thousand dollars, lawful money of the United States of America, conditioned for the payment, in lawful money as aforesaid, of the just sum of one hundred thousand dollars at the expiration of ten years from the date thereof and hereof (the said obligor being privileged, however, to pay the said sum within said period in instalments of not less than one thousand dollars each), together with interest thereon, payable semi-annually, at the rate of five per cent. per annum, and together with all taxes or charges in nature thereof that may be laid or levied on said obligation or this indenture of mortgage, or the principal and interest moneys thereby secured, immediately upon their assessment, without any fraud or further delay; and for the production of said obligee, its successors or assigns, on or before the thirty-first day of December of each and every year, of receipts for all taxes for the current year assessed upon the premises hereinafter prescribed:

Provided, however, and it was thereby expressly agreed, that if at any time default should be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof should fall due, or in the payment of any tax or charge as aforesaid, for the space of ninety days after the same shall first become payable, or in such production of tax receipts as aforesaid, on or before the

day aforesaid, then and in either such case the whole principal debt as aforesaid should, at the option of the obligee therein named, its successors or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, should be enforced and recovered at once, anything therein contained to the contrary notwithstanding, as in and by the said recited obligation, and the condition thereof, relation to the same being had, may more fully and at large appear.

Now this indenture witnesseth, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of one hundred thousand dollars, and for the better securing the payment thereof unto the said party of the second part, its successors and assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and confirm, unto the said party of the second part, its successors and assigns, all that tract and parcel of land situate, lying and being in the city and county of Camden, and particularly described as follows, viz: Beginning at the northwest corner of Front and Arch streets and extending thence (1) northwardly along the west side of Front street one hundred and thirty feet, nine and five-eighths inches to land of the Camden and Philadelphia Steamboat Ferry Company; thence (2) westwardly along the same at right angles with Front street three hundred feet to a corner; thence (3) southwardly parallel with said Front street one hundred and fifty-eight feet eight and one-quarter inches to the north line of Arch street; thence (4) eastwardly along the north side of Arch street three hundred and one feet and one-fourth of an inch to the place of beginning.

Being the same premises conveyed by the said party of the second part to the party of the first part by deed bearing even date herewith.

And also all moveable machinery, machines, tools, kettles, pots, pans, jars, cups, belting, gearing, stock manufactured and unmanufactured, or in the process of manufacture, office furniture and all appliances and appurtenances of every kind and description used in connection with the business of the party of the first part or otherwise. And also including all personal property and chattels which may be brought upon the premises above conveyed or become the property of the party of the first part as in substitution for, renewal of or addition to the personal property above described; it, however, being particularly understood and agreed that the party of the first part may conduct its ordinary business and in so doing dispose of any of the foregoing personal property.

The above personal property is the same as was assigned to the said party of the first part by bill of sale from the party of the second part, bearing even date herewith, and this mortgage is given to secure a part of the purchase money of the sale of the said real estate and personal property; together with all and singular the improvements, woods, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof.

To have and to hold the said hereditaments and premises above granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns, to and for the only proper use and behoof of the said party of the second part, its successors and assigns forever. Provided always, nevertheless, that if the said party of the first part, its successors or assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, its successors or assigns, the aforesaid debt or principal sum of one hundred thousand dollars on the day and time hereinbefore mentioned and ap-

pointed for the payment thereof, together with interest for the same, in like money, and for all taxes and charges, and production of tax receipts, in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made for or in respect of any taxes, charges or assessments whatsoever; that then and from thenceforth, as well this present indenture, and the estate hereby granted, as the said obligation above recited, shall cease, determine and become absolutely null and void, to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said party of the first part, for itself, its successors and assigns, does covenant and grant to and with the said party of the second part, its successors and assigns, that the said party of the first part, its successors and assigns, shall not, nor will apply for, or claim, any deduction, by reason of this mortgage, from the taxable value of the said lands and premises; and that the said party of the second part, its successors and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, its successors or assigns, or of any other person or persons whatsoever. And it is also further agreed, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible insurance company or companies, to an amount not less than dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the second part to effect such

insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond and obligation, and secured by these presents, and payable on demand, with legal interest.

In witness whereof, the said party of the first part hereto has hereunto set its corporate seal, caused these presents to be signed by its president and to be attested by its secretary the day and year first above written.

JOHN T. COX,
President.

Sealed and delivered in the presence of, and attested by

DAVID A. HENDERSON,
Secretary.

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

Be it remembered, that on this twentieth day of September, nineteen hundred and one, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Voorhees S. Anderson, who, being by me duly sworn, on his oath says that he is the treasurer of the Anderson Preserving Company, the mortgagor named in the foregoing mortgage; that the true consideration of the said mortgage is the sum of one hundred thousand dollars, part of the purchase price for the premises therein described, and that there is now due and owing on said mortgage the sum of one hun-

dred thousand dollars, together with interest thereon from the twentieth day of September, nineteen hundred and one.

VOORHEES S. ANDERSON.

Sworn and subscribed before me this 20th day of September, 1901.

JOHN F. HARNED,
M. C. C. of N. J.

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

Be it remembered, that on this twentieth day of September, in the year of our Lord one thousand nine hundred and one, before me, a Master in Chancery of New Jersey, personally appeared David A. Henderson, who, being by me duly sworn, on his oath saith, that he is the secretary of the Anderson Food Company, the grantor within named, and that John T. Cox is the president; that deponent knows the common or corporate seal of said grantor and that the seal annexed to the within deed or conveyance is such common or corporate seal; that the said deed or conveyance was signed by the said president and the seal of said grantor affixed thereto in the presence of deponent; that said deed or conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the board of directors of said grantor; and at the execution thereof this deponent subscribed his name thereto as witness.

DAVID A. HENDERSON.

Sworn and subscribed the day and year aforesaid.

JOHN F. HARNED,
M. C. C. of N. J.

Received at Camden, N. J., Sept. 20, 1901, at 4.05 P. M., and recorded in Book No. 10 of Chattel Mortgages, page 520, &c., in office of the Register of Deeds, &c., of Camden county.

ISAAC W. COLES,
Register.

[The bond secured by this mortgage bears a fifty dollar U. S. Rev. stamp duly cancelled.]

[EXHIBIT C3.]

KNOW ALL MEN BY THESE PRESENTS, that the Anderson Preserving Company, a corporation of New Jersey, for and in consideration of the sum of one hundred thousand dollars, lawful money of the United States of America, to it in hand paid by Abraham Anderson, of Camden, New Jersey, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said Abraham Anderson, his heirs and assigns, all that certain indenture of mortgage, bearing date the twentieth day of September, in the year of our Lord one thousand nine hundred and one, made and executed by the Anderson Food Company to said assignor to secure the payment of one hundred thousand dollars in ten years, with five per cent. interest secured upon premises situate at northwest corner Front and Arch streets, Camden New Jersey; which mortgage is recorded in the Register of Deeds office of Camden county, in Book No. of Deeds, page hereditaments and premises in and by the said indenture of mortgage particularly described and granted, or mentioned

and intended so to be, with the appurtenances, together with the bond or obligation in said indenture of mortgage mentioned, and thereby intended to be secured, and all moneys due and to grow due thereon, and the warrant of attorney to confess judgment thereto annexed; and all its estate, right, title, interest, property, claim and demand in and to the same.

To have and to hold the same unto the said Abraham Anderson, his heirs and assigns, to it and their proper use, benefit and behoof forever, subject nevertheless to the equity of redemption of said Anderson Food Company, mortgagor in the said indenture of mortgage named, and its successors and assigns therein.

In witness whereof, the said The Anderson Preserving Company has caused its corporate seal to be hereto affixed and these presents signed by its president, attested by its secretary, this twentieth day of September, in the year of our Lord one thousand nine hundred and one.

A. ANDERSON,
President.

Signed, sealed and delivered in the
presence of, and attested by

R. L. ANDERSON,
Secretary.

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

Be it remembered, that on this twentieth day of September, in the year of our Lord one thousand nine hundred and one, before me, a Master in Chancery of New Jersey, personally appeared Robert L. Anderson, who, being by me

duly sworn, on his oath saith, that he is the secretary of The Anderson Preserving Company, the grantor within named, and that Abraham Anderson is the president; that deponent knows the common or corporate seal of said grantor, and that the seal annexed to the within deed or conveyance is such common or corporate seal; that the said deed or conveyance was signed by the said president and the seal of said grantor affixed thereto in the presence of deponent; that said deed or conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the board of directors of said grantor; and at the execution thereof this deponent subscribed his name thereto as witness.

R. L. ANDERSON.

Sworn and subscribed the day and year aforesaid.

JOHN F. HARNED,
M. C. C.

[EXHIBIT C1—CROSS BILL.]

THIS AGREEMENT, made this fourteenth day of August, one thousand nine hundred and one, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, in the county of Burlington and State aforesaid, party of the second part, witnesseth, that for and in consideration of the mutual covenants and promises hereinafter contained the said parties have agreed as follows:

1. The said party of the first part agrees to sell, assign, transfer and set over to the said party of the second part, or such person or persons as may be nominated by him, two thousand two hundred and fifty shares of the capital stock

of the Anderson Preserving Company upon the payment of the sum hereinafter agreed to be paid and the performance of the conditions hereinafter agreed to be performed by the said party of the second part.

2. The said party of the second part agrees, upon the delivery of the said shares of the capital stock of the Anderson Preserving Company, properly assigned, transferred and set over as aforesaid, to pay to the said party of the first part the sum of seventy-five thousand dollars in cash, to deliver to him *a mortgage on the plant, appurtenances and equipments now owned by the said Anderson Preserving Company,* securing the payment of the sum of one hundred thousand dollars in ten years from the date thereof, with a net interest thereon of five per centum per annum; to deliver to the said party of the first part notes of a corporation about to be constituted under the name of the Anderson Food Company, for the sum of fifty-eight thousand dollars, one-half payable on the thirty-first day of December, nineteen hundred and two, and the remainder one year thereafter, the same to bear interest at the rate of five per centum per annum.

3. The said party of the second part further agrees to sell, assign, transfer and set over to the said party of the first part two hundred and fifty shares of the par value of one hundred dollars each of the capital stock of the proposed corporation above referred to, The Anderson Food Company, upon the payment of the sum of seventy-seven dollars and seventy-seven cents per share, which said two hundred and fifty shares of stock the said party of the first part agrees to buy and pay for at the rate last aforesaid.

4. It is further agreed, that each and all of the foregoing covenants and promises shall be carried out and fulfilled on or before the sixth day of September next, and that they shall all be carried out and performed at the same time.

5. It is further understood and agreed, that the foregoing covenants and promises of the party of the second part are subject to and conditioned upon the agreement of the assets and liabilities of the said Anderson Preserving Company with a statement thereof as made on the fifteenth day of July, last past.

In witness whereof, the said parties have hereunto set their hands and seals the day and year above referred to.

A. ANDERSON, [SEAL]
JOHN T. COX. [SEAL]

Signed, sealed and delivered in the presence of
"Second" written over "first" insert in fifth paragraph.

DAVID A. HENDERSON.

[CROSS BILL EXHIBIT C2.]

THIS AGREEMENT, made this thirteenth day of September, nineteen hundred and one, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, in the county of Burlington and state aforesaid, party of the second part.

Witnesseth, that for and in consideration of the mutual covenants and promises hereinafter contained, the said parties have agreed as follows:

1. The said party of the first part agrees to sell, assign, transfer and set over to the said party of the second part, or such person or persons as may be nominated by him, two

thousand two hundred and fifty shares of the capital stock of the Anderson Preserving Company upon the payment of the sum hereinafter agreed to be paid and the performance of the conditions hereinafter agreed to be performed by the said party of the second part.

2. The said party of the second part agrees, upon the delivery of the said shares of the capital stock of the Anderson Preserving Company, properly assigned, transferred and set over as aforesaid, to pay to the said party of the first part the sum of seventy-five thousand dollars in cash, to deliver to him *a mortgage on the plant, appurtenances and equipments now owned by the said Anderson Preserving Company,* securing the payment of the sum of one hundred thousand dollars in ten years from the date hereof, with a net interest thereon of five per centum per annum; to deliver to the said party of the first part notes of a corporation about to be constituted under the name of the Anderson Food Company, for the sum of fifty-eight thousand dollars, one-third payable on the thirty-first day of December, nineteen hundred and two, and one-third payable on the thirty-first day of December, nineteen hundred and three, and the balance in one year thereafter; the same to bear interest at the rate of five per centum per annum.

3. The said party of the second part further agrees to sell, assign, transfer and set over to the said party of the first part two hundred and fifty shares of the par value of one hundred dollars each of the capital stock of the proposed corporation above referred to, The Anderson Food Company, upon the payment of the sum of seventy-seven dollars and seventy-seven cents per share, which said two hundred and fifty shares of stock the said party of the first part agrees to buy and pay for at the rate last aforesaid.

4. The party of the second part agrees that the total net profits of the Anderson Food Company, which company, it is understood and agreed, is to absorb the good will, prop-

erty and assets, and to assume all liabilities, of the Anderson Preserving Company, or the net profits of any company that shall succeed to the rights and interest of said Anderson Preserving Company, shall be dispersed as follows: 1st. In the payment of the interest on the sum of fifty-five thousand five hundred and fifty-seven dollars and fifty cents advanced by the party of the second part hereto in purchase of said stock. 2nd. In the payment of the notes held by the party of the first part against the Anderson Preserving Company, and agreed to be assumed and renewed by the Anderson Food Company, amounting to the sum of fifty-eight thousand dollars, as provided for aforesaid. 3rd. In the payment of the principal of fifty-five thousand five hundred fifty-seven dollars and fifty cents advanced by the party of the second part.. 4th. In the payment of the principal of one hundred thousand dollars mortgage agreed to be executed and delivered to the party of the first part by his agreement.

5. It is further understood and agreed, that no dividends are to be declared or paid by the Anderson Food Company, or any other Company that may succeed to the rights of the Anderson Preserving Company under this agreement, until all of the above indebtedness, including said seventy-five thousand dollars, is paid, or if so declared, shall be appropriated as set out in Section 4.

6. It is further agreed, that each and all of the foregoing covenants and promises shall be carried out and fulfilled on or before the nineteenth day of September next, and that they shall all be carried out and performed at the same time.

7. And it is further understood and agreed, that the total amount of salary to be paid all of the elective officers of the said Anderson Food Company shall not exceed the sum of twelve thousand five hundred dollars per year, for the period of five years from this date.

In witness whereof, the said parties have hereunto set their hands and seals the day and year above referred to.

A. ANDERSON, [SEAL.]

JOHN T. COX. [SEAL.]

Signed, sealed and delivered in the presence of "And the balance in one year thereafter" inserted before signing.

JOHN F. HARNED,
As to A. Anderson.

DAVID A. HENDERSON,
As to John T. Cox.

[CROSS BILL EXHIBIT C3.]

THIS AGREEMENT, made the twentieth day of September, nineteen hundred and one, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, in the county of Burlington and State aforesaid, party of the second part.

Witnesseth, that for and in consideration of the mutual covenants and promises hereinafter contained, the said parties have agreed as follows:

1. The said party of the first part agrees to sell, assign, transfer and set over to the said party of the second part, or such person or persons as may be nominated by him, two thousand two hundred and fifty shares of the capital stock of the Anderson Preserving Company upon the payment of the sum hereinafter agreed to be paid and the performance of the conditions hereinafter agreed to be performed by the said party of the second part.

2. The said party of the second part agrees, upon the delivery of the said shares of the capital stock of the Anderson Preserving Company, properly assigned, transferred and set over as aforesaid, to pay to the said party of the first part the sum of seventy-five thousand dollars in cash, to deliver to him a mortgage *on the plant, appurtenances and equipments now owned by the said Anderson Preserving Company*, securing the payment of the sum of one hundred thousand dollars in ten years from the date hereof, with a net interest thereon of five per centum per annum; to deliver to the said party of the first part notes of a corporation constituted under the name of the Anderson Food Company for the sum of fifty-eight thousand dollars, one-third payable on the thirty-first day of December, nineteen hundred and two, and one-third payable on the thirty-first day of December, nineteen hundred and three, and the balance in one year thereafter; the same to bear interest at the rate of five per centum per annum.

3. The said party of the second part further agrees to sell, assign, transfer and set over to the said party of the first part two hundred and fifty shares of the par value of one hundred dollars each of the capital stock of the proposed corporation above referred to, the Anderson Food Company, upon the payment of the sum of seventy-seven dollars and seventy-seven cents per share, which said two hundred and fifty shares of stock the said party of the first part agrees to buy and pay for at the rate last aforesaid.

4. The party of the second part agrees that the total net profits of the Anderson Food Company, which company it is understood and agreed is to absorb the good will, property and assets, and to assume all the liabilities of the Anderson Preserving Company, or the net profits of any company which shall succeed to the rights and interests of the said Anderson Preserving Company, shall be used exclusively in paying the principal and interest on the sum of fifty-five thousand five hundred and fifty-seven dollars and

fifty cents advanced by the party of the second part for the purchase of the said stock and the obligations to be given to the party of the first part as before mentioned; and no dividends shall be declared in the Anderson Food Company, or any other company that may succeed to the rights of the Anderson Preserving Company under this agreement, except to be used toward making the said payments, or some part thereof, until all of the same shall have been paid; it being particularly understood and agreed that nothing herein contained postpones the time of payment of any of the obligations held by the party of the first part.

5. It is further agreed, that each and all of the foregoing covenants and promises shall be carried out and fulfilled on or before the nineteenth day of September next, and that they shall all be carried out and performed at the same time.

6. And it is further understood and agreed, that the total amount of salary to be paid all of the elective officers of the said Anderson Food Company shall not exceed the sum of twelve thousand five hundred dollars per year, for the period of five years from this date.

7. The party of the first part covenants and agrees, that the assets of the Anderson Preserving Company are not less and its liabilities are not relatively greater than on August 16, 1901.

In witness whereof, the said parties have hereunto set their hands and seals the day and year above referred to.

A. ANDERSON, [SEAL]

JOHN T. COX. [SEAL]

Signed, sealed and delivered in the presence of "Relatively" interlined before signing.

JOHN F. HARNED,
As to A. Anderson.

DAVID A. HENDERSON.
As to John T. Cox.

[CROSS BILL EXHIBIT C4.]

THIS AGREEMENT, made this thirteenth day of August, 1901, between Abraham Anderson, of the city and county of Camden and State of New Jersey, party of the first part, and John T. Cox, of Moorestown, county of Burlington, State of New Jersey, party of the second part.

Witnesseth, whereas, the parties hereto are about to enter into an agreement concerning the sale of the stock of the Anderson Preserving Company, now it is hereby further agreed in connection with said first mentioned agreement, and the parties hereto do hereby agree as follows:

1st. The party of the second part agrees that the total net profits of the Anderson Food Company, which company, it is understood and agreed, is to absorb the good will, property and assets of the Anderson Preserving Company, or the net profits of any company that shall succeed to the rights and interests of said Anderson Preserving Company, shall be dispersed as follows: In the payment of the interest on the sum of seventy-five thousand dollars advanced by the party of the second part hereto in purchase of said stock. In the payment of the principal of one hundred thousand dollars mortgage agreed to be executed and delivered to the party of the first part by his agreement. In the payment of the notes held by the party of the first part against the Anderson Preserving Company, and agreed to be assumed and renewed by the Anderson Food Company, amounting to the sum of fifty-eight thousand dollars. In the payment of the principal of seventy-five thousand dollars advanced by the party of the second part.

2nd. It is further understood and agreed, that no dividends are to be declared or paid by the Anderson Food Company, or any other Company that may succeed to the rights of the Anderson Preserving Company under this

agreement until all of the above indebtedness, including said seventy-five thousand dollars, is paid.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

A. ANDERSON, [SEAL]
JOHN T. COX. [SEAL]

Signed, sealed and delivered in the presence of

DAVID A. HENDERSON.

Line interlined as line 2 on page 2 and 3rd paragraph erased before execution.

[CROSS BILL EXHIBIT C5.]

CERTIFICATE OF INCORPORATION.

This is to certify, that the undersigned do hereby associate themselves into a corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations (Revision of 1896), and the several acts supplementary thereto and amendatory thereof; and to that end we do by this, our certificate, set forth:

First. The name of the corporation is ANDERSON FOOD COMPANY.

Second. The location of the principal office in this State is at the northwest corner of Front and Arch streets, in the city and county of Camden.

The name of the agent therein and in charge thereof upon whom process against this corporation may be served is John T. Cox.

Third. The objects for which this corporation is formed are the manufacture, preparation and sale of canned and preserved foods, extracts and beverages, and any and all articles or products, liquid or solid, used as foods or in the preparation of foods, or in conjunction or connection therewith, including medicinal extracts or preparations; the exploitation, purchase and sale of processes for the preservation of food products and such other articles as are hereinbefore enumerated.

In furtherance and not in limitation of the general powers conferred by the laws of the State of New Jersey, and of the objects and purposes as hereinabove stated, it is expressly provided that the company shall have also the following powers; that is to say:

(a) To do any or all of the things herein set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees, or otherwise.

(b) To conduct its business in all its branches and have one or more offices, and unlimitedly to hold, purchase and convey real and personal property, both within and without the State of New Jersey, and in all other States, Territories and Colonies of the United States, and in all foreign countries and places.

(c) To manufacture, purchase or otherwise acquire, hold, own, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description, and to do both mining and manufacturing of any kind.

(d) To purchase or otherwise acquire, to hold, own, maintain, work, mine, develop, to sell, convey or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, and in any part of the world, real estate and real property, and any interest and rights therein, and to issue bonds, debentures and evidences of indebtedness of all other kinds and character, secured by mortgage or otherwise, upon all or any of the property and franchises of the company, or unsecured.

(e) To acquire the good will, rights and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds or otherwise.

(f) To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign or otherwise dispose of, any and all trade marks, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and with a view to the working and development of the same, to carry on any business, whether agricultural mining, manufacturing or otherwise, which the corporation may think calculated, directly or indirectly to effectuate these objects.

(g) To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock, bonds, or other evidences of indebtedness created by other corporation or corporations, and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

(h) To purchase, lease, exchange, hire, or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business to erect and construct, make, improve or aid or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employes and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purposes of the corporation, as above described, to construct, lease, own, operate or sell a railroad or railroads, or both, in any state or country other than the State of New Jersey, subject to the laws of such other state or country, either directly or through the ownership of stock of a corporation formed or to be formed for the purpose under the laws of such other state or country.

(i) To guarantee the payment of dividends or interest on any shares, stocks, debentures, or other securities issued by, or any other contract or obligation of, any corporation whenever proper or necessary for the business of this corporation in the judgment of its directors or the executive committee.

(j) To make and enter into contracts of every sort and kind with any individual, firm, association, corporation, private, public or municipal body politic and with the government of the United States, or any State, Territory or Colony thereof.

(k) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of or interested in any property, and in general to carry on any business, whether manufacturing, mining or otherwise.

It is the intention that the objects, purposes and powers specified and clauses contained in this third paragraph shall,

except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth. The total authorized capital stock of this corporation is two hundred and fifty thousand dollars, divided into twenty-five hundred shares of the par value of one hundred dollars each.

Fifth. The names and post office addresses of the incorporators, and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which this company will commence business, are as follows:

Names.	Post Office Addresses.	Shares.
John T. Cox,	Camden, New Jersey,	8
Voorhees S. Anderson,	" " "	1
David A. Henderson,	" " "	1

Sixth. The duration of the corporation is to be perpetual.

The undersigned, for the purposes aforesaid, do make, record and file this their certificate, and do respectively agree to take the number of shares of stock hereinbefore set opposite their respective names, and do accordingly hereunto set their hands and seals this fifteenth day of August, A. D. nineteen hundred and one.

JOHN T. COX, [L. S.]
VOORHEES S. ANDERSON, [L. S.]
DAVID A. HENDERSON. [L. S.]

Signed, sealed and delivered in the presence of
"Agricultural" interlined on page 3.

SAMUEL W. BELDON.

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

BE IT REMEMBERED, that on this fifteenth day of August, nineteen hundred and one, before me, the subscriber, personally appeared John T. Cox, Voorhees S. Anderson and David A. Henderson, 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. All of which is hereby certified.

SAML. W. BELDON,
Master in Chancery of N. J.

Received Aug. 15, 1901, and recorded in the Clerk's office of the county of Camden in Book No. 19 of Corporations, page 45, &c.

F. F. PATTERSON, JR.,
Clerk.

[ENDORSED]

"Filed Aug. 19, 1901.

"GEORGE WURTS,
"Secretary of State."

STATE OF NEW JERSEY.

Department of State.

I, GEORGE WURTS, Secretary of State of the State of New Jersey, do hereby certify, that the foregoing is a true copy of the certificate of incorporation of Anderson Food Company and the endorsements thereon, as the same is taken from and compared with the original filed in my office on

the 19th day of August, A. D. 1901, and now remaining on file therein.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, [SEAL] this nineteenth day of August, A. D. 1901.

GEORGE WURTS,
Secretary of State.

[CROSS BILL EXHIBIT C6.]

Incorporated under the Laws of the State of New Jersey.

Issued for Property Purchased.

Number 52. 2250 Shares.

ANDERSON PRESERVING COMPANY,

CAMDEN, NEW JERSEY.

2500 Shares. $100 Each.

Capital, $250,000.

This certifies that A. Anderson entitled to twenty-two hundred and fifty shares of the capital stock of the Anderson Preserving Company, Camden, N. J., of the par value of one hundred dollars each full paid and non-assessable, transferable only on the books of the company in person or by legal representative, on surrender of this certificate.

In witness whereof, is hereunto affixed the corporate seal of said company, and the signatures of the president and treasurer at Camden, N. J., this fourteenth day of September, [SEAL] A. D. 1901.

A. ANDERSON, President.
V. S. ANDERSON,
Treasurer.

KNOW ALL MEN BY THESE PRESENTS, that for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto shares in the capital stock of Anderson Preserving Company, standing in name on the books of the said company, and do hereby constitute and appoint true and lawful attorney, irrevocably for and in name and stead, but to use, to sell, assign, transfer and set over, all or any part of the said shares; and for that purpose to make and execute all the necessary acts of assignment and transfer, and one or more persons to substitute with like full power; hereby ratifying and confirming all that said attorney, or substitute or substitutes, shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the twentieth day of September, one thousand eight hundred and

A. ANDERSON. [L. S.]

Signed, sealed and delivered in presence of

DAVID A. HENDERSON.

[CROSS BILL EXHIBIT DI.]

KNOW ALL MEN BY THESE PRESENTS, that the Anderson Preserving Company, a corporation of the State of New Jersey, party of the first part, for and in consideration of the payment of one thousand dollars by the Anderson Food Company, a like corporation, party of the second part, and of the capital stock of the party of the second part, in the sum of one hundred and forty-nine thousand dollars, the

receipt of all which consideration is hereby acknowledged, has bargained, sold, granted and conveyed, and by these presents does bargain, sell, grant and convey, unto the said party of the second part, its successors and assigns, all the chattels and personal property belonging to the party of the first part and in its possession or in the possession of any one for it, whether at the place of business of the said party of the first part, at the northwest corner of Front and Arch streets, in the city of Camden, or elsewhere, including all movable machinery, machines, tools, kettles, pots, pans, jars, cups, belting, gearing, stock, manufactured or unmanufactured, or in the process of manufacture; and all appliances and appurtenances of every character and description used in connection with the business of the said party of the first part or otherwise, and also including all cash, book accounts, notes, bills receivable, evidences of indebtedness of every kind and character and all articles and chattels of every kind and description, heretofore used, now used or capable of being used in the business of the said company or otherwise, the purpose of this bill of sale being to include every chattel of whatever kind or nature, the property of the said party of the first part.

To have and to hold the same unto the said party of the second part, its successors and assigns, forever.

And the said party of the first part does hereby constitute the said party of the second part as its attorney, with power to appoint one or more attorneys under it, to demand, sue for, collect, receive and receipt for all sums of money or choses in action of any kind or character above transferred or intended so to be; all suits or actions to be in the name of the party of the first part or otherwise, but always at the expense and cost of the said party of the second part.

And the said party of the first part, for itself, its successors and assigns, covenants and agrees to and with the said party of the second part to warrant and defend the said described goods and chattels hereby sold unto the said party of the second part, its successors and assigns, against all and every person or persons whatsoever.

In witness whereof, the said party of the first part has caused its corporate seal to be hereto affixed, these presents to be signed by its president and attested by its secretary, this twentieth day of September, one thousand nine hundred and one.

A. ANDERSON, [SEAL]
President.

Signed, sealed and delivered in the
presence of, and attested by

R. L. ANDERSON,
Secretary.

INDEX.

WITNESSES.

COMPLAINANT (RESPONDENT).

DEFENDANT (APPELLANT).

SUR CROSS-BILL.

DEFENDANT (APPELLANT.)

COMPLAINANT (RESPONDENT).

EXHIBITS.