

New Jersey Court of Errors and Appeals.

Between,

CHRISTOPHER A. BERGEN, Trustee,

Appellant,

and

THE PORPOISE FISHING COMPANY,

JONAS S. MILLER and JOHN A.

COOK,

Respondants.

} On Bill
&c.

APPELLANT'S BRIEF.

The bill in this cause was filed to foreclose two mortgages of even date, one upon real estate the other upon chattels made by "The Porpoise Fishing Company" to the complainant as Trustee, to secure 60 bonds of \$50 each, negotiable upon their face. Only two of the defendants filed answers. A decree *pro confesso* was taken against the other, the defendant company. The answering defendants claim ownership of some of the chattels included in the chattel mortgage under and by virtue of judgments recorded subsequent to the execution and record of the chattel mortgage, admitting in their answer that the constable making the sale sold the

same to them subject to the chattel mortgage, but stating that at the time of the creation of the mortgages the company was insolvent and made the mortgages and assessment on its stock to pay its debts and continue its business, and that it did not liquidate the indebtedness then due and owing, but created new obligations and made the assessment and mortgages to prefer creditors and defraud the defendants, and by the amended answer (ordered at the trial) that they denied the mortgages were made and executed by authority of the stockholders. (p. 1—24.)

We submit that the pleadings do not raise the issue decided by the Honorable Vice Chancellor.

I.

The Porpoise Fishing Company was incorporated under the general act by certificate filed February, 1884. By its minutes, which are in evidence, it appears that there was a meeting of some of its stockholders held February 5, 1884, and that at this meeting a President, Secretary, Treasurer, Superintendent and Board of Directors were elected. No by laws were adopted, nor any provision made for future meetings of the stockholders. There is no pretense, we believe, that the act was complied with in calling this meeting. (Ex. p. 64, l. 12). The persons thus made officers became such *de facto*. The first meeting of stockholders called pursuant to statute, was held September 15th following. The call for this meeting was signed by five stockholders and published for two weeks prior thereto in the *Cape May Wave* and *Star of the Cape*, two newspapers circulating in Cape May County, in pursuance of section 51 of the act concerning corporations. This notice is in evidence, exhibit B 11 (Ex. p. 69). Personal notice, we believe, was also sent to every stockholder by mail, though not required.

At the meeting so called, the resolution was passed authorizing these bonds and mortgages.—(Ex. p. 27, l. 9). There were at the time 3700 shares of stock issued (p.

72, l. 11.); 2673 voted in favor of the resolution—none against it.—(p. 102, l. 13.) The board of directors subsequently at a regular meeting directed its officers to execute and deliver the bonds and mortgages. After this the President and Secretary executed the papers in accordance with the resolutions, and the President undertook the sale of the bonds so secured under the direction of the board. What he did with the bonds is set forth in Exhibit B 4, (p. 107). For 32 of same he received the cash, \$1600, paid either upon the delivery of the bonds or promise of their early delivery; two he paid to John S. Corson for current board of men working for the company; three he paid to W. Peacock for current salary as Secretary—W. W. Green paid \$250 to Corson and Peacock for the five bonds subsequently. Besides this the President sold five other bonds for \$250 to W. W. Green, who therewith paid current bills against the company for that amount, and one bond for \$50 to E. H. Rowley, who thereupon paid that amount of current bills against the company. He also paid F. Richardson three bonds as \$150 on account of his bill against the company for provisions, and four bonds as \$200 to the solicitor of the company on his account against the company for services and expenses; the remaining 10 bonds, \$500, he retained to reimburse to himself in part the \$985.31 due him per Exhibit B 3, (p. 107), \$265.31 of same being for moneys advanced by him for the company and \$720 being salary. There is no misapplication of the bonds and none pretended. Except in the last three cases referred to the parties taking same have paid cash moneys for them to the full extent of their face value and did not even take them on an old indebtedness or to secure a prior indebtedness of the company to them. In the last three cases perhaps the point might be made that they were paid on account of a previous indebtedness, but we do not understand that this invalidates the bonds in their hands. Should it do so in the mind of the Court, certainly this should not affect the

rights of those others who are bona fide holders of their bonds for full value paid in cash as consideration of their assignment to them at the time.

But it is suggested that most of the bondholders were also stockholders. We never before heard that a stockholder's money was not as good as anybody else's in the absence of actual fraud, and no such is proved, or as we understand, pretended, and the Vice Chancellor, in his opinion (p. 114, l. 7,) specially saves himself from adjudicating that there was fraud.

The Vice Chancellor reasons that on the 15th of September, and also on the 1st of October, the company was insolvent; that prior thereto its members had been doing business nominally as a company, but practically as "a copartnership or joint-stock concern, each individually liable for the whole indebtedness of the firm"; that "to escape such liability they organize according to law," issue the bonds in question and secure the bonds by the mortgages now being foreclosed, and that even "if the company believed the method adopted ever so wise and businesslike, it was unlawful" because "it delayed and hindered creditors."

We do not think that the testimony shows that the company was insolvent, nor do we think partners can escape liability by incorporation as a company, or a wise and business like transaction (like cashing the bond of a company at par value and putting the moneys in good faith into the coffers of the company), delays or hinders creditors or is ever unlawful.

The cases his Honor cites all relate to the transactions of individuals, not corporations, and were therefore strong if they had application to the present case. In Owen vs. Arvis the original conveyance and reconveyance were a sham sale, wanting in *bona fides*, confessedly made by collusion of the parties to delay and hinder creditors, none of which is true of the present case. The subsequent assignment of the reconveyance or mortgage in that case was practically an assignment for the ben-

efit of creditors, void under the statute because showing a preference; and the furthest this court went in the National Bank of the Metropolis vs. Sprague, was that a mortgage given by an *insolvent* firm to trustees to secure bonds *which the debtors subsequently passed to their creditors* was void as against other creditors praying for relief.

To bring this case then within the purview of those two cases the company must at the time of making the mortgages have been *insolvent and have passed the bonds to creditors on old accounts, preferring some to others.* If the insolvency were admitted, still the great mass of the bonds, all but the last three lots referred to, 43 out of the 60 bonds would be unaffected thereby; and certainly no greater wrong could be than for those 43, which to their full face value have bona fide been paid into the treasury of the company, and every creditor having had the full benefit thereof now to be deprived of their security as if purposely embarked in a fraudulent enterprise. The other cause referred to by Vice Chancellor Bird is Livermore vs. McNair, which without involving other principles than the last two cases follows their reasoning.

To interpret the present cause as not falling within the line of those cases which encourage enterprise and justify efforts laudably taken in the interests of trade and manufactures for the benefit of commerce and the development of latent resources, seems to us to do injury alike to our written and unwritten law. The theory of this decree put in practice would invalidate nine-tenths of the mortgages executed, whether by persons natural or corporate. There can be no policy in a State which cripples the employment of capital under the circumstances of this case.

II.

But still even in the supposition of the insolvency of the company, the creation of these mortgages was lawful, and the bonds issued thereunder are good securities,

not only to the extent of their sale in good faith for cash, but also to the extent they were pledged to secure previous indebtedness of the company.

P. L. 1882, p. 167.

Wilkinson vs. Bauerll, 14 Stew., 635.

Vail vs. Jameson, 14 Stew., 648.

III.

We deny that the company was insolvent at the time of the execution of the mortgages. It is true that Cook, one of these defendants, swears that somebody told him it was, and that George L. Sparks, another witness, gave it as his opinion (p. 89, l.) that it was insolvent. Both these men either as Superintendent or Secretary or otherwise, for they held various offices, had almost free hand prior to Sept. 15, 1884, to do as they pleased with the moneys of the company. The company's confidence in them then became shaken and they were displaced. On Sept. 1, just two weeks prior to the meeting aforesaid, the same Mr. Sparks submitted a statement to the stockholders which is in evidence (p. 67) showing all the liabilities of the company to be \$2,028.49 and its assets to amount to \$5,500, besides an amount due from Solomon to the company on balance of accounts. This statement he tries to explain away when giving his testimony, but the object is plain. He now claims that the company owed for a boiler and press some \$1,100 and \$500 to Solomon, and that its lands were not worth \$1,500 above encumbrance. This is the substance of his supplemental statement, Exhixit M 2, (p. 99). It might well be asked, if the company had lately bought a boiler and press at \$1,100 why they were not worth that in it sassets? The evidence is that the company only took them on trial (p. 51), and subsequent events, as the vendor has taken them back, prove that this is true. Instead of Solomon owing the company as in his statement of Sept. 1, now he says the company owes Solomon \$500. But he admits that the money was not loaned to the company

but to the commission (p. 90), and that ^{the} understanding with Solomon was that he was to reimburse himself from porpoise skins and oil he held on consignment from the company. The value of the land is fully proven from the fact that the valuation at which it was estimated is what the company had given for it but a few months before. That other land unfavorably situated without the improvements is not worth so much, proves nothing.

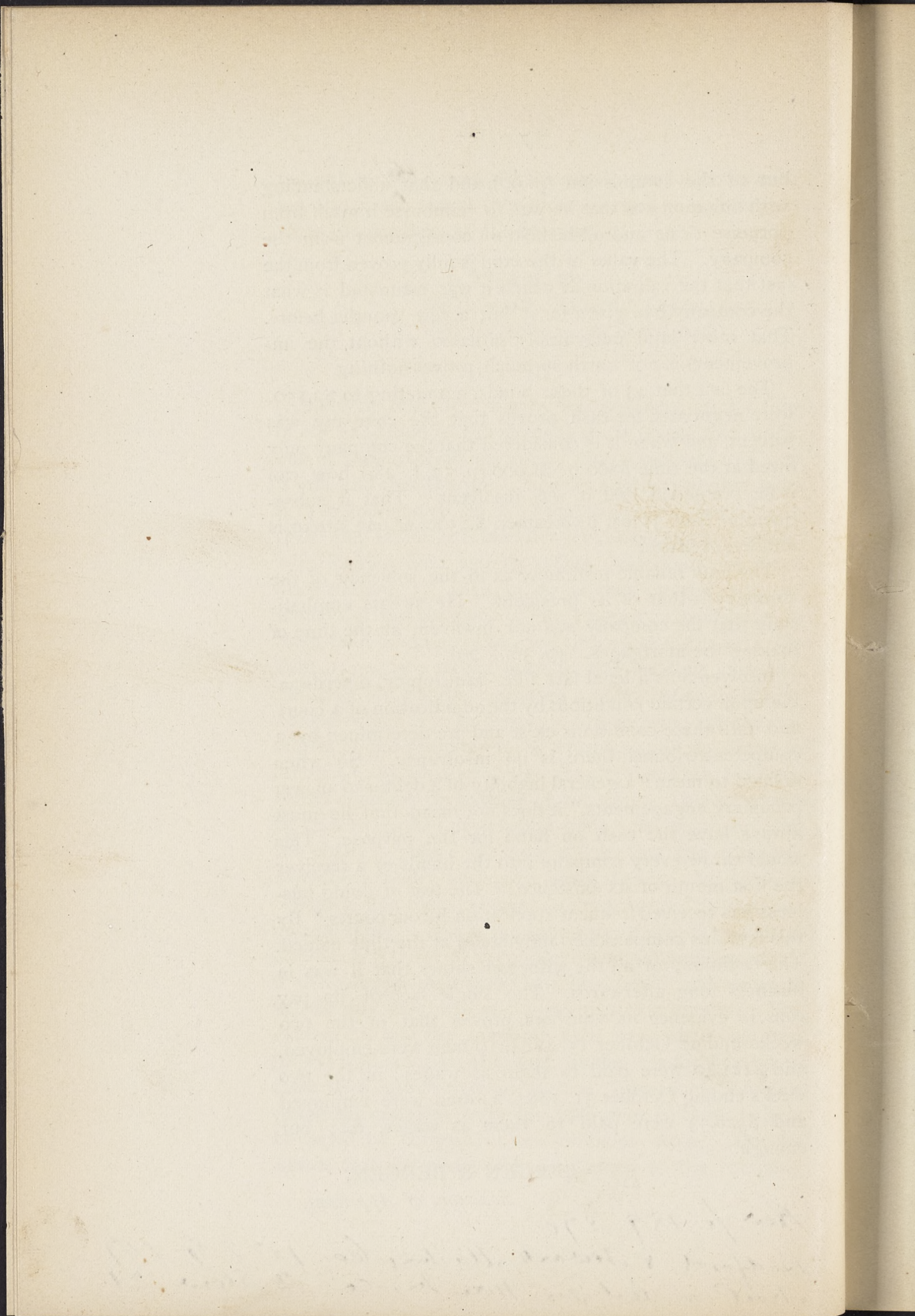
The fact that 43 of these bonds, amounting to \$2,150, were negotiated for cash, proves that the company was solvent, and when it is considered that the company only owed at the time \$800 or \$1,000 (p. 53, l. 28,) how can it be pretended that it was insolvent. That it subsequently (Nov. 3) lost its steamer, \$2,500, at one stroke, is a different matter.

The only reliable testimony as to the solvency of the company is that of its president. He swears emphatically that the company was not insolvent at the time of making the mortgages. (p. 36, l. 29).

Insolvency is a legal fact like bankruptcy, determinable upon certain conditions by the adjudication of a court, and until these conditions exist and are determined by a competent tribunal, there is no insolvency. So when defined to mean "a general inability of a debtor to answer pecuniary engagements," it does not mean that he must always have the cash on hand for the purpose. This would throw every company into the hands of a receiver the first month of its existence. The test of doing business has received frequent application by our courts. X By this test this company certainly stood at the time named. The testimony of all the witnesses shows that it was in business long afterwards. The single fact of its pay rolls, in evidence as vouchers, proves that in the two weeks ending October 15, 1884, 19 men were employed, and \$221.49 were paid to them as wages; in the two weeks ending October 31, 1884, 22 men were employed and \$328.33 were paid to them as wages, &c; but enough.

BERGEN & BERGEN,
Solicitors of Appellant.

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Rev p 189 \$70
Bedford v Newark Machine Co 1089 117
Street v Lentzen, Fire Ins. Co 2 Steu 21



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ON BILL TO
FORECLOSE.
ANSWER, REPLI-
CATION AND
PROOFS.

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SAMUEL D. BERGEN,
Solicitor of Appellant.

JOHN W. WESCOTT,
Solicitor of Jonas S. Miller and John A. Cook,
Respondents.

BILL OF COMPLAINT.
(Filed June 26, 1885.)

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*To the Honorable Theodore Runyon, Chancellor of the State
of New Jersey :*

Humbly complaining shows unto your Honor your
orator, Christopher A. Bergen, of the city of Camden, State

of New Jersey, trustee as hereinafter mentioned, that The Porpoise Fishing Company, a body politic and corporate under the laws of the State of New Jersey, on or about the first day of October, in the year of our Lord one thousand eight hundred and eighty-four, duly made and executed, under its common seal, signed and attested by its president and secretary, sixty bonds, each bearing date on the said first day of October, one thousand eight hundred and eighty-four, and numbered
10 consecutively from one to sixty inclusive, and each for the payment of fifty dollars by the said corporation to Edward H. Rowley or bearer, at the office of the said company, in the city of Cape May, New Jersey, on demand, whenever thereunto required by one-half in value of the holders of said bonds at such time issued, with interest thereon from the date thereof aforesaid, at the rate of six per cent. per annum, without any deduction for taxes, which said company is now or at
20 any time hereafter may be required to retain from said principal or interest for National or State purposes, or by reference to the said bonds when produced by the proper holders thereof will more fully appear, the same not being in the possession or control of your orator.

2. That the said corporation having made the said sixty bonds aforesaid, the aggregate of the principal of which amounts to the sum of three thousand dollars, or collateral security for the payment of the said bonds, principal and interest, at the same time and of like date,
30 duly made its two indentures of mortgage, under its common seal, subscribed and attested by its president and secretary, to your orator, by which indentures of mortgage, in consideration of the premises set forth by way of recital in said indentures, and for the better securing the payment of the said sixty bonds, or as many thereof as should be issued, and interest thereon according to the

terms thereof, and the further sum of one dollar well and truly paid by your orator to the said corporation, the receipt whereof it acknowledged in said indentures, granted, bargained, sold, released, conveyed, confirmed, assigned and set over unto your orator, his heirs, executors, administrators, successors and assigns, *by the one indenture of mortgage*, all those five certain lots or tracts of land situate on the bay shore at and about Pond Creek, in Lower township, county of Cape May, State of New Jersey, bounded and described as follows:

The First. Beginning at a big stone on the top of the hill at the Bay Shore bearing south sixteen degrees west sixty perches and four links to the "two and a half mile stone" on the south side of the Cape Island turnpike road, at the corner of the saloon at the steamboat landing (by survey of 1878) and running thence north eighty-eight degrees west to Delaware Bay; thence up the bay north twenty-two degrees east sixty-four perches and nineteen links (64&19) to a point opposite, where Pond Creek empties into the bay (perhaps closed now); thence up the middle of said creek the several courses thereof to a point in the creek in a line with several posts towards the bay and line of land of the Reeves'; a line of courses run along the right hand bank of said creek is as follows: First—south sixty-eight degrees and thirty minutes east nineteen perches and seventeen links up the middle of said creek to a point on the southeast bank of said creek; thence (2) north fifty-one degrees and forty-five minutes east, twenty-two perches; thence (3) south sixty-three degrees east, eight perches; thence (4) south thirty-one degrees and thirty minutes east, sixteen perches and six links; thence (5) south nine degrees and twenty minutes west, twenty-eight perches; thence (6) south seventeen degrees east, eleven perches; thence (7) south forty-four degrees

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and thirty minutes east to said point in the creek and Reeves' line; thence along said Reeves' line north eighty-four degrees and fifty minutes west (north eighty-four degrees and fifty minutes west) six hundred and sixty feet to a post and northeast corner of the tract purchased of Clement B. Reeves, et ux. et al.; thence by the same south, thirty-two degrees and ten minutes west, eleven perches to the northeast corner of the tract purchased of James H. Stevens, et ux. et al., by Smith E. Hughes;

10 thence by the same north eighty-eight degrees west three hundred and eighty-three feet to the big stone and place of beginning. Containing twenty and fifty hundredths acres more or less.

The Second. Beginning at the same big stone of lot No. 1, above referred to on the top of the hill, and running thence north eighty-eight degrees west to the high water line of the Delaware Bay; thence along the same south twenty-two degrees west, thirteen perches and five links to a corner; thence south sixty-eight degrees and twenty minutes east, four perches and three links to a

20 post on the hill; still the same course along the southern line of lot No. 34, on the plan of partition and division of the property late of Ezekiel Stevens and Andrew H. Reeves, deceased, eight perches and five links to a point in the westerly side of a road given by the said Ezekiel Stevens and Andrew H. Reeves for public and private use, distant forty-two rods from the north

30 side line of the Cape Island Turnpike Road; thence along said road, westerly side thereof, north eighteen degrees and forty-five minutes east sixteen rods and twelve links more or less to a line now or late of Joseph S. Higbee, deceased; thence along his line north eighty-eight degrees west, fourteen perches and fifteen links more or less to the beginning; which said lot consists of lots No. 34 and 35 on the plan of partition aforesaid.

The Third: Beginning at a point in the easterly side line of said road, given for public and private use as aforesaid, bearing north eighteen degrees and forty-five minutes east from the northwest corner of lot No. 1 on said plan of partition, distant forty-five perches and being the southwest corner of No. 12 on said plan, and running thence south sixty-eight degrees and twenty minutes east six perches; thence north thirty-two degrees and ten minutes east twenty-two perches and thirteen links to a point in the line of Thomas H. Higbee, now or late claimed to be Joseph S. Higbee's, deceased; thence along 10 said line north eighty-eight degrees west more or less to easterly side of said road, and northwesterly side or corner of lot No. 14 on said plan; thence along the said side of road south eighteen degrees and forty-five minutes west, seventeen perches and eighteen links more or less to the beginning; which lot includes *inter alia* lots No. 12, 13 and 14 on the plan of partition aforesaid.

The Fourth. Beginning at the southeast corner of lot No. 12 on the plan of partition aforesaid, which said corner is distant six perches from the eastwardly side of the 20 road given as aforesaid and forty-two perches from the north side line of the Cape Island Turnpike Road and running south sixty-eight degrees and fifty minutes east six perches to the line of a road two and a half perches wide, intended soon to be laid out as a public road and opened to Cape Island Turnpike; thence north twenty-four degrees and forty-five minutes east thirty perches more or less to a post in the line of other land of the said Smith E. Hughes (lot No. First) purchased of Thos. Hig- 30 bee; thence along said line north eighty-four degrees and fifty minutes west twenty-five feet to a corner in said Hughes' line, first lot; thence along partly first lot and third lot south thirty-two degrees and ten minutes west thirty-three perches and thirteen links to the place of beginning, containing more or less.

The Fifth. Beginning at a point in the high water line of the easterly shore of Delaware bay in the southerly line of said Smith E. Hughes' land, and from thence running north sixty-eight degrees west one hundred feet to the exterior line of solid filling established, etc; thence north twenty-two degrees west, along said exterior line for solid filling twelve hundred and eighty-six and thirty-four one hundredths feet; thence south sixty-eight degrees east, one hundred feet to a point in the high
 10 water line of the easterly shore of Delaware bay, at the mouth of Pond creek; thence south twenty-two degrees west along said high-water line twelve hundred and eighty-six thirty-four one-hundredths feet to the point or place of beginning.

Also all the land under water in front of the above described tract of land lying between the exterior line aforesaid for solid filling and the exterior line for posts as fixed by the said Commissioners, and bounded by the northerly and southerly boundary lines of the above described tract, etc., as in and by a certain deed
 20 from said Commissioners to Smith E. Hughes, dated May 21, 1881, signed by the Governor, Commissioners, attested by the Secretary, with the Great Seal of State affixed, registered in Liber F, folio 1872, and recorded in the Clerk's office at Cape May Court House, in Deed Book No. 51, page 184, &c.

Being the same premises Smith E. Hughes and wife conveyed to said The Porpoise Fishing Company, by deed
 30 dated the thirty-first day of May, A. D. eighteen hundred and eighty-four, of record in the Clerk's office of Cape May county, at Cape May Court House, New Jersey, in Book No. 64 of Deeds, pages 174, 175, 176, 177 and 178, &c.

Together with all the docks, dams, gates, pens, sluices, water-tanks, casks, fixed machinery, buildings, improve-

ments, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, possession, claim and demand in law or equity of it, the said The Porpoise Fishing Company, to all and singular the property aforesaid, and every part and parcel thereof.

By the other indenture of mortgage aforesaid, all those goods and chattels at such time in and upon it, said real estate, or at any time thereafter put therein, to wit; one steamboat called the "John Taylor" and equipments. 10

Two water tanks.

Four casks—large.

One steam pump No. O.

Three porpoise hooks.

One harpoon.

Two sections canvas hose

Two shaving beams for currier's use.

Two currier knives.

Two scow boats. 20

One surf boat.

One pilot boat skiff.

One large yawl boat.

One small yawl boat.

One new seine.

One sweep net, seven hundred and thirty feet.

One warp, six hundred feet.

One old seine.

One long net, twenty-two hundred feet. 30

One new piece sweep net.

Two hundred and fifteen feet small warp.

Six large and four small oars.

One boat hook.

Five anchors.

One new and one old hawser, and one line.

Three pieces of chain.

One wheelbarrow.

Twenty-eight pieces lumber, 3x6.

Sixty pieces lumber, 3x4.

One funnel.

One screen.

One bail twine.

One lot square corks.

10 One slice bar.

Sixty tons compost, and all stock on hand and all goods and chattels, either stock, fixtures, or otherwise whatever, hereafter to be put or found on or in the said real property.

To have and to hold the same, with all and singular the appurtenances, unto your orator, his heirs, executors, administrators and assigns, to the only proper use, benefit and behoof of your orator, his heirs, executors, administrators and assigns forever.

20 In trust, nevertheless, for the security, equal use and benefit of the several persons to whom said bonds had been or might be issued, or who should become the lawful holders thereof, their respective executors, administrators or assigns, according to law, without any priority or preference to the holder or holders of any of said bonds, but subject, however, until default should be made in the payment of the principal or interest of said bonds as thereinafter mentioned, to permit and suffer the said The Porpoise Fishing Company, its successors and
30 assigns, its president, directors, other officers and agents, to have and retain the free and uninterrupted use, possession, control and management of all the said goods and chattels and estates, to and for its proper use, benefit and behoof; such use, enjoyment and possession, however, not in anyway to prejudice or affect the lien or operation of said mortgages.

And it was thereby expressly covenanted, agreed and understood by and between the said parties thereto, the said The Porpoise Fishing Company covenanting as well for itself as for its successors and assigns, and your orator covenanting for himself and his heirs, executors, administrators and assigns, and his successor and successors in this trust in manner following, to wit: First. That it, said The Porpoise Fishing Company, its successors and assigns, should and would punctually pay the holders of the bonds aforesaid intended to be thereby secured, respectively, the interest thereon when and as the same should be demanded; and should and would also, when hereunto required by one-half in value of the holders of said bonds at such time issued, pay, satisfy and discharge the whole of the said bonds at such time issued, both principal and interest, on demand, without further delay, and without any deduction, either from the said principal or interest for any tax or taxes imposed thereon by the laws of the State of New Jersey or of the United States for State or United States purposes, which the said Porpoise Fishing Company was or might be required by the laws aforesaid to retain therefrom, the said The Porpoise Fishing Company thereby agreeing to pay the same.

Second. That in case default should be made in the payment of the said sum above mentioned, after demand, by one-half in value of the holders of said bonds at such time issued; or in case the said The Porpoise Fishing Company should at any time remove the goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against it, or permit or suffer any judgment to be entered up against it, then the said sum of money herein mentioned should become instantly due and payable and then it should and might be lawful for, and the said The Porpoise Fishing Company did thereby

authorize and empower your orator, his successors and assigns, with the aid and assistance of any persons, to enter the said real estate buildings and other premises, and such other place or places whatever in which the said goods and chattels, or any of them, were or might be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price here they could obtain; and out of the moneys arising therefrom to retain and pay
 10 the said sum above mentioned and all charges touching the same, rendering the overplus if any unto The Porpoise Fishing Company, its successors and assigns.

Third. That your orator and his acceptance of said trust was upon this express condition, should not incur any liability or responsibility whatever in consequence of permitting or suffering the said The Porpoise Fishing Company to retain or be in possession of the said goods and chattels, or to use and enjoy the same, nor for any destruction, deterioration, determination, loss, injury or damage, which might be done or happen to the same; nor
 20 for the consequences of any breach on the part of the said The Porpoise Fishing Company, of any of the covenants herein contained; nor for any exercise of judgment or discretion in any case in which such judgment or discretion is allowed or given; nor for any moneys, estates or property whatever, except what should or might actually and in fact come into his hands and possession by virtue of the provisions thereof; nor for any other matter, cause
 30 or thing, except for his own wilful and intentional breaches of the trust therein and thereby created, expressed and contained.

Provided always nevertheless, that if the said The Porpoise Fishing Company, its successors or assigns, should and did well and truly pay or cause to be paid unto the several persons, bodies politic and corporate,

who shall become the holders of the bonds above mentioned and intended to be thereby secured, the sums of money expressed therein when demanded as aforesaid, together with interest as aforesaid for the same, according to the provisions of the said recited bonds or obligations, or in accordance with the provisions of said mortgage, without any fraud or further delay, and without any deduction, defalcation or abatement, then and from thenceforth as well said mortgage and the estates and interest thereby granted and conveyed, assigned and set over, or thereby agreed and intended so to be, and the trust thereby created as the said recited bonds or obligations should cease, determine and become void and of no effect, anything therein before contained to the contrary thereof notwithstanding, and satisfaction should be forthwith duly rendered by your orator, his executors, administrators, successors or assigns, upon the record of said mortgage. 10

3. That after the execution of the said indentures of mortgage as aforesaid, to wit: on the sixth day of October, A. D. 1884, the execution thereof by the said corporation as hereinbefore stated was duly proved by the affirmation of Walter W. Green, a subscribing witness thereto, before Samuel P. Jones, Esquire, one of the Masters in Chancery of New Jersey, and a certificate of such proof in due form in writing, under or at the foot of each of said indentures, signed by the said Samuel P. Jones, was duly made. 20

4. That your orator, by memorandum in writing at the foot of each of said indentures of mortgage, signed by himself, bearing date the first day of October, A. D. eighteen hundred and eighty-four, accepted and took upon himself the burden of the execution of the several trusts reposed in and conferred on him in and by the said indentures of mortgage; and by his affidavit there- 30

after annexed to said chattel mortgage, bearing date the sixth day of October, A. D. eighteen hundred and eighty-four, swore that the true consideration of said chattel mortgage was moneys paid to the said The Porpoise Fishing Company for said bonds to the extent the same act negotiated, and the amount due and to grow due thereon, as near as he could state, was the sum of three thousand dollars principal thereof, and interest from the date thereof.

10 5. That each of said indentures of mortgage, with the said acceptance and certificates of proof and affidavit respectively, were afterwards, on the seventh day of October, A. D. eighteen hundred and eighty-four, according to the statute in such case made and provided, recorded at length in the office of the Clerk of the said county of Cape May, said mortgage of real estate in Book X of Mortgages, page 24, &c., and said mortgage of chattels in Book 3 of Chattel Mortgages, page 15, &c.

20 6. That all of the said sixty bonds, the aggregate principal of which amounts to the sum of three thousand dollars, were and have been sold and disposed of, absolutely for valuable considerations, full and at par, to *bona fide* purchasers, by the said corporation; and being negotiable, by simple sale and delivery, are now in the hands of the numerous persons to whom they were thus sold and delivered, either in whole or in part, or else in the hands of numerous other persons to whom they have been sold and delivered by the said purchasers or other subsequent holders thereof; but who are now the lawful
30 holders of all of said bonds sold as aforesaid, or who will at any future day be the holders thereof, your orator has not, and is unable to obtain to a large extent thereof, any reliable knowledge or information, and is consequently unable to make them parties to this bill of complaint; and respectfully submits that he is the trustee and proper

representative of said bond holders, whoever they are or may be, and is not therefore required to make them parties defendant to this bill.

7. That on or about the twentieth day of June now instant, the holders of thirty-one bonds, and more than one-half in value of all of said bonds, made demand upon the said The Porpoise Fishing Company that it pay to them forthwith the principal and interest moneys of their said mortgage bonds; that said company did thereupon make default therein and the holders of said thirty-one bonds, and more than one-half in value of all of said bonds, did thereupon give your orator notice thereof and require that your orator take possession of the property as trustee and proceed to sell the same, or have the same sold forthwith by process of law, according to the terms of the mortgage. 10

8. That on the sixteenth day of June instant, such proceedings were had in a certain cause then pending before Furman Barnett, a justice of the peace in and for the county of Cape May aforesaid, wherein Jonas S. Miller was plaintiff and the said The Porpoise Fishing Company was defendant; that judgment was had therein by said plaintiff against said defendant for two hundred dollars debt and costs of suit. 20

9. That on the said sixteenth day of June instant, such proceedings were had in a certain other cause then pending before Furman Barnett, a justice of the peace as aforesaid, wherein John A. Cook was plaintiff and the said The Porpoise Fishing Company was defendant; that judgment was had therein by said plaintiff against said defendant for two hundred dollars debt and costs of suit. 30

10. That thereafter executions were issued by said justice upon said judgments and delivered to a constable of the county of Cape May, and such proceedings were

had by him thereunder that, after having made levies upon large portions of said mortgaged chattels, and advertised the same for sale according to law, he did sell the same at public vendue subject to said chattel mortgage, on the twenty-fourth day of June instant, some thereof to the said Jonas S. Miller, and some thereof to the said John A. Cook, and some thereof to other persons unknown to your orator, how much or what portions thereof to each your orator is ignorant; and did deliver 10 said goods and chattels so sold by him as aforesaid, although notified at such time of the chattel mortgage of your orator aforesaid thereon to his said vendees; and the said Jonas S. Miller and John A. Cook have removed large portions of said goods and chattels and claim to have the same in their possession and safe as against the discovery of your orator but within the jurisdiction of this court, and threaten soon to remove the same entirely beyond the reach and control of your orator and beyond this State, contrary to 20 the rights of your orator and his beneficiaries therein.

11. That both of said judgments were had and recovered subsequent to the execution and delivery of said mortgages and sale of said mortgage bonds, and with full notice thereof, and have been and are a lien on said goods and chattels and the purchasers of said goods and chattels thereunder are subject to the lien of said mortgages.

12. That because of said demand for payment on said company and default therein, and notice and request to 30 your orator, and of said judgments and processes of law against said company and its property, and removal of said property or some thereof as aforesaid, your orator, for the purpose of duly executing the trusts conferred and imposed upon him as aforesaid, exhibits this his bill of complaint, as advised by counsel, and shows that all of

said bonds and the principal moneys secured by his said mortgage are due, with interest from date of same.

13. That the said mortgaged premises are a slender and scanty security for the payment of said bonds and mortgage, and that it is necessary that the said mortgaged premises be sold and the net proceeds of sale be applied to the payment of said bonds as required by the provisions and covenants contained in said indentures of mortgage.

14. That your orator, or some person for him, has frequently and in a friendly manner applied to the said The Porpoise Fishing Company, Jonas S. Miller and John A. Cook, and requested them to pay and discharge the said principal and interest moneys due on said bonds and mortgage, and your orator well hoped they would have complied with such reasonable request, as in justice and equity they ought to have done. But now so it is, said defendants neglect and refuse so to do, contrary to equity and good conscience.

In tender consideration whereof, and forasmuch as your orator has not a complete remedy in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged goods and chattels and real estate, or safely sell the same for the payment and satisfaction of the said principal and interest moneys without the aid of this honorable court, where matters of this nature are particularly cognizable and relievable ;

To the end, therefore, that the said The Porpoise Fishing Company, Jonas S. Miller and John A. Cook, may without oath full, true and perfect answers make to all and singular the premises as fully as if here repeated and they thereto particularly interrogated ; and that the possession of all of said goods and chattels and real estate may be delivered over to your orator, as trustee aforesaid, during the pendency of

these proceedings ; or if seeming more equitable to your Honor, that some impartial and fit person should be appointed receiver of all the said mortgaged property, to hold or use and operate the same and the business of said company under the orders of this court, and to pay the proceeds thereof to said bondholders or to your orator, to defray the expenses of this proceeding ; and that the said Jonas S. Miller and John A. Cook may be ordered to disclose the whereabouts of said goods and
10 chattels so removed by them as aforesaid, and to return the same forthwith to said real property and the possession thereof to give to your orator or to said receiver, and restrained from selling or disposing or transferring the same, or any thereof ; and that the said The Porpoise Fishing Company, Jonas S. Miller and John A. Cook and all persons claiming or to claim by, from, through or under them, may be barred and foreclosed forever of all right, title and equity of redemption of, in and to the said goods and chattels and real estate, and every part thereof, and may deliver the possession of the said mortgaged
20 premises, and all deeds, evidences and muniments of title relating to and concerning the same unto your orator ; or if your Honor shall deem it more equitable and just that the said mortgaged goods and chattels and real estate should be sold and the net proceeds applied to the payment of the moneys due and owing on the said bonds, both principal and interest, to the general holders thereof, according to the aforesaid declaration of
30 trust, provisions and covenants set forth and declared in the said indentures of mortgage, that then such sale may be made under the decree, orders and directions of this honorable court for that purpose, and that an account may be taken in order to ascertain the amount of principal and interest due to the said several holders of said bonds, and that the said defendants, in case of such sale or sales, shall be barred and foreclosed from all

claim or demand against the purchaser or purchasers at such sale, and all persons representing them; and that the net proceeds of such sale or sales, and from operating the business of the said company by said receiver, or otherwise, shall be paid to your orator as trustee as aforesaid, in trust, to pay and distribute the same according to the aforesaid trusts declared and set forth in the said indentures of mortgage; and that your orator may have such further and other relief in the premises, including costs, as the nature of the case may require and as may be agreeable to equity and good conscience. 10

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 Jonas S. Miller and John A. Cook, restraining them and each of them from secreting the said goods and chattels, or any of them, and from selling or disposing the same, or any thereof, or transferring the same out of this State, and from depriving the said complainant of the possession of said goods and chattels, to the end that the same may be restored to said real property and his possession as trustee under said mortgage; but also the State's writ of subpoena, to be directed to the said The Porpoise Fishing Company, Jonas S. Miller and John A. Cook, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed to be and appear before your Honor in this honorable court, then and there to answer all and singular the 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. 20 30

S. D. BERGEN,

Sol. for and of Counsel with Complt.

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

CHRISTOPHER A. BERGEN, of full age, being duly sworn says he is the complainant named in the above bill, and that he has read the same and knows the contents thereof, and that the same so far as relates to his own acts is true, and so far as relates to the acts of others he believes it to be true; and particularly is it true that he is mortgagee, as therein set forth, and that the bonds secured by his
 10 said mortgage have been negotiated by said company, and that demand for the payment of thirty-one of said bonds has been made on said company and refused and notice thereof served on this deponent, with request as specified; and that said Jonas S. Miller and John A. Cook respectively have recovered judgments as specified against said company, and having sold the mortgaged goods and chattels, or some of them, under levies on same of executions on such judgments, purchased or bought
 20 same in, or some thereof, and now claim to have possession thereof and to have the same secretly stored from this deponent and removed from said real property where same were safely stored prior thereto, and threaten to remove the same beyond this State and to deprive this deponent of all access thereto or knowledge thereof, and to sell and dispose of the same to third parties and away from deponent, and that this deponent is fearful that his entire right in said goods and chattels as trustee as aforesaid will be lost by the wrong act and doing of the said Jonas S. Miller and John A. Cook.

30

C. A. BERGEN.

Sworn and subscribed this twenty-sixth day of June,
 A. D. 1885, before me,

WM. S. CASSELMAN,
 M. C. C.

ANSWER.

The joint and several answer of Jonas S. Miller and John A. Cook, two of the defendants in the above stated cause.

1. These defendants, saving and reserving to themselves all and all manner of advantage and exception to the many errors, untruths, uncertainties and other imperfections in the said bill of complaint contained, for answer thereunto say, that they admit that The Porpoise Fishing Company, on the first day of October, eighteen hundred and eighty-four, made and executed sixty bonds, numbered from one to sixty inclusive, and each for the payment of fifty dollars to Edward H. Rowley or bearer, at the office of the company, at Cape May, New Jersey, according to the conditions and tenor of said bonds as mentioned in said bill of complaint. 10

2. And these defendants, further answering, admit that after the making of the said several bonds, the aggregate of which amounted to the sum of three thousand dollars, as collateral security for the payment of the same, with principal and interest, at the same time and date made two indentures of mortgage to secure said bonds, according to the conditions and tenor thereof. By the first the land and premises described in said bill, with the appurtenances; by the second indenture of mortgage all the goods and chattels mentioned in said bill of complaint. 20

And these defendants, further answering, say that the issuing of the said sixty bonds, and the making of the two indentures of mortgage by the officers of the said The Porpoise Fishing Company to secure the payment of said bonds, was without authority from the stockholders of said corporation and contrary to law and consummated 30

to defraud outstanding creditors, and to prevent them from collecting their just claims.

And these defendants, further answering, admit that the complainant took upon himself the burden of said trust, according to the stipulations and covenants mentioned in said indentures of mortgage, but whether the complainant made affidavit that the true consideration of said chattel mortgage was moneys paid The Porpoise Fishing Company on said bonds, and the truth of said
10 statement, they leave the said complainant to prove as best he may.

And these defendants, further answering, admit that the said indentures of mortgage were proven by affidavit of Walter Green, a subscribing witness, before Samuel P. Jones, a Master in Chancery of New Jersey; and that there was a memorandum in writing at the foot of said indentures of mortgage, signed by complainant on the first day of October, eighteen hundred and eighty-four, to the effect that the said complainant accepted the trust imposed upon him, and that the said indentures of mortgage were duly recorded in the County Clerk's office of
20 Cape May county.

4. And these defendants, further answering, say that whether or no the said bonds have been sold and absolutely disposed of for valuable considerations and at par, to *bona fide* purchasers, and to whom the said bonds were delivered, these defendants leave the complainant to prove the same as best he may.

30 5. And these defendants, further answering, say that on or about the twentieth day of June, thirty-one bond holders made a demand on The Porpoise Fishing Company to pay them their principal and interest money of their said mortgage bonds; and that the said company made default therein and that the said complainant was notified of that fact by the said thirty-one bond holders,

and required the complainant to take possession of the said mortgaged property.

6. And these defendants, further answering, admit that on the sixteenth day of June, eighteen hundred and eighty-five, the defendant, Jonas S. Miller, recovered a judgment against the said The Porpoise Fishing Company for the sum of two hundred dollars and costs before Furman Barnet, Esquire, a Justice of the Peace, and that on said day last aforesaid the said John A. Cook recovered a judgment against the said The Porpoise Fishing Company for the sum of two hundred dollars and costs. 10

And that executions were issued on said judgments and a levy made upon the goods and chattels of the said defendant, The Porpoise Fishing Company, and that the same were advertised for sale according to law, and that on the twenty-fourth day of June, eighteen hundred and eighty-five, the constable exposed the said goods and chattels for sale at public vendue and proclaimed that they were sold, subject to a chattel mortgage, and that some of the goods were bought by both these answering defendants and other persons unknown to the complainant and defendants, and that the said constable delivered the said goods and chattels to the purchasers at said sale. 20

7. And these defendants, further answering, deny that they have removed large portions of said goods and chattels for the purpose of keeping the complainant from discovering the same, and that they were about or had any intention of removing the said goods and chattels from the State or the jurisdiction of this Honorable Court, but allege the truth to be that they removed the most perishable part of said goods and chattels and stored the same in a storehouse in which they are protected from the weather. 30

8. And these defendants, further answering, deny that

said two judgments were recovered subsequent to the execution and delivery of said mortgage bonds, and with full notice thereof, and have been and are a lien on said goods and chattels, and the purchase of said goods and chattels thereunder are subject to the lien of said mortgages.

9. And these defendants, further answering, say that whether or no there was a demand for payment on said company and default and notice and request to the complainant, the said judgments, and the removal of said goods and chattels, was the cause of the foreclosure of the mortgages by the complainant, these defendants leave the complainant to prove the same as best he may.

10. And these defendants, further answering, deny that any demand has ever been made upon them for the payment of said bonds by the said complainant, or any person for him.

11. And these defendants, further answering, say that prior to the execution of said mortgages to the complainant the said The Porpoise Fishing Company was insolvent and unable to pay their just debts, and that on the fifteenth day of September, eighteen hundred and eighty-four, the said The Porpoise Fishing Company made an assessment on the several shares of stock held by the different stockholders, to pay the debts and continue the business, which at said last mentioned time was suspended.

12. And these defendants, further answering, say that the said defendant, The Porpoise Fishing Company, at the time last aforesaid and subsequent thereto, did not liquidate the indebtedness then due and owing, but created new obligations, to the great detriment and harm of these defendants and other creditors, and that said assessment and indentures of mortgage were made to prefer creditors and to defraud these defendants and other creditors.

13. And these defendants, further answering, say a portion of said mortgage bonds issued as aforesaid are held by the complainant as trustee for himself, and that at said time when the same were issued the said complainant was the attorney of the said The Porpoise Fishing Company, and has since remained the same, and that a greater portion of said bonds are held by one individual, who was a member of said corporation and was cognizant of its insolvency at the time aforesaid.

14. And these defendants, further answering, pray that said mortgage on the goods and chattels and on the real estate of the defendant, The Porpoise Fishing Company, may be declared a subsequent lien to that of the judgments of these defendants, and that any rights these defendants may have shall be protected and saved to them without this, that any other matter or thing in the complainants' said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied is true; and they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained. 10 20

And that the injunction heretofore issued be dissolved with costs.

JOHN W. WESCOTT,
Solr. and of Counsel with Defts.

A true copy.

G. S. DURYEE, Clk.

AMENDMENT TO ANSWER.

30

And these defendants, further answering, admit that the said bonds were made, and the said mortgages executed in manner and form as alleged in said complainant's said bill, but that these defendants deny that

they were made and executed by authority of the shareholders, and insist that they were made and executed contrary to law and the statute in such case made and provided.

REPLICATION.

The replication of the complainant to the answer of
 10 Jonas S. Miller and John A. Cook, defendants.

The complainant joins issue on the said answer of defendants.

SAMUEL D. BERGEN,
 Sol. of Complainant.

COMPLAINANT'S EVIDENCE.

The complainant offers in evidence two mortgages made by the defendant, The Porpoise Fishing Company,
 20 to Christopher A. Bergen, trustee, dated October 1st, 1883, recorded October 7th, 1884, in the Clerk's office of the county of Cape May, in Book X of Mortgages, page 24, &c.; also in Book No. 3 of Chattel Mortgages, page 15, &c., marked "Exhibits B1 and B2."

(Objected to on the ground that the authority for making said mortgages must be shown under the circumstances; that it is a corporation and these mortgages are made to secure negotiable bonds.)

30 Mr. Bergen: I am to try the case made by the pleadings.

The execution of the mortgages is admitted.

Mr. Wescott: That they were issued upon authority and legally is the point we intend to deny. We deny

the right of the company to proceed in this way to issue negotiable bonds, to put them in the market and secure them by property in this company; they had no power to make a mortgage upon their property to raise money and secure them by the property of the company.

The Court: I think the court above will look into that.

Mr. Bergen: We will produce the proof of the authority to execute the bonds and mortgage. 10

Mr. Wescott: The pleadings are regarded as amended.

Mr. Bergen: No, they stand as they are.

The Court: If there is an application to amend the answer, to that extent we will consider it and allow the amendment.

Mr. Wescott: (To the Court.) We make the applica- 20
tion.

The Court: (To Mr. Wescott.) Put it in writing.

BENJAMIN REYNOLDS, sworn and examined.

By Mr. Bergen:

Ques. Do you hold any office in the defendant company?

Ans. Yes, sir; I am sorry to say I am President of 30
The Porpoise Fishing Company of Cape May.

Ques. Have you the minutes of the company?

Ans. Yes, sir; they were brought here.

Ques. Is that the book of minutes? (Same shown witness.)

Ans. Yes, sir; that is the book of minutes of The Porpoise Fishing Company.

Ques. Are the constitution and by-laws recorded in that book?

Ans. To the best of my knowledge they are.

Ques. Will you refer to them here?

Ans. The book is not paged.

(Pages marked from A to K inclusive, at the top of the 10 page.)

Ques. Subsequently to the adoption of that was there a meeting of the stockholders of the company?

Ans. Yes, sir; a meeting of the stockholders.

Ques. When were the by-laws of the stockholders adopted, to which you have referred.

Ans. September 15th, 1884.

Ques. At that meeting of the stockholders was any resolution passed relating to these mortgages?

20 Ans. I think there was; at least for the purpose of raising the money.

(Objected to.)

Ques. Is that the same meeting?

Ans. Yes, sir.

By the court:

Ques. What was done at the same meeting, September 15th, 1884?

30 Ans. The by-laws were passed and a motion made for an assessment, and then an order passed by the stockholders directing the Board of Directors—

By Mr. Bergen:

Ques. (Interrupting.) Read the resolution that was passed?

By Mr. Wescott:

Ques. Who made that; is that your work?

Ans. No, sir; these are the minutes of the company.

(Reading.)

“On motion of Mr. Branin, *Resolved*, That the Board of Directors of this company be hereby authorized to borrow from any person or persons willing to loan the same the sum of three thousand dollars on the best terms they can procure the same, and to pledge by bond and mortgage on real and personal property of the company, either or both, any of the property of the company for the security thereof, said moneys to be for the uses of the company. Seconded by Gallagher and carried. 10

Ques. How many stockholders voted in favor of that?

Ans. The record shows twenty-six hundred and seventy-three yeas and no nays. 20

Ques. Was there a meeting of the Board of Directors after that?

Ans. Yes, sir.

Ques. When was that held?

Ans. The meeting of the Board of Directors of The Porpoise Fishing Company, the same day, September 15th, subsequently to the stockholders' meeting.

Ques. Was there any resolution passed at that meeting? 30

Ans. Yes, sir; in accordance with the request of the stockholders the resolution recorded here.

(Reading.)

“On motion, *Resolved*, That this company do borrow

from any person or persons willing to loan the same the sum of three thousand dollars on the best terms they can procure the same, and the officers of the company are hereby authorized to execute bonds or notes of the company therefor and to execute all papers necessary to secure the same by mortgage on the property of the company, either real or personal, to them or their trustee; carried." The motion was carried by the directors. This is signed by the secretary of the meeting who kept
10 the records.

By Mr. Bergen :

Ques. Did you as president of the company subsequently execute those papers?

Ans. I did.

Ques. And the bonds?

Ans. Yes, sir.

Ques. The sixty bonds?

20 Ans. The sixty bonds; I signed them as president.

Ques. Did the secretary sign them with you?

Ans. The secretary signed them and placed the seal of the company on each and every one; they were numbered consecutively from one to sixty, inclusive.

Ques. What did you do with those bonds?

Ans. I sold them, raised money on them, obtained money on the most of them.

Ques. Does that show what you did with the bonds?

30 (Paper shown witness.)

Ans. Yes, sir; that is a detailed statement of my handling of each and every bond, the names of the parties to whom they passed from my hands. I do not know where they all are now, some of them.

Ques. You do not know where they all are?

Ans. Not all of them. I know where most of them are, I suppose. I have heard the parties still hold them.

Ques. State what that account shows?

The Court: It speaks for itself.

By Mr. Wescott:

Ques. Who made that account?

Ans. I made it.

Mr. Bergen: I offer in evidence the account. 10

Ques. As set forth in that paper all the bonds have been in one way or another negotiated and disposed of.

Ans. Yes, sir; according to my statement there.

Ques. What did you do with the moneys arising from those bonds?

Ans. I paid it out for the debts of the company. I have my vouchers for it.

Ques. What is this?

Ans. These papers show my several accounts with the 20 company from the commencement; the moneys I handled individually for the benefit of the company from the commencement up to near the present time. All the accounts I have in detail.

Ques. Does it include the proceeds on the bonds?

Ans. Yes, sir; it includes the proceeds of the bonds, the entire statement, and the final disposition of them.

Mr. Bergen: I offer in evidence the account. 30

Ques. What is that?

(Paper shown witness.)

Ans. This is the notice that was served on me by my bondholders, I believe.

Ques. When?

Ans. June 20th, 1885.

Ques. On or about that date?

Ans. Yes, sir.

Ques. Was that paper served on you at the time these gentlemen signed?

Ans. That is their order.

Ques. Is that the demand on you? (Paper dated June 25th shown witness.)

10 Ans. The demand on me for the foreclosure.

Ques. What is that? (Another paper shown witness.)

Ans. It was served on you as as trustee by the bondholders.

By Mr. Wescott:

Ques. When?

Ans. June 22.

Ques. When was it served?

20 Ans. I presume it was served within a day or two of that time; I know it was served within a day or two, if not the very next day.

Mr. Bergen: The complainant offers same in evidence—papers marked, B3, B4, B5, B6.

Ques. Are all the chattels included in the mortgage still extant?

Ans. My last personal knowledge of them is they were not by a considerable portion.

30

By the Court:

Ques. Do you mean to say some have been destroyed?

Ans. Yes, sir.

By Mr. Bergen:

Ques. What especially do you recall ?

Ans. The steamer General Taylor.

Ques. What happened to her ?

Ans. She was wrecked, lost.

Ques. When was that ?

Ans. On the morning after election day, I believe ; that is the 4th of November ; the election in Pennsylvania was on the 3rd, I think.

Ques. Are you speaking of Pennsylvania or New Jersey.

Ans. The Pennsylvania election, because I went down ¹⁰ on election day.

Ques. What year ?

Ans. 1884. (Resuming) On the morning of November 4th ; I believe I am right as to the date within a day ; at all events she was wrecked on Delaware Bay shore, near the steamboat landing.

Cross-examined.

By Mr. Wescott :

20

Ques. Is this book said to contain the minutes in your handwriting ?

Ans. No, sir ; I have no recollection of any of my handwriting in that book.

Ques. How long have you been president of the company ?

Ans. Since its organization.

Ques. Was this an annual meeting of the stockholders you speak of? 30

Ans. No, sir ; it was a called meeting of the stockholders.

Ques. How did you call it ?

Ans. By publication, if I remember right, a public notice. The printed notice, as it was at the head of the

minutes I see of the newspaper; they were published in the newspapers at Cape May.

Ques. State whether it was published within a legal period of time, if you know?

Ans. I say as far as that is concerned from information; I remember distinctly the searching of the statutes of New Jersey, and those were complied with in the publication of the notices in the papers, a copy of which is at the head of that.

10 Ques. How do you know they were complied with?

Ans. I say I read the statutes, and what the statutes required was complied with, by the advice of our attorney.

Ques. That is all you know about it?

Ans. That is all I know about it.

By Mr. Bergen:

Ques. Did you see advertisements in the papers?

Ans. Yes, sir; in the papers.

20 Mr. Wescott:

Ques. Where were you living at the time of the publication?

Ans. I was living at that time in Philadelphia, but I was staying a good deal of my time at Cape May; in fact, at the time I was living at Cape May; I had been there for the summer; I remember that now.

Ques. How many of the stockholders were present?

30 Ans. I kept no record of it, but the majority of them were there.

Ques. Your minutes do not show what stockholders were present?

Ans. It shows a number—I can't tell whether the record of the names of every stockholder there is recorded or not.

Ques. Can you state how many stockholders were present at this meeting or who they were?

Ans. I suppose fifteen or twenty.

Ques. Who were they?

Ans. Mr. Gallagher, Mr. Mien.

Ques. Were they officers of the company?

Ans. Yes, sir; they were officers and stockholders; Mr. Green was there and Mr. Brannin was there, a stockholder.

Ques. The people that were there represented how much stock? 10

Ans. They represented three-fourths and over of the stock of the company, according to the records. I represented a portion of them myself.

Ques. How do you know they represented over three-fourths of the stock of the company?

Ans. By the records of the company, their books, their stock ledger.

Ques. Where is the stock ledger?

Ans. It is, I believe, in Cape May or Philadelphia; the books have been scattered lately. 20

Ques. How long have you had possession of these books you have produced?

Ans. This book; this is the second time I have had it in my hand; they were left with Mr. Green and brought up from Cape May; our secretary had left and placed the books and papers in Mr. Green's hands; Mr. Green and I brought them on this occasion.

Ques. Who had charge of the stock book?

Ans. Mr. Peacock, the secretary. 30

Ques. Where is Mr. Peacock?

Ans. In Bridgeton, I believe.

Ques. Why did you not produce that; you had notice to produce all your books?

Mr. Wescott: We give notice now.

Ques. When were these by-laws made?

Ans. They were passed on the same day the meeting stated they are; I think September 15th.

Ques. You made the by-laws that day?

Ans. They were passed by the stockholders that day.

Ques. How long had the company been in existence before that?

10 Ans. The company had been in existence some five or six months.

Ques. You were running five or six months without a constitution and by-laws?

Ans. It was so claimed by the stockholders that the by-laws that were originally passed were not strictly in accordance with the law, and it was suggested to pass those by-laws.

Ques. Why did you make those by-laws on the day you perfected this scheme about the bonds?

20 Ans. It was impossible to get the stockholders to get together; it was a great deal of labor.

Ques. Why did you make the by-laws on the same day you perfected the scheme?

Ans. In order to have the company start on a solid basis.

Ques. It had not been on a solid basis up to that time?

Ans. It was so decided.

Ques. What do you mean by having the company start on a solid basis?

30 Ans. My interpretation would be to comply with the laws of the State of New Jersey as far as possible.

Ques. Was it not to make this scheme of raising money solid?

Ans. No, sir; I don't think we had any thought of that.

Ques. Has your company been running since that time?

Ans. Yes, sir.

Ques. On a solid basis?

Ans. Running up to the time they lost their steamer.

Ques. You did business from this time of the date of the by-laws up until how long, a regular business of the company?

Ans. Up until November 5th. Then we had to look out for the property after that.

Ques. What do you mean by that? 10

Ans. We had to save the wreck; we saved all we could of the steamer. About the middle of November, I think, the last man was employed under pay.

Ques. Did you do this business continuously from the time you made the by-laws until the wreck of the steamer?

Ans. Yes, sir; we were following the details of the business.

Ques. Did you catch any fish? 20

Ans. We were only getting ready to catch fish.

Ques. How long were you getting ready to catch fish?

Ans. We caught some fish after those by-laws were passed.

Ques. Are you sure of that?

Ans. Yes; the steamer was wrecked—no I must refer to dates; it is a good while ago; the steamer was wrecked on the 22nd of August; that is, she was beached.

Ques. Between that time of the making of the by-laws and the 22nd of August you caught no fish? 30

Ans. No, sir.

Ques. You were getting ready?

Ans. Well, we were making our arrangements for fishing, I mean by making arrangements getting the steamer arranged, fitted, provisioned, manned and everything

ready for fishing. That took up to the third or fourth of November, I think, and then she was finally wrecked and broken to pieces. We met with two losses, two reverses, one on the 22nd of August and the other on the 3rd of November.

Ques. Up to the time you made these by-laws what was the condition of the company, flourishing?

Ans. Their prospects were very fair ahead.

Ques. What had been the actual results?

10 Ans. The actual results up to that time had not been very prosperous; that is, we had not received enough to pay expenses.

Ques. Had you suspended business at any time before you made the by-laws?

Ans. We were obliged to suspend business when the steamer went ashore.

Ques. At any time before you made the by-laws, had you suspended business?

Ans. I had no recollection of it; we always had men in our employ and doing something.

20 Ques. Are you sure you had not suspended business before the time you made these by-laws?

Ans. I have no recollection of it. The minutes will show if we did; it will show it.

Ques. Whatever was done that minute book will show it?

Ans. Yes, sir; but I don't carry the whole details in my brain.

30 Ques. As a matter of truth, was not this company hopelessly gone at the time you made those by-laws?

Ans. I certainly think it was not.

Ques. Why do you think it was not?

Ans. For the reason that the company was the owner of property of value at that time, more than enough to pay all its debts, with the prospect immediately at that

time, we thought, before them of a prosperous fishing season on top of it, and if that property had been sold then and there, at that time, we would have had more than enough to pay all our floating indebtedness, and more than two-thirds of our stock, of the capital stock of the company, was not issued.

Ques. Could you get anybody to take it?

Ans. Those were our endeavors. We could have got people to take that stock and sold the whole of it provided we had not lost our steamer and caught fish, but the Porpoise Company had property of intrinsic value and that had cost more in dollars and cents, two to one, than we owed at that time. 10

Ques. What was the property?

Ans. Real estate and personal property.

Ques. What was the real estate worth?

Ans. The real estate was purchased.

Ques. What was it worth?

Ans. It was represented to be worth at least four thousand dollars, the property we owned. 20

Ques. How much was it worth?

Ans. My opinion is that it was worth that.

Ques. Do you not know it was not worth one hundred dollars?

Ans. The real estate?

Ques. The real estate was not worth one hundred dollars?

Ans. I do not.

Ques. When does your fishing season close?

Ans. The fishing season is supposed to close early in December, and did that year. 30

Ques. Do you not know that you can't catch fish after November?

Ans. I do not; I know the very last season we lost the steamer the fish were running the whole month of November close ashore.

Ques. Had you paid all your debts at the time you made the by-laws?

Ans. No, sir; we had current debts running all the time?

Ques. Had you any money?

Ans. We had very little money then.

Ques. Had you any?

Ans. No, sir; a few dollars, probably.

Ques. Why had you not money if you were so rich a
10 company?

Ans. The money we had collected up to that time had been all paid out for expenses.

Ques. Your stock had not been issued?

Ans. The stock had not been issued.

Ques. Why did you not raise money on your stock?

Ans. For the reason there was an order passed by the Board of Directors at some previous meeting forbidding the issuing of any more stock, the Board of Directors relying implicitly upon their information of the matter if there was enough money in the concern to carry it on;
20 the less stock they issued the more there would be for the stockholders in interest, if it was a paying institution. We could have sold in the month of August considerable stock and floated over even our losses in November.

Ques. When did you make your last sale of stock before this?

Ans. I think it was in May or June; I don't think there was any stock sold after June, probably May. I
30 am speaking from memory without referring to books.

Ques. Between the time down to the making of the by-laws there was no stock sold; what was the par value of that stock?

Ans. The par value was twenty-five dollars.

Ques. During that period in which you sold no stock,

and previous to that, were you not extensively advertised in the papers to sell the stock ?

Ans. I have no recollection of it ; previous ?

Ques. When did you advertise in the Philadelphia papers to sell stock ?

Ans. We advertised to sell stock last April or May, the last effort we made actively to sell stock.

(To the Court.) Last April, 1885.

Ques. Did you ever advertise before ?

Ans. I have no recollection of having advertised that stock for sale before. 10

Ques. Did you have a rush of purchasers when you advertised ?

Ans. I am sorry to say we did not.

Ques. They did not look at this business in the same manner you did ?

Ans. Not the same as we did.

Ques. Have you issued all your stock ?

Ans. No, sir ; two-thirds of the stock is in possession of the company, belongs to the company to-day, nearly two-thirds ; I am speaking at random. 20

Ques. How did the company get that stock ?

Ans. They never issued it.

Ques. Only one-third has been issued ?

Ans. There has been over one-third issued ; there was an assessment made and the stock was scaled down by different parties ; some paid their assessments, and others scaled their stock down, returned a certain number to the company and took a less number ; that increased the capital stock of the company ; originally there were two-thirds of the shares issued. 30

Ques. Did you have two kinds of stock, one preferred and one otherwise ?

Ans. No, sir.

Ques. Have you not some stock marked "red," that you agreed to be preferred over other stock?

Ans. I am not aware of any being marked that way; there was one certificate of stock given a party for a part payment for land; if that is marked, I don't know; I have never seen it.

Ques. How did you designate the difference between these two species of stock, the one you issued for land and the one for other purposes?

10 Ans. I have no recollection of there having been any difference in it.

Ques. At the time you made these by-laws how much was the company in debt?

Ans. I think they owed about altogether probably two thousand dollars.

Ques. Was the property of the company mortgaged?

Ans. The real estate had a mortgage on it for fifteen hundred dollars; the purchase originally was three thousand dollars.

20 Ques. The purchase money?

Ans. The purchase money for the land was three thousand dollars; we paid fifteen hundred dollars and gave a mortgage for the fifteen hundred dollars; stock was given; five hundred of stock was given as part payment, taken as cash by the gentleman who sold the land.

Ques. Has that five hundred dollars of stock ever been paid?

Ans. No, sir; he still holds it.

30 By the Court:

Ques. Did I understand you to say your indebtedness was two thousand dollars?

Ans. I think that was the extent of our indebtedness.

Ques. Did that include the fifteen hundred dollar mortgage?

Ans. Exclusive of the mortgage. I kept my figures myself.

By Mr. Wescott:

Ques. Has this mortgage of fifteen hundred dollars ever been paid.

Ans. No, sir.

Ques. Do you still owe that?

Ans. Yes, sir; that mortgage is still against the land, fifteen hundred dollars.

10

Ques. What does this land constitute, or where is it?

Ans. This land lying a little above the steamboat landing on the bay side, formerly owned by Hughes.

Ques. How many acres?

Ans. Only twenty acres, I think, according to the records or papers, in the neighborhood of twenty acres.

Ques. This is a sandy, barren land?

Ans. Yes, sir; and has a large basin built—

Ques. (Interrupting.) Is there any wood on it?

20

Ans. A few scattered trees; it is mostly wood land.

Ques. Is it mostly scrub trees, such as grow on the barren shore there?

Ans. Yes, sir.

Ques. How many miles is it from Cape May?

Ans. I think it is about three miles.

Ques. This paper was issued at the same time you got up your by-laws?

Ans. Yes, sir; they ordered it.

Ques. It is a paper purporting to be an assessment on stock?

30

Ans. Yes, sir.

Ques. Was that assessment paid?

Ans. Some of it was paid.

Ques. How much of it?

Ans. Some six or seven hundred dollars.

Ques. What was done with the money paid?

Ans. Paid out for expenses of the company.

Ques. To whom did you pay it; do you remember?

Ans. I suppose it was paid to divers persons, drawn out of the treasury; that money was put in the treasury.

Ques. How much money was there in the treasury at the time you made this assessment?

Ans. If my recollection is right, some thirty or forty dollars.

10 Ques. What were your daily expenses at that time?

Ans. I suppose about one hundred dollars.

Ques. You were running on credit all that time, were you not?

Ans. As any other mercantile business would; we were incurring debts and paying them as we run along.

Ques. Were you not running on credit?

Ans. Yes, sir; of course we run on credit all the time. We had a credit for a bill we purchased until we paid; many of them we did pay.

20 Ques. Is it not true the reason you made your assessment was because you had run your credit out—nobody would work for you any longer?

Ans. It is true that we were so sure of the money that we would not sell any more stock at that time, because there was an order not to sell.

Ques. Because you were ordered not to sell; if you had not been ordered you could have sold?

Ans. I didn't say we could; we would have made an effort.

30 Ques. How much above par would you have sold at?

Ans. I don't think we could have sold at much above par.

Ques. All the men at that time declined to go on because you did not furnish them with provisions?

Ans. There was a day or two that they did. I remember hearing of it.

Ques. Those were the days you were not selling the stock?

Ans. No, sir.

Mr. Wescott: This paper we will offer in evidence after the other side has examined it. ("Exhibit B2.")

Ques. Have you any bonds in your possession that were issued?

Ans. Yes, sir.

Ques. I would like to see what those bonds are? 10

Ans. I thought I might be asked for it and I had one of them; I brought it down:

(Bond produced.)

Mr. Wescott: We offer in evidence the bond.

Ques. You have offered in evidence the notice; can you state who served it on you?

Ans. I can't tell.

Ques. Where were you when it was served on you? 20

Ans. In Philadelphia, I think I was.

Ques. Try to be sure about that; where were you when this was served on you?

Ans. I think it was in Philadelphia.

Ques. Who served the other one on Mr. Bergen?

Ans. I think I did—no, I believe now that the secretary served it, Mr. Peacock, and I didn't charge my brain with that at the time?

Ques. Were not they served at the same time? 30

Ans. I don't think I was present when one was served; I was present when the other was. I never made dates or memoranda of those things at all; I know the fact that they were served.

Ques. These notices show how much each signer subscribed for and held of these bonds?

Ans. Yes, sir ; they represent the number of the bonds that they had at that time, and I have every reason to believe they still hold them.

Ques. How much of these bonds do you hold ?

Ans. I have ten of them ?

Ques. How many does Mr. Rowley hold ?

Ans. My account made out will show that.

Ques. Is that the account ? (Produced.)

Ans. That is the list you want.

10 Ques. When did you make that out ?

Ans. This I made out within the last few days, from another one, from a rough memorandum.

Ques. Where is the rough memorandum that you made it out from ?

Ans. I destroyed it ; tore it up.

Ques. When did you make that rough memorandum ?

Ans. At the time I sold the bonds.

Ques. Were all these gentlemen who hold these bonds in this scheme to raise money ?

20 Ans. I suppose they were in the scheme to raise money ; they were stockholders.

Ques. Were they not in the scheme itself for raising money of bond holders ?

Ans. They furnished the money for the bonds ; they purchased the bonds and gave me the money.

By the Court :

Ques. The stockholders ?

Ans. Yes, sir ; they were the stockholders.

30 Ques. The stockholders purchased the bonds ?

Ans. Yes, sir.

Ques. The members of the association are the creditors ?

Ans. The members of the association principally are creditors, with a few exceptions.

By Mr. Wescott :

Ques. (Interrupting.) They were creditors of the association before they bought these bonds ?

Ans. No, sir ; they were stockholders of the old stock, and they paid up their cash ; they had already purchased their stock.

Ques. And were they not all directors at the same time ?

Ans. No, sir ; not all of them.

Ques. How many were directors and how many were not ? 10

Ans (Referring to memorandum.) Six of those names were not directors. Mr. Green was a director, Mr. Schwab and Mr. Rowley ; Mr. Gallagher was not, he was treasurer. There are three names only that were directors at the time, according to the records.

Ques. Was Mr. Young a director ?

Ans. I think not at that time ; I cannot answer that question without reference to the book.

Ques. Your minutes show he was a director ? 20

Ans. I think you will find he immediately resigned and another one was appointed in his place ; I think so ; I can't keep the run of the directors.

Ques. When did you issue those bonds ?

Ans. They were dated October 1st, 1884.

Ques. These bonds were made payable on demand ?

Ans. Yes, sir.

Ques. They were negotiable ?

Ans. Yes, sir ; I should call them negotiable. 30

Ques. They were negotiable bonds made payable on demand ?

Ans. I should think they were.

Ques. All these gentlemen who took these bonds agreed to the scheme ?

Ans. They agreed to take the bonds and pay for them, to furnish money to the company.

Ques. How much money did these purchasers of these bonds furnish to the company?

Ans. They each and every one paid fifty dollars for each and every bond.

Ques. Did they pay the cash?

Ans. They paid the cash; yes, sir.

Ques. To whom did they pay it?

10 Ans. They paid it to me.

Ques. They paid the money to you?

Ans. Yes, sir; personally.

Ques. How much did you pay for yours?

Ans. I paid—I took mine at par—fifty dollars each and every bond.

Ques. You paid?

Ans. Yes, sir; that is what I claim; you will find my account—

Ques. What did you pay?

20 Ans. I have paid fifty dollars for each and every one.

By the Court:

Ques. Did you pay in cash or did you pay by charging the company with its liability to you?

Ans. I charged the company with its liability to me.

Ques. Did any of the rest do the same thing?

Ans. No, sir.

Ques. Are you sure of that?

30 Ans. Not to my knowledge, not one.

Ques. How many bonds did you take?

Ans. I held ten.

Ques. Fifty dollars, was it not?

Ans. Fifty dollars each.

Ques. Twenty-five hundred dollars cash was paid you by the other people?

Ans. Not exactly. If you will take the trouble to look at the statement I made of those bonds, you will see the amount of money that passed through my hands for bonds. That amount of the money is credited in my general account with the company, showing the disposition I made with it by vouchers.

Ques. Where is your general account?

Ans. You have it in your hand.

The Court: I understand you now hold ten bonds?

Ans. Yes, sir. 10

Ques. How many did you hold originally?

Ans. I held sixty.

Ques. Were the sixty issued to you?

Ans. No, sir; not to me, but I had them in my possession.

Ques. You still hold them as the agent of the company?

Ans. Yes, sir.

Ques. How many did you take when the transfer was first made to yourself? 20

Ans. I took none and laid them away specially, and laid them in the safe.

Ques. You issued to A, B and C bonds?

Ans. Yes, sir.

Ques. You took the money from them?

Ans. Yes, sir; to the amount of sixteen hundred dollars.

Ques. Do you not know how many?

Ans. I afterwards paid them for the debts of the company? 30

Ques. How many did you take to yourself then?

Ans. I took about, I suppose, fifteen or twenty to myself.

Ques. How many did you take?

Ans. I state, in my account, I took ten.

Ques. You never had but ten to yourself?

Ans. I never kept more than ten to myself.

Ques. You said twice in answer to Judge Wescott you now hold ten bonds; I thought possibly you might have held more?

Ans. No, sir; I never sold a bond on my own account.

By Mr. Wescott:

10 Ques. Did Mr. Gallagher get anything for his services as treasurer?

Ans. He did not.

Ques. Are you sure of that?

Ans. Yes, sir.

Ques. How do you know that?

Ans. From the fact that he paid me money for the bonds.

Ques. How much did he pay you?

Ans. Two hundred and fifty dollars for five of them, fifty dollars each.

20 Ques. Where was this money paid you that he paid for these bonds?

Ans. I am under the impression that it was paid to me at Cape May at two different times, one hundred dollars at one time and one hundred and fifty dollars at another; I think I received both those amounts at Cape May; I think he was there at the same time, in the summer season.

Ques. How long was this after the mortgage this money was paid to you on the bonds?

30 Ans. It was paid to me before.

Ques. Before the mortgages were made?

Ans. Yes, sir.

Ques. Were all of them paid before the mortgages?

Ans. Not all; no, sir.

Ques. How much was paid before the mortgages were made and how much afterwards?

Ans. About twelve hundred dollars, I think, before the bonds were issued, was paid, based upon the agreement.

Ques. What was that agreement?

Ans. That they would purchase so many bonds and loan so much money to the company upon being secured by bonds; that agreement I had signed by a few of them.

Ques. Where is that agreement?

10

Ans. I believe Mr. Bergen has it; we were trying to liquidate our debts at that time and run the steamer, get into fishing, and we had fallen short of funds owing to small receipts, and it was very important we should raise money to pay our hands at that moment. These gentlemen agreed to raise the money, based on that agreement of the bonds and mortgage, and I had that agreement written and they signed it, a few of them; it is a rough piece of paper.

Ques. The money you raised on these bonds was expended on the effort to run the company at the time you received the money?

20

Ans. Yes, sir; right away, generally to pay debts and to pay wages.

Ques. Did you pay your debts?

Ans. As far as we were able, and we continued to pay them up to the time of the loss of the steamer.

Ques. Had you paid them all?

Ans. No, sir; we paid a great many after the steamer was lost.

30

Ques. The old bills you paid with this money you raised in this manner were bills that you were sued for; you had to pay them because you were sued?

Ans. We were sued in two or three instances, which annoyed us.

Ques. They were a few old bills?

Ans. Running bills.

Ques. Were they not for bills incurred before you got cash?

Ans. Yes, sir; part of it was, and part not.

Ques. How far did the twenty-five hundred dollars cash you raised go towards paying your debts?

10 Ans. I don't think it left more than six or seven hundred dollars outside of debts due.

Ques. That is all you owe, six or seven hundred dollars?

Ans. That is all we claim.

By the Court:

Ques. I understand there is a balance of indebtedness—

20 Ans. I am not speaking from memorandum. I have not kept the books; the secretary kept the books. That is my general recollection.

Ques. You only owe now five or six hundred dollars?

Ans. Yes, sir; seven hundred dollars, I think.

Mr. Bergen: He does not say twenty-five hundred dollars went to pay the debts that were past due.

The Witness: That is outside of the mortgage.

30 The Court: I understand the witness to say at that time, after twenty-five hundred dollars had been paid, there were still a balance of five hundred dollars or six hundred dollars of liabilities.

The Witness: I will make an explanation of that; the \$2,500 that was paid out was running expenses that

were going on all the time. We had men employed, twenty-five or thirty men; we were paying them in the interim between September and November. Some wages were paid for November; when we ceased paying, my impression is, we concluded at the last meeting of the board, there were some six or seven hundred dollars of honest indebtedness due by the company, and I really don't think it is that amount.

By Mr. Wescott :

10

Ques. Do those debts include the debts of the defendants against the company ?

Ans. It includes the debt of one of them ?

Ques. One of them and not the other ?

Ans. Not the other; there was a claim made that the other was not a debt.

Ques. You purchased a boiler in one of the western states somewhere ?

Ans. Yes, sir.

20

Ques. In Cleveland, Ohio ?

Ans. Yes, sir; we have a boiler in our possession we had.

Ques. You had it in your possession ?

Ans. I suppose it is there yet; I have not been there for sometime.

Ques. How much was that ?

Ans. That boiler, if accepted by the company, was to be paid for, one thousand dollars.

Ques. Has it been accepted by the company ?

30

Ans. No, sir.

Ques. You kept it in your possession ?

Ans. Yes, sir.

Ques. If you should accept it, it will increase your indebtedness still one thousand dollars ?

Ans. Yes, sir; the reason it was not accepted was, it

did not prove to be equal to what they represented it to be.

Ques. Is that boiler in your mortgage?

Ans. No, sir; because we don't claim it; it belongs to Mr. Anderson.

Ques. Do you not know, as a matter of fact, that boiler was accepted and there is a record of it in your minutes?

Ans. No, sir.

Ques. You do not know whether or not it was accep-
10 ted?

Ans. I think not; I am sure, in fact, it was not accep-
ted by the Board of Directors. We accepted it and let
him put it on the ground and put it up and it was used,
but it was decided by the parties in interest and the di-
rectors that it did not come up—when they claimed the
pay I saw a number of them and conversed with them
and they said it did not come up to the representation
and they preferred not paying for it; it was received in
that way, and we have never accepted it as a company,
according to the best of my knowledge; if we have, I
20 have forgotten it.

Ques. How much money did you people owe at the
time you entered into this scheme to raise money by bond
and mortgage?

Ans. We owed the mortgage, of course, the fifteen
hundred dollars on the land, and we owed in outside
debts of every kind and description, I judge, including
wages up to that time, sixteen or seventeen hundred dol-
lars, I think at that time. Whether we made a state-
30 ment that we owed some twelve hundred dollars, I don't
know; I think it is on record there what there is; I can't
tell; I don't carry the books in my head.

Ques. See if that is the condition of things at the time
you entered into this scheme for raising this money?
(Paper shown witness.)

Ans. I recognize this writing ; it is Mr. Sparks', who is here ; he was our former secretary. I see that he put the boiler and press there at eleven hundred dollars.

Ques. That is the boiler in question, that we have been talking about ?

Ans. That we have been talking about ; of course I would not estimate that as one of the debts of the company. I would not estimate the debt here of Solomon, of Newark, N. J.

By the Court :

10

Ques. What does that statement show the boiler to be ?

Ans. This is a memorandum, " Boiler and press eleven hundred dollars." I would not officially, or as a director, recognize that as a debt of the company. There is another charge of five hundred dollars, of Cook, Sparks, salary and so forth. As president of the company, I would not recognize that without reflection ; I would not call it a clean debt against the company, because there were accounts against it—in my official capacity only. I remember well having seen that before ; it was made by Mr. Sparks at the time he was secretary and there was some discussion at the time, and it was thought the indebtedness was too high, and I think the directors put it down to eleven hundred dollars short. I don't think we owed that much ; I don't believe ten hundred dollars.

20

Ques. You think about ten hundred dollars would cover the indebtedness ?

Ans. Yes, sir ; and it is very likely it was not over eight hundred dollars at that time.

30

Ques. Did you owe a debt to Mr. Solomon in Newark ?

Ans. The company never claimed they owed a debt to Solomon in Newark.

Ques. William Solomon claims you owe him five hundred dollars, does he not?

Ans. He claims we owe him two hundred and sixty odd dollars, according to a statement he sent.

Ques. Is it not five hundred dollars?

Ans. No, sir.

Ques. Has he sued for it?

Ans. Not according to the papers before me; I have not had any notice he sued.

10 Ques. Do you recognize that paper? (Paper shown witness.)

Ans. No, sir; I have never seen that paper.

Ques. This company some time before you entered into this scheme for raising money by bonds undertook to do something through a commission?

Ans. Yes, sir.

Ques. What was that?

Ans. It is a very long story, and it is of record on the minutes; I have no recollection of the details.

Ques. What was this commission for?

20 Ans. To raise money.

Ques. How long before the bond scheme?

Ans. Probably a month or six weeks.

Ques. It was a month or six weeks before the bond scheme you appointed a commission, the object of which was to raise money; is that correct?

Ans. Yes, sir; it was rescinded.

Ques. Do you not know that through this commission the company obtained five hundred dollars on that bond?

Ans. I heard they did.

30 Ques. Do you not know they did?

Ans. I don't know the facts; I heard the secretary had raised five hundred dollars on it; I never saw the money; I don't know anything about it.

Ques. Who told you they raised five hundred dollars?

Ans. the secretary.

Ques. What did he say they had done with the money?

Ans. Only what I heard; George L. Sparks is present; he could answer those questions better than I can; he was the former secretary.

By the Court:

Ques. Do you know that through him the company lost money? 10

Ans. That is claimed; they lost money through his account at that time.

Ques. As an officer of the company do you know the company lost five hundred dollars through him?

Ans. I know the fact we lost five hundred dollars through him; I know the fact property was shipped; there was said to be advanced to him five hundred dollars; we never realized anything like what was supposed by everybody to be the value.

By Mr. Wescott: 20

Ques. How did you ascertain there was property shipped?

Ans. I ascertained that fact by going to the freight depot; there was no record on the books of the company to show that.

Ques. How do you know, as a member of the company, that the company shipped property through Sparks to pay the alleged indebtedness of the company to the amount of five hundred dollars?

Ans. I didn't know that the company shipped any property. I will give you all the information I can.

By the Court:

Ques. State whether the company did not keep books of account?

Ans. The company's secretary had charge of the books of the company.

Ques. Did you not keep regular daily journals in which there was daily entries?

Ans. I presume they were not daily entries. The books are here; the journal of the company is here in court.

10

Mr. Wescott: (To the Court.) We want to show the additional indebtedness of \$500 on this bond, which bears the company's execution and signature.

Ques. Look at the minutes and see if you can straighten out that on the \$500 question?

Ans. I have not looked over that book for years.

(Question withdrawn.)

20

Ques. At the time of this scheme of raising the money on bonds your indebtedness in your judgment did not exceed one thousand dollars exclusive of the mortgage?

Ans. Yes, sir; that is about my general recollection.

Ques. Had your stock all been paid up at that time, that which was out; had it been paid up in full?

Ans. Not paid up in full.

Ques. How nearly paid up in full was it?

Ans. Probably it run one-fourth on an average.

30

Ques. At the time you made the scheme, not more than that?

Ans. No, sir; not without an assessment.

Ques. Why did you not make assessment to get money rather than mortgage your property in this way?

(Objected to.)

Ans. I didn't represent all the directors.

Ques. Do you know the reason why you did not make an assessment on the stock ?

(Objected to.)

The Court : The witness may answer why the company did not raise the money to the full amount of the stock issued, if he knows.

Ans. My recollection is, that it was thought we could 10
raise more money on stock ; that was probably talked over but not acted on ; that was abandoned to the next method for raising money, which was made by calling a meeting by the Board of Directors, making an assessment and calling the stockholders ; we could not get them together any nearer.

Ques. That assessment you made then is the assessment referred to in this case ?

Ans. That is the assessment, the only one that was 20 .
made.

Ques. You failed to get your money ?

Ans. We failed to get enough money for our purpose ; we got some six or seven hundred dollars.

Ques. Was not that assessment made at the same time, at the same meeting the resolution was made to adopt this bond scheme for raising money ?

Ans. The same meeting of stockholders passed that resolution.

Ques. So you had two schemes for raising money adopted at the same time, one by assessment and the other by 30
bonds.

Ans. Yes, sir ; I think the record shows that.

Ques. Could you have raised money by a bond and mortgage alone on your property executed to anybody except the directors and these stockholders ?

(Objected to.)

Ans. I can't answer that question ; I made no effort.

Ques. Why did you not make an effort ; why did you not resort to the simple means provided by the statute of raising money upon a bond and security by a mortgage on your property ?

(Objected to.)

10 Ans. The credit of the company was not at that time very good, and as an individual I did not feel disposed to go to any of my friends and ask them to advance money at that time for the benefit of the company and endorse it myself ; I had a good deal of money in it.

Ques. When you entered into this scheme to raise money by negotiable bonds, or bonds secured by a mortgage on your property, you knew that the holders of those bonds would then be masters of this property and own the property of the company ; you knew that ?

(Objected to as a matter of law.)

20

Ans. No, sir ; I didn't know it. I had not that thought, and I will say to you I did not know but what they would part with those bonds, and come in the hands of strangers ; I had no knowledge of it at all.

Ques. Why was it you would not make any effort among your friends to raise money for this company ?

30 Ans. For the simple reason that I strained my friends by getting them to subscribe to the stock of the company originally, and I felt very sore ; I didn't ask them for any more.

Mr. Wescott : The defendants offer in evidence the statement of Sparks, which the witness is familiar with, and the bond of Solomon for five hundred dollars.

Mr. Bergen : I object to both of them.

Mr. Wescott : At this point we wish to object to the admission of any proof on the subject of the meeting of the stockholders, on the ground that it has not been proven the meeting was a legal one, properly advertised, &c.; and there is nothing to show in the evidence whether there was a legal quorum or a legal number of votes present participating. We also object to the minutes, on the ground that they are not made by the witness and he did not know and is not competent to prove them and never had any book in his possession, but they were made by somebody else. 10

Ques. Who made this account you speak of? (Same shown witness.)

Ans. I did.

Ques. When did you make it?

Ans. I made it at different times according to the dates of them.

Ques. Did you make it on this piece of paper as they appear here? 20

Ans. Yes, sir.

Ques. At the date specified?

Ans. In most cases; in most cases the dates are specified.

Ques. In what cases did you not?

Ans. I don't know that there is any; I had kept a little memorandum book in my pocket of payments I made out and this is from the very first of the company I advanced money to take money out of my pocket to pay a bill. 30

Ques. Did you not keep a book?

Ans. No, sir; I didn't keep any book of accounts further than I kept my memorandum and papers and I have my vouchers.

Ques. Where are your memoranda and vouchers?

Ans. They are here. (The witness produces a bundle of papers.)

Ques. When did you make that statement on the last page?

Ans. I made that within the last few days in order to give a clear statement of what I had done with the bonds.

10 Ques. What was your mode of paying out money during the course of the business of this company; did you determine when you should pay it out and what for and for what amount yourself?

Ans. I was directed to pay expenses; to pay bills as fast as I could by the directors when I had the money; some of the money I drew from the treasurer and have given credit for it there, others I raised from the sale of stock; I have accounted for the stock there (indicating); I paid the bills and got the vouchers and submitted them to the company; in the long course we run generally out of pocket and nothing in; and there is nothing 20 stuck to my fingers, and I was a great deal of money out.

Ques. These papers, you say, contain the running expenses?

Ans. The running expenses of the Company, a portion, that is.

Ques. Where is the rest of it?

Ans. In the books.

Ques. What books?

30 Ans. The books that are here.

Ques. All your dealings are contained in the books that are here?

Ans. Yes, sir; as far as my knowledge goes.

Ques. Except what is contained in those papers?

Ans. Those are my papers and the records of those I

have mostly, except the last are in this book also credited by the secretary; in other words, the books are written up as well as he could write them up.

Ques. Did you not make up this account?

Ans. No, sir; the books of account were made from those; the books were made from these vouchers. You see I have handled a good deal of money there.

Mr. Wescott: (To the Court.) I shall have to object to these papers.

The Witness: I am willing to qualify to that account. 10

The Court: The witness says the books are here.

The Witness: The books are here.

Ques. Do you know that the books are made up from your vouchers and your original memorandum there?

Ans. Yes, sir; they have all been in the hands—

Ques. (Interrupting.) How do you know?

Ans. They have been all in the hands of the secretary. 20

Ques. You did not do it yourself?

Ans. No, sir, I didn't; all I did was to make up my accounts, you see, from my memorandum and vouchers I hold in my possession; I submitted these and handed them all over to the secretary, and I hold these as vouchers against the company, to show the company and those interested what I had done with money that passed through my hands; for that reason I hold these vouchers.

Mr. Wescott: We enter a formal objection to these 30 papers.

The Court: We will allow them to go in as part of the account.

By Mr. Bergen:

Ques. Are those the papers you have just referred to?

Ans. Yes, sir.

Ques. The papers of the account you produced here?

Ans. Of the general account ; yes, sir.

Mr. Bergen : I offer in evidence the whole papers.

The Witness : I have not opened them for some time.

10 Ques. Where are the books you have referred to?

Ans. You have two books here ; that is called the journal of the company (indicating.)

Ques. That is a memorandum book ? (Referring to book.)

Ans. That is my private memorandum book.

Mr. Bergen : We offer in evidence the account books and all the vouchers.

20 Ques. Those are all the books of account you have in this matter ?

Ans. Yes, sir.

By Mr. Wescott :

Ques. What is that memorandum book ?

Ans. My private memorandum book.

Ques. What does that show ?

Ans. I have a few records in it with lead pencil of entries in money.

Ques. Of parts of this transaction ?

30 Ans. Yes, sir ; my memorandum book I carry in my pocket.

Ques. This sheet shows the amount of business you did from September 18th ?

Ans. That I did personally.

Ques. Since the bond scheme for raising money ?

Ans. Yes, sir ; the vouchers are all here and the dates are here.

By Mr. Bergen :

Ques. The agreement you have referred to by which the plan of raising money by bonds was first decided upon is dated when ?

Ans. September 4th.

Ques. Is that the paper you referred to in your testimony as the agreement ?

Ans. That is the paper ; yes, sir ; September 4th. 10

Ques. And the parties under the agreement afterwards took the bonds and paid you the money ?

Ans. Paid me the money and afterwards took the bonds.

Ques. That is their signatures.

Ans. As far as they go their signatures ; they are not all signed. They did not all sign, and I added in pencil the rest ; they paid me money previous to issuing the bonds, based on that agreement. 20

The complainant offers in evidence agreement marked B7 ; book of account marked B8 ; private account marked B9 ; and all the vouchers for accounts marked B10.

Ques. Prior to September 15th, 1884, had there ever been a meeting of the stockholders of this company ?

Ans. I am told there was a meeting of the stockholders at Cape May.

Ques. Do you know ? 30

Ans. There was a meeting of the original stockholders at Cape May previous to that ; I don't know whether it is of record.

The Court : The book will show.

Ans. The book ought to show it; there was a meeting, I remember distinctly now, I think.

Ques. There was a regularly called meeting according to the statute?

Ans. No, sir.

The Court: You cannot claim such a thing only by the minutes.

Ques. By the first page of the minutes produced there
10 appears to have been a meeting of the stockholders?

Ans. Yes, sir; it is my recollection that there was.

Ques. Was there any notice given of that meeting to the stockholders?

Ans. I think not, except a verbal notice.

Mr. Wescott: What meeting?

Mr. Bergen: The first meeting.

The Witness: There are some prior, in February, I think; I remember being present at one. The minutes
20 will show the record of that.

Ques. Will you read the preamble contained in the meeting of September 15th, 1884?

Ans. (Reading.) "On motion, *Resolved*, That whereas the stockholders have never adopted any by-laws of this company and none have been adopted acceptable to the company, or according to law, now be it *Resolved*, That the following be hereby adopted and declared to be the
30 by-laws of this company."

Ques. Then follow the by-laws already referred to?

Ans. Yes, sir.

Ques. Are these the only by-laws that the stockholders ever adopted?

Ans. The only by-laws that I know the stockholders have adopted in general meeting.

Ques. How was that meeting called?

Ans. By advertising in the papers; the notices are there ahead.

Ques. You saw the advertisements in the paper you stated in your examination before?

Ans. I did.

Ques. It was advertised in the paper as the statute required?

Ans. As the statute requires.

Ques. The required number of times? 10

Ans. The required number of times; at the moment I cannot answer what that was, but the record is there on the minutes of the meeting, cut from the two papers.

Ques. The steamer was finally wrecked on November 3d?

Ans. On the morning of November 4th, I think it was, about three o'clock in the morning.

Ques. Did the company have hands employed up to that time?

Ans. Yes, sir. 20

Ques. Did they have hands employed after that time?

Ans. Yes, sir.

Ques. With the expectation of carrying on business?

Ans. With the expectation of carrying on business; yes, sir.

Ques. You stated that the steamer was beached on August 22d?

Ans. In the first instance; yes, sir.

Ques. What did you do with the steamer after it was beached? 30

Ans. She was raised, or jacked up and repaired and so forth, and one of the directors was appointed a committee to have it done.

Ques. The repairs were made to the steamer after August 22d?

Ans. A short time she laid.

Ques. You continued from that time?

Ans. Yes, sir.

Ques. How long was it before she was repaired and ready for operation?

Ans. Not before November.

Ques. Did you commence fishing in November?

Ans. We had made the first move towards fishing by taking her along in front of the steamboat wharf ready to
 10 fish at daylight in the morning; she went out of the basin at night owing to the fact the superintendent stated unless he went out at night during the high tide he could not get out in the morning until too late to fish in front of the beach. He took occasion to take the vessel out at high tide the next morning with four men on board to be sure to be ready to move at daylight to go around to catch fish.

Ques. When was that?

Ans. Last November.

20 Ques. At the time she was engaged there to carry on the business of the company she was wrecked?

Ans. Yes, sir; she was ready to fish at daylight, and we concluded our troubles were over then; we had a great deal of trouble to get the vessel ready.

Ques. Reference has been made to the statement made by the secretary to the company, in your testimony. Have you those minutes there?

(Book of minutes, dated September 1st, 1884, produced.)
 30

Ans. Yes, sir.

Ques. Are those the minutes of the meeting of stockholders September 1st, 1884?

Ans. Yes, sir.

Ques. Is that a copy of the statement made by Mr. Sparks—what is the minute made in that minute?

Ans. Mr. Sparks as secretary and on behalf of the commission made a statement of the financial condition of the company, showing its liabilities to be as follows :

Liability to workmen.....	\$800 00	
Liability to Hammell & Stubbs.....	264 00	
Liability to W. J. Hooper & Son.....	263 00	
Liability to F. L. Richardson.....	225 00	
Liability to Geo. L. Sparks.....	350 00	
Liability to J. H. Benezet.....	40 00	
Liability to Banner Thomas.....	48 00	10
Liability to Hall & Haines.....	38 49	
	<hr/>	
Total	\$2,028 49	

Assets—One net.....	\$1,000	
Sundries	500	
Steamboat.....	2,500	
Real estate, \$3,000 less \$1,500, leaving	1,500	
	<hr/>	
Total	\$5,500	20

Besides amt. due from B. G. Solomon on balance of acct.

Ques. Were you at that meeting ?

Ans. Yes, sir ; I was at that meeting.

Ques. Did Sparks make that statement at that time.

Ans. To the best of my recollection, he did.

Ques. Is this the statement he did make ?

Ans. That is the statement he made at that time ; this
has no date. (Paper shown witness.) 30

Ques. Did he ever make this statement to the company ?

Ans. I have no recollection of his making this statement to the company.

Ques. Did the company admit at the time they owed Sparks three hundred dollars ?

Ans. No, sir ; the board of directors did not admit it.

Ques. Has the company always disputed that claim ?

Ans. Yes, sir.

Ques. How much of the moneys arising from this mortgage went to pay past indebtedness of the company at the time of making the mortgage ?

10 Ans. I can't answer that question ; I don't think there was much, but I can't answer the question.

Ques. At the time the mortgage was made was there three thousand dollars of indebtedness in arrears from the company ?

Ans. I think not ; I should say there was nothing like three thousand dollars.

Ques. Were the mortgage bonds held exclusively by stockholders of the company ?

Ans. No, sir.

By the Court :

20 Ques. Were they not originally issued to stockholders ?

Ans. Most of them.

Ques. State the facts ?

Ans. The facts are, that the great bulk of the bonds were taken by parties in interest of the company as stockholders, but some two or three bonds were sold to parties outside, who to the best of my knowledge were not stockholders ; that is, they did not appear on the books.

Ques. These are the minutes of the company ?

30 Ans. Yes, sir ; I know that to be the book of the company ?

Mr. Bergen : I offer the whole of the book of minutes in evidence.

Recess.

Mr. Wescott (To the Court.) We offer this amendment: The defendants, further answering, admit that the said bonds were made and the said bonds executed in the manner and form as alleged in said complainant's bill, but deny that they were made and executed by authority of the stockholders and insist that they were made contrary to law and the statute in such case made and provided.

By Mr. Bergen :

10

Ques. What is the paper you hold in your hand ?

Ans. This is the original paper, signed by five stockholders, calling a meeting of the company.

Ques. A meeting of the stockholders ?

Ans. A meeting of the stockholders ; yes, sir.

Ques. Is that the notice that is prescribed by the statute ?

Ans. To the best of my knowledge it is—yes, it is it ; Monday, the 15th ; this is the paper.

20

Ques. Is that the signature of the signers there to it ?

Ans. Those are the original signatures of each and every signer.

Ques. Will you read that notice ?

By Mr. Wescott :

Ques. (Interrupting.) Did you see them sign it ?

Ans. Yes, sir.

Ques. You saw those gentlemen ?

Ans. Yes, sir ; I am positive of that fact ; I remember distinctly (reading) " A meeting of the stockholders of The Porpoise Fishing Company is hereby called to meet at the office of the company, No. 7 Washington Street, city of Cape May, N. J., Monday, the 15th day of September, 1884, at the hour of three o'clock in the afternoon of that day, for such purposes as may come before the

30

meeting. (Signed) Edward H. Rowley, A. C. Gile, W. Peacock, R. Bannon, B. Reynolds."

I recognize that paper as the original.

Ques. That is the original of the notice which you have referred to already in your testimony?

Ans. The secretary had that published afterwards; yes, sir; that is the original. That is printed in two papers.

10 Ques. Those are the notices?

Ans. Yes, sir.

Mr. Bergen: We offer the same in evidence, paper marked "Exhibit B11."

We ask your Honor to adjourn the case for the purpose of calling the secretary, who lives in Bridgeton, to prove the books.

By Mr. Wescott:

20 Ques. You said there were some of the holders of these bonds who were not stockholders; state who they were?

Ans. There is one bond that is held by Mr. Hand that was subsequent; it is one of these bonds.

Ques. Is his name here?

Ans. That is one of these bonds; for instance, here are three bonds of the secretary.

Ques. Is his name there?

30 Ans. The name is not on that list; I forget his first name.

Ques. Is it John Hand?

Ans. Steelman.

Ques. What was that bond given to him for?

Ans. For provisions.

Ques. Did you say for provisions?

Ans. Yes, sir.

Ques. I thought you said all these bonds were issued for cash except those you settled?

Ans. I stated about sixteen hundred dollars; and the balance, I stated what disposition had been made of them.

Ques. Can you name any others?

Ans. Three bonds in the hands of F. Richardson for payment of bill.

Ques. Are they now in his hands?

Ans. Yes, sir; to the best of my knowledge for the payment of bills. 10

Ques. Who else?

Ans. I don't know any others; that makes four that I have knowledge of. Mr. Richardson has three, and so I have stated in my account.

Ques. How many stockholders were there there at the time of the bond scheme of this company; have you anything that will show that?

Ans. The books of the company will show that.

Ques. Where are those books?

Ans. There is the stock book. 20

Ques. Is it here?

Ans. I don't know whether it is in Mr. Bergen's possession or not. There is another book there; that is the general ledger; I think it is in Mr. Rowley's possession now.

Ques. How many stockholders are there outside of the names of these people on this list?

Ans. I presume about fifty.

Ques. Fifty stockholders outside? 30

Ans. Yes, sir; but not representing anything like the amount of stock, a small amount.

Ques. There are about fifty?

Ans. Yes, sir.

Ques. Were not these people who took these bonds for

provisions compelled to take the bonds because they could not get the money?

Ans. They preferred having the money; yes, sir.

By Mr. Bergen:

Ques. How much stock had been issued at the time of the meeting of September 15th, 1884?

Ans. The entire number of shares of stock?

10 Ques. Yes, sir.

Ans. In the neighborhood of 3,700 shares out of 6,000.

Ques. There were about thirty-seven hundred shares of stock that had been issued?

Ans. Yes, sir.

Ques. And were outstanding at the time of that meeting?

Ans. Outstanding at the time of the meeting; out of six thousand shares.

20 Ques. What proportion of the outstanding stock voted in favor of the bond and mortgage, the making of the bond and mortgage?

Ans. The minutes will show.

By Mr. Wescott:

Ques. Were the outside stockholders, fifty in number, people of means or poor people?

30 (Objected to. Question withdrawn, with the understanding that hereafter the complainant will be permitted to put the secretary of the defendant company upon the stand if the testimony is not closed.)

The complainant rests.

DEFENDANT'S EVIDENCE.

JOHN A. COOK, sworn and examined.

Mr. Wescott :

Ques. Where do you live ?

Ans. At Cape May, N. J., I call my residence, though I am employed in North Carolina.

Ques. Did you come from North Carolina to testify in this case ? 10

Ans. I did.

Ques. Were you ever connected with the Fishing Company ?

Ans. To some extent ; yes, sir.

Ques. In what capacity ?

Ans. They made me their foreman.

Ques. How long were you connected with them ? 20

Ans. About nine months, I believe.

Ques. Were you connected with the company at any time when they got up the commission which has been spoken of ?

Ans. I was.

Ques. What was that commission ?

Ans. The Board of Directors ; I was a director—

(Objected to.)

Ques. Were you a director ? 30

Ans. Yes, sir.

The Court : The minutes will show what he was.

By Mr. Wescott :

Ques. Why was that commission gotten up?

(Objected to.)

The Court: If the minutes do not show, the witness can state what he knows about it.

Mr. Wescott: (To the Court.) I want to show the condition of things produced this commission.

10 The Court: The witness may state.

The Witness: As superintendent or foreman managing their fishing, they were having—

(Objected to.)

It is admitted that until September 15th, 1884, there was no organization.

Mr. Wescott: The defendants propose to show by the witness the actual condition of things; that the company at that time was hopelessly insolvent; that they
20 knew it. They could not go on; they owed debts; were sued and could not control their men because they could not pay them, and they resorted to a device called a commission to raise money.

The Court: You can show all the liabilities at the time.

By Mr. Wescott:

30 Ques. Go on and state the facts that gave rise to the commission as it is called?

Ans. If there are any directors of that company, I was one of them.

Ques. What was the condition of the company?

Ans. They held meetings, at least three or four each week.

Ques. About what time?

Ans. In July and the fore part of August.

Ques. Why did they hold those meetings?

Ans. Because the treasurer said they had no money and they must devise means to get it.

Ques. How was the company—

Ans. They were to some extent running bills, running into debt.

Ques. Had they or not any money to carry on the business at that time? 10

Ans. So far as my knowledge goes they had not. The treasurer told me they had not a dollar in the treasury when he gave me the last check.

Ques. Who was the treasurer?

Ans. Christopher Gallagher.

Ques. When did he give you the last check?

Ans. Sometime in July.

Ques. What expenses were the company at daily at that time?

Ans. They had been cut down some the last of July; 20 they had been losing about one hundred dollars a day and they had been cutting down on from that probably seventy dollars.

Ques. Were you familiar with the business the company was attempting to do?

Ans. Yes, sir; I think so.

Ques. How familiar were you with it?

Ans. Undertook to create it.

Ques. Could they carry on the business they were un- 30
dertaking?

Ans. They said positively they could not—

(Objected to.)

By the Court :

Ques. Who said so ?

Ans. The Board of Directors.

Ques. Assembled in their meeting ?

Ans. Yes, sir ; the meeting assembled ; you have not all the minute books here.

Ques. From your knowledge of the nature of the business and what they were doing and what they were projecting to do, can you tell whether they could go on, or not, successfully with this business ?

10 Ans. They could not ; they could not get credit ; they could not pay or get credit for their provisions for their men ; they were boarding their men ; they could not get provisions—that is what these bonds are paid to Richardson for.

Ques. What bonds ?

Ans. These three bonds and one of Hand.

Ques. Was this condition of things in existence immediately preceding this commission ?

Ans. It was in July and August.

20 Ques. Who was it participated in this commission ; who got it up, and how many participated in it ?

Overruled.

The Court : The question is, what was the financial condition of the company ?

By Mr. Wescott :

Ques. At that time had the company any income ?

30 Ans. None whatever.

Ques. Do you know at that time whether or not the stock was salable ?

Ans. I think there were some members of the company speculating in it, but the company's stock was not being sold at that time.

Ques. Do you know why ?

Ans. Because no one would buy it.

Ques. Do you know whether or not they made an assessment of stockholders ?

Ans. I got a notice like the one you have produced here.

Ques. Was that assessment paid ?

Ans. As far as I am concerned, it was not.

Ques. Do you know of anybody that paid anything ?

Ans. I do not; I know a good many that refused.

Ques. Was there anything else undertaken, any other scheme for raising money after the commission and assessment upon the stockholders failed ?

Ans. Mr. Bergen came there as a private counsel for some directors; he got up this scheme.

Ques. Were you present ?

Ans. I was a portion of the time and I refused to vote in the meeting.

Ques. Did you ever hear any of the stockholders or officers of the company say why they entered into this scheme ?

Ans. Yes, sir; Mr. Gallagher told me.

Ques. Who was Mr. Gallagher ?

Ans. The treasurer, and one of the directors; I won't be certain whether he was a director, but I think he was; he was the treasurer; he said that we voted for it in order to save their property ?

(Objected to.)

The Court: What the officers did in respect to this particular transaction may be shown.

Ques. When was it Mr. Gallagher told you this ?

Ans. Within a day or two after they pretended to pass it.

Ques. Whereabouts were you talking about it?

Ans. At Cape May, on the corner of Washington and Jackson streets.

Ques. What did he say?

Ans. He said he voted for that scheme in order to save the property.

Ques. Did Mr. Gallagher say anything to you about the solvency or insolvency of the company?

10 Ans. He said they were insolvent; there was not a man in the Board of Directors but what knew it; that was about his language.

Ques. In any one of these successive meetings of the Board of Directors were you present?

Ans. At nearly all of them.

Ques. Was the subject of the solvency or insolvency or condition of the company talked about on any of these occasions?

Ans. Yes, sir; about one or two o'clock in the morning there very often—

20 Ques. What was the substance of the talk upon the condition of the company at these meetings?

Ans. There was not one of the directors but what admitted the facts that they were insolvent and unless they got fishing nothing would save them from wreck?

Ques. Did they catch any fish?

Ans. Not after September, I think; they did catch one hundred and twenty, I think that is the number, I won't be positive, about one hundred and twenty during the whole season?

30 Ques. How many would they have to catch to make the thing successful?

Ans. Three or four thousand, I think.

Ques. Can you tell whether or not there were more than fifty stockholders outside of these represented on this list?

Ans. Not positively ; I think so though.

Ques. How many more in your judgment were there ?

Ans. I think there were a good many more than fifty originally.

Ques. Do you know whether the company raised any money on these bonds ?

Ans. No, I do not.

Ques. Did the company do any business after that time, after issuing these bonds ?

Ans. They had some men under their employ.

Ques. How many as compared with what they had 10 before, and what business did they do as compared with what they did before ?

Ans. They didn't catch any fish ; they didn't do anything at all, only to squander their money.

Ques. Do you know anything about the property in the company's hands ?

Ans. The real estate ?

Ques. Yes.

Ans. I have been living at Cape May the last eleven 20 years.

Ques. Have you seen the property ?

Ans. A great many times ; yes, sir.

Ques. Are you acquainted with the value of property generally around in that community ?

Ans. Somewhat ?

Ques. Have you ever known any sales of property to be made there ?

Ans. Never, except this along that—

Ques. (Interrupting.) I do not confine that to the 30 locality where the fishery is ?

Ans. Along that beach, above the turnpike, I have never known any to be sold except this.

Ques. What kind of land is this ?

Ans. Barren sandy land ; there is nothing on it.

Ques. What is it worth?

Ans. For what purpose?

Ques. For any purpose.

The Court: What is its fair market value for any purpose?

Ans. I don't know that I could say; if a party wanted it for fishing I suppose it might be worth more than it would otherwise. Along that beach the same class of
10 land as this can be bought for three or four dollars an acre, just above it.

Ques. Did you have a claim against this company?

Ans. Yes, sir.

Ques. Did you ever undertake to ask for the payment of it, or press it?

Ans. Yes, sir.

Ques. Did you hold any conversation with anybody about that?

Ans. I did with a number, one in particular, with Mr. Bergen.

20 Ques. What conversation did you have with Mr. Bergen?

Ans. Mr. Bergen told me to keep quiet and my claim would be paid; he had no doubt about that; these parties were good parties; it was going to be all right.

Ques. In consequence of his statements did you defer the presentation of your claim?

Ans. I waited nearly a year, eight or nine months.

30 Ques. I mean to say, did you present your claim before this bond scheme was entered into?

Ans. Yes, sir; they paid me one hundred dollars on it.

Ques. How much did they owe you as a balance?

Ans. Four hundred dollars.

Ques. And that they owe you yet?

Ans. Yes, sir ; unless I have got it secured ; I think I have.

Ques. How long after your presenting your bill first for payment was it that this bond scheme was entered into ?

Ans. I couldn't say exactly ; within a very short time—in a week or ten days. I got notice of the meeting ; my attention was called to the notice of the meeting of stockholders within a very short time ; they were broke ; they had no money ; they could not do anything.

Ques. While you were delaying to receive your money 10
this scheme was entered into and perfected ?

Ans. Yes, sir.

Cross-examined.

By Mr. Bergen :

Ques. Did you sue the company for your claim ?

Ans. Yes, sir.

Ques. How much did you sue the company for ?

Ans. Two hundred dollars.

Ques. You got judgment for two hundred dollars? 20

Ans. Yes, sir.

Ques. Why do you then say your claim was four hundred dollars when you only sued for two hundred dollars ?

Ans. I will explain. I saw that you were getting away with the property, covering it up, and I preferred to go before a justice rather than to wait for the Circuit Court ; I sued for what I could, before a justice. 30

By Mr. Wescott :

Ques. You thought a half loaf was better than none ?

Ans. Yes, sir.

By Mr. Bergen :

Ques. You thought it took a thief to catch a thief?

Ans. If you consider yourself one.

Ques. I was asking your impression.

Ans. No, sir; I think it takes an honest man to catch a thief.

Ques. You say there was no business done after the making of these mortgages?

Ans. No fish caught, no dollars coming into the treasury of the company except through that.

10 Ques. Was there not an endeavor on the part of the directors to carry on the business of the company after that?

Ans. I think there was, undertaken; a show made to do something; they employed a few men.

Ques. Did you not get an impression that there was an honest endeavor to carry on the business?

Ans. No, sir; I don't think it was an honest endeavor.

Ques. Why do you say they squandered money?

20 Ans. I say if they raised three thousand dollars and did not pay any more of their former indebtedness, I think they must have squandered it.

Ques. That is the only reason?

Ans. Yes, sir; I know nothing what they done after they raised their money by these bonds, from present knowledge.

Ques. That is what you call squandering money?

Ans. Yes, sir; I call it squandering money.

Ques. Who bought this property for the company?

Ans. I was one of the committee.

30 Ques. What did you give for the property?

Ans. I think twenty-five hundred dollars agreed to.

Ques. Was it not three thousand dollars?

Ans. My impression is twenty-five hundred dollars; I couldn't say positively.

Ques. You, as one of the officers of the company, gave

either twenty-five hundred or three thousand dollars for this property?

Ans. I was one of the committee of three.

Ques. (Question repeated.)

Ans. Not with my consent, they didn't.

Ques. And you gave it with the impression that this property was only worth three or four dollars an acre?

Ans. I don't wish to give out any such impression.

Ques. Did you not so state in your testimony?

Ans. I considered you can buy property along there similar to that property at three or four dollars an acre. 10

Ques. Do you mean this property is only worth that?

Ans. I don't believe you could get that for it to-day.

Ques. It is only worth what other adjoining property is worth?

A1.s. I don't consider it worth any more.

Ques. Than the adjoining land?

Ans. If the fish company had succeeded it would possibly have been more valuable.

Ques. Do you not know this company has inside of 20 this land a basin or dock and has some fishing arrangement on the shore, and that a great deal of money has been expended there?

Ans. There has been considerable money expended.

Ques. In your judgment how much money has been expended there?

Ans. I don't know.

Ques. Give your judgment.

Ans. I presume four thousand dollars.

Ques. Four thousand dollars has been expended there 30 for the improvement of that property?

Ans, Yes, and its right of way.

Ques. To some extent you mean?

Ans. The greater portion of it, and filled up. Reynolds says they could not even get a boat drawing eight

inches of water out of this Point creek except at the very top of the tide.

Ques. In going in and out of the basin there is a bar is the reason?

Ans. Certainly. You can't get out of there with a boat drawing twelve inches of water at the top of the tide; therefore I consider the property no more valuable than other property along the same place.

Ques. While you were there you had it cleaned out?

10 Ans. I spent two hundred dollars in trying to clean it out and never succeeded. Hughes, the man that followed, spent another two or three hundred dollars to try to make it so they could get in and out with their steam-boat; they never succeeded in getting in and out except on the top of the tide.

Ques. It is the same now as when you were there, as to that bar?

Ans. Mr. Hughes spent three thousand dollars; it is a failure.

Ques. Is that bar the same now as it was when you
20 were there?

Ans. I have not been there for two months, and there is a bar there the same as it has been for the last two years.

Ques. You used it?

Ans. We got the boat in there two or three times; we got stuck once or twice and could not get it out when we wanted to.

Ques. You have not paid for the stock you got?

30 Ans. Yes.

Ques. I thought you stated you did not pay?

Ans. I didn't pay any assessment, nor did a good many of them either.

Ques. You got red letter stock?

Ans. I got some of it.

Ques. Under a resolution of the company you surrendered your black letter stock and took red letter stock; is not that true?

Ans. I was at Hatteras when I got notice of the assessment but I paid no attention to it. The party I left the stock with told me he had got three shares out of fifty they had written in red ink—that was Sparks. It is of no value; it is not worth the paper it is printed on.

Ques. Is the stock paid up?

Ans. I never paid any attention to it; I didn't read the notice of assessment, or nobody else did, I don't think. 10

Ques. You surrendered your stock that you might have stock thus written on?

Ans. I didn't surrender it; I left it in the hands of a party in Cape May.

Ques. He surrendered it for you?

Ans. He acted as my agent.

Ques. Did you run this company for about nine months?

Ans. No, the company run me. 20

Ques. You were its foreman or superintendent?

Ans. Yes, sir.

Ques. What was your position, superintendent?

Ans. You say the company had no existence; perhaps I don't know what I was; I was foreman, I suppose, or superintendent.

Ques. Were you not superintendent?

Ans. Some of them did call them that; I believe I was elected as that by the Board of Directors.

Ques. As superintendent did you not draw a salary? 30

Ans. Mr. Young, the man that left the Board of Directors, gave me from his own pocket one hundred dollars on account of salary; they voted me seventy-five dollars a month.

Ques. Is that all you ever received as salary?

Ans. Yes, sir.

Ques. And you worked nine months for the company without any pay?

Ans. Yes, sir; with the exception of one hundred dollars.

Ques. You had charge of considerable of the disbursements of the company.

Ans. I never got a dollar except I got it by signature of Reynolds and Sparks, going to the treasurer for it.

10 Ques. Then you disbursed it?

Ans. Yes, sir.

Ques. Did you ever account for the money you disposed of.

Ans. There was an audit for the company by Young, Dougherty and Giles, and on that audit they gave me one hundred dollars and said they should give me more.

Ques. Did they not deny they owed you a cent?

Ans. No, never; they would not be likely to give me one hundred dollars if they did not owe me a cent; no, sir, never.

20 Ques. Has the corporation always denied its indebtedness to you?

Ans. They did not before—

Ques. Has not the company claimed you have never accounted for the money given you?

Ans. Never; they made no claim.

Ques. Did you ever file a regular account with the company?

30 Ans. I turned all my accounts over to the auditing committee, composed of Dougherty, Young and Gile.

Ques. It was while you were superintendent of the company the company failed, as you say?

Ans. They issued sixty thousand dollars worth of stock, and raised about nine thousand dollars of money on it.

Ques. Who disbursed that money ?

Ans. They had thirteen directors to direct nine thousand dollars ; that is all the money.

Ques. How much of that money did you dispose of ?

Ans. I can't tell ; I never disposed of a cent of it except through the signatures of the secretary and president.

Ques. You got money ?

Ans. Some of it.

Ques. You undertook to disburse it ?

Ans. I disbursed all I got.

10

Ques. About how much ?

Ans. I can't tell.

Ques. Refer to your accounts.

Ans. I have not them with me ; I turned them over to the auditing committee.

Ques. Fix the time you were superintendent or foreman of the company, from what time to what time ?

Ans. I commenced a net for them sometime in September, 1883. I think the year before they failed I was employed more or less by them all winter, was sent by them to New York and Newark and other places more or less during the winter, commenced regularly in April, the next April.

20

Ques. To fish ?

Ans. Yes—no, we didn't commence to fish. I don't recollect the date we commenced to fish ; sometime in May, I think ; I don't know as it was until June ; I won't be positive of the date. I was employed by them all the while.

30

Ques. As a practical man to run the fishing business ?

Ans. They kept me in their employ.

Ques. As a practical man ?

Ans. I took it to myself ; I was not more practical than other men ; they never found any fault with me. I can't tell you the time we commenced to fish.

Ques. When did you cease to be superintendent or foreman of the company?

Ans. It will show on the minutes. I can't tell the date; it was sometime in August, I think.

Ques. August, 1884?

Ans. Yes, sir; I think so, but I won't be positive. It was the evening you were down there; you will recollect as well as I do that evening.

Ques. That is the first day of September?

10 Ans. I couldn't say positively when it was; I don't know.

By Mr. Wescott:

Ques. Was Mr. Young an officer of the company?

Ans. He originally was one of the directors.

Ques. Did you have any conversation with him in which he stated the reason why he left the company?

20 Ans. Yes, sir; I don't know as I can recall the exact language. He had some difficulty with one of the other directors. They had formerly been very good friends.

Overruled.

Ques. State the reason why Mr. Young left the company?

Ans. He didn't like the way they done business.

(Overruled.)

30 Ques. Is the claim you have against the company for wages?

Ans. Yes, sir.

GEORGE L. SPARKS, sworn and examined.

By Mr. Wescott:

Ques. Where do you live?

Ans. At Cape May Court House, N. J.

Ques. Were you ever connected with this company?

Ans. I was.

Ques. In what capacity?

Ans. I was secretary.

Ques. During what time?

Ans. I helped to organize; I was with it from its incipency and helped to organize it.

Ques. You stayed with it how long?

Ans. Up until the fifteenth of September, I think, 1884. 10

Ques. What was the condition of the company on the fifteenth of September?

Ans. It was in my opinion insolvent, in a very bad state, I think, (Objected to,) the facts would show it was insolvent—

(Objected to.)

20

The Court: If the witness states that he made inquiry into its financial condition and obtained facts on which he bases his judgment; if he shows that as an interested party he made an examination of the financial condition of the concern and satisfied himself that it was insolvent.

Ques. Were you present at any meetings of the Board about the time you speak of?

Ans. Yes, sir.

Ques. At how many meetings were you present? 30

Ans. I was present at all of them.

Ques. What was the subject matter considered at these various meetings.

Ans. The principal subject was the raising of money, getting themselves out of debt and trying to carry the

business on, to devise some means to raise money. There were several broached, but none of any effect until I got one of mine; I perfected a scheme to raise money.

Ques. What was it?

Ans. A commission is what they call it.

Ques. Did you raise any money through that?

Ans. I did.

Ques. How much?

Ans. Five hundred dollars.

10 Ques. From whom did you get it?

(Objected to.)

Ques. Was there five hundred dollars raised by this commission?

Ans. Yes, sir.

Ques. Were you a member of this commission?

Ans. Yes, sir.

Ques. You raised it from the bondsmen?

Ans. Yes, sir.

Ques. What was that paper given for?

20 Ans. It is five hundred dollars; it was to be fifteen hundred dollars. We only got five hundred dollars of it.

Ques. The company gave that paper to secure that five hundred dollars?

(Objected to.)

Ans. No, sir; the commission.

30 The paper examined upon is offered in evidence.

(Objected to.)

Ques. Is that all you raised through this scheme?

Ans. Yes, sir.

Ques. Was there any other scheme?

Ans. That is all the scheme ; at that time I was out of the company ; I have not much knowledge.

Ques. Did you have any talk with any of the officers of the company ?

Mr. Wescott: We propose to show that some of the officers stated to the witness that this scheme was entered into to save the property.

Ques. Did any of the officers or members of the company say to you for what purpose the bond scheme was entered into ? 10

(Objected to.)

Ans. To save themselves and protect their property ; that is my understanding of it.

By the Court :

Ques. Who told you ?

Ans. I had talks with Gallagher and Rowley and some of the stockholders ; I don't remember who they were, but I think those are two of them. 20

Ques. How long have you lived in the neighborhood of Cape May ?

Ans. About three years.

Ques. Are you familiar with the value of real estate in that neighborhood ?

Ans. I think some little ; yes, sir.

Ques. What is a fair market value of the twenty acres of the land of the company on the sea-shore ? 30

(Objected to.)

Ques. Do you know anything about the value of property in that locality ?

Ans. Not very much ; there is very little property sold in that neighborhood.

Ques. Do you know why there is very little sold ?

Ans. It is not considered to be worth anything.

Cross examined.

By Mr. Bergen :

10 Ques. Is there no income from this property as it stands idle and unused ?

Ans. Not that I know of.

Ques. Has it not any income from gravel sold off of it regularly ?

Ans. I never heard of it ; I never knew there was such a thing.

Ques. To say nothing of the fishery ?

Ans. I don't know of any income from the place as a property.

20 Ques. Five hundred dollars is all the money the commission ever got ?

Ans. That is all while I was connected with it ?

Ques. Who got that money ?

Ans. I did.

Ques. Personally ?

Ans. Yes, sir.

Ques. As one of the commission ?

Ans. As one of the commission acting for them.

Ques. Did you ever account to the company for it ?

Ans. Yes, sir ; I did.

30 Ques. Where is the account ?

Ans. Turned over to Peacock, my successor, and the check book was with it ; the money was deposited in the Millville Bank, and all drawn out by check ; the stubs was in it.

Ques. For what purpose ?

Ans. To pay bills and labor, and carry the business of the company on.

Ques. That is what your commission was for ?

Ans. That was the understanding.

Ques. To run the business of the concern ?

Ans. Yes, sir.

Ques. It was not to settle it up.

Ans. No, sir ; it was to try to carry it on.

Ques. It was to get rid of thirteen directors and get down to three irresponsible men ?

Ans. No ; not altogether. The directors still had their say and vote ; if I remember right, we were merely to take charge of the business and do the best we could. 10

Ques. You were deputized to do the business for them ?

Ans. That is the idea ; the rest didn't seem to know how to do it ; they had no money.

Ques. You got five hundred dollars from Solomon ?

Ans. Yes, sir.

Ques. Was Solomon doing business with the company ?

Ans. Not at that time ; no, sir.

Ques. Did you have money or property of the company that you disposed of during that time ? 20

Ans. I sent some of the property of the company to Solomon on account of his loan ; that was the understanding ; he was to buy the hides.

Ques. What did you send to Solomon ?

Ans. Some skin and oil.

Ques. Anything else ?

Ans. Of course that is all ; I don't know of anything else. 30

Ques. He was expected to be reimbursed out of them ?

Ans. That was the understanding ; yes, sir.

JOHN A. COOK, recalled.

By Mr. Wescott :

Ques. State whether or not either by yourself, or with Mr. Miller or any other person, you ever undertook to secrete or carry away any of the property of this company? Did you singly, or with Mr. Miller, or in connection with any other person, ever undertake to carry away or secrete any of the property of this company?

Ans. I took a net in connection with Mr. Miller and put it in a shingle building, where we thought it would be out of the way; I didn't remove it over five hundred
10 yards from where we found it.

Ques. Is it there yet?

Ans. To the best of my knowledge; I have the key of the building; there has been nobody to look after it.

Cross-examined.

By Mr. Bergen :

Ques. What did you mean?

Ans. That was sold.

20 Ques. And which you bought?

Ans. Yes, sir.

Ques. And which Mr. Miller bought too.

Ans. Yes, sir; as far as my knowledge goes.

Ques. It still remains on the property of the company?

Ans. Except the net; there may be some few stones moved, I have heard.

Ques. The net, you say, is stored in the building there?

Ans. Yes, sir; not on the property.

30 Ques. On some other property?

Ans. The building it is stored in belongs to the turn-pike company.

Ques. Does not that building leak?

Ans. Not to my knowledge, it don't; the net was originally in the store when it was built there.

Ques. Do you not know the net is very insecure for a piece of property so valuable?

Ans. I don't think it is valuable; it is only good for old junk; I would not give fifty dollars for it to-day; it laid in an open building of the company.

Ques. What is the matter with the net now; is it mildewed?

Ans. I believe the net was in a very bad condition when we moved it; it had been lying in an open building where salt water was going through.

JONAS MILLER, sworn and examined.

10

Mr. Wescott:

Ques. Are you one of the defendants?

Ans. Yes, sir.

Ques. Are you a member of the bar of New Jersey?

Ans. Yes, sir.

Ques. Did you ever render any services to this company as attorney?

20

Ans. I did.

Ques. Did you present your bill to them for such services?

Ans. Yes.

Ques. About when was it?

Ans. That I presented the bill? I will have to tell you how I came into the employ of the company before I can tell that fact. I became an attorney of the company on or about the first, or sometime in the first part of 1884. Mr. Reynolds, through Mr. Cook, asked to have me come over and stated they had employed me.

By the Court:

Ques. You were attorney of the company and you went in their employ?

Ans. Yes, sir; they also asked that I might have my name on the prospectus published.

By Mr. Wescott:

Ques. Can you state when it was you presented a bill for services to the company and they failed to pay it?

Ans. I don't remember; sometime either in the latter part of August, or sometime in September, along there.

Ques. Did you or did you not present your claim and
10 threaten to prosecute to recover?

Ans. They wrote me a letter, the secretary, sending me a copy of the resolution of the Board of Directors, stating that my services were dispensed with and Mr. Bergen was subsequently their solicitor or acted for them. I went to him and stated that I wanted to be paid; that otherwise I should commence suit for my services. He asked me to wait and said these were good parties; that I would be paid. I went to him on several occasions, also representing Mr. Cook's claim, who placed that in my
20 hands as attorney. Mr. Bergen also at that time said the claim was good, not to hurry about it, it would be paid.

By the Court:

Ques. What did you do?

Ans. After I had learned they had created mortgages to secure these bonds I commenced suit and got judgment.

By Mr. Wescott:

30 Ques. They entered into this bond scheme after they asked you to wait for your claim?

Ans. Yes, sir; if it had not been for the representations by Mr. Bergen I would have taken steps to get ahead of the bond and mortgages because I knew nothing of it, that any such scheme was on foot.

Ques. Did you ever live in Cape May?

Ans. I was born there.

Ques. Are you familiar with the value of property in that neighborhood?

Ans. I believe so; I am.

Ques. Have you ever known any property to be bought and sold there?

Ans. Yes, sir.

Ques. Are you familiar with the property, the real estate, involed in this case?

Ans. I am thoroughly familiar with it. 10

Ques. What is its market value; what is it worth?

Ans. Property of the same character, in that neighborhood, I do not consider it to be worth over two or three dollars an acre, and this property, particularly down back from the sea, there is a row of sand hills and more beach sand than anything else surrounding it.

Ques. Have you ever had any talk with any of the officers of the company as to their object in this bond scheme?

Ans. No, sir; I had a talk with Christopher Gallagher last summer at Cape May in reference to this business. We had got judgments then. He admitted to me he knew at the time those bonds were made and the mortgages created, the company was insolvent, that they all knew it. 20

Ques. Did you singly, or with Mr. Cook or any other person, ever undertake to secrete, or carry away, the personal property of this corporation?

Ans. No, sir; from the fact that I hold, and as long as I did hold the property, that I had a right, having purchased it at a constable's sale under the law, to have the use and possession of the goods that I bought, and under those circumstances, and from the advice of counsel, I had a right to move any portion of those goods in order 30

to protect them. We moved the net and one or two other articles.

Ques. For what purpose?

Ans. For the purpose of protecting it from the inclemency of the weather by putting it in a covered building and locking them up. The key was given to Mr. Cook. I did that before obtaining the building for that purpose from Mr. Leaming at Cape May.

10 Ques. What kind of a building were they in before you put them in there?

Ans. A sort of salt building.

Ques. When you and Mr. Cook answered as you did what was your desire?

Ans. To protect the property and preserve our own rights.

Ques. You were acting from no other motive?

Ans. No other motive at all.

Cross examined.

20 By Mr. Bergen :

Ques. Did I ever represent to you any more than the company was undertaking to do its business?

Ans. You represented to me, you asked me not to sue; I would be paid; that these parties were good people and they would see all their indebtedness paid.

Ques. To be patient?

Ans. To be patient and not sue.

30 Ques. Did I ever ask you not to sue this company?

(Objected to. Overruled. Answer overruled.)

~~Ques. Did I ever ask you not to prosecute this company?~~

Ans. Not to sue them; yes; you did in your office.

Mr. Wescott: The defendants offer in evidence the bond signed by the commission to secure Mr. Solomon five hundred dollars, and the statement made by the secretary of the condition of the company, marked "Exhibits 1 and 2."

(Objected to. Objection overruled.)

The defendants also offer in evidence bond marked "Exhibit

GEORGE L. SPARKS, recalled:

10

Mr. Wescott:

Ques. Is that a book of the minutes of the company?

Ans. Yes, sir; that is one of them; I think there is another.

Ques. Will you look at that book and see if you cannot state that is the only book of the company; did you hand that other book to the company?

Ans. All the books in my possession.

20

Ques. Is not that the only book of minutes of the company?

(Book shown witness.)

Ans. No, sir; it is not; there is another book; it is called the Atlantic Fertilizing Company; it was a continuation of this.

Ques. This company, The Porpoise Fishing Company; is that not the only book of The Porpoise Fishing Com- 30
pany?

Ans. I think there are no more minutes in the other book. It is a common blank book.

Ques. What is it started with, with the name of the other company?

Ans. It started with the name of the other company.

Defendants rests.

The Court: The case will stand over until next Monday, (March 1st.)

March 1st, 1886.

Mr. Bergen: I propose to call William Peacock, secretary of the company.

(Objected to.)

The Court: Under the circumstances I will allow the witness to be sworn.

WILLIAM PEACOCK, sworn and examined.

By Mr. Bergen:

Ques. Where do you live?

Ans. At Bridgeton, New Jersey.

20 Ques. What is your business?

Ans. Printer.

Ques. Are you connected with any paper there?

Ans. Yes, sir.

Ques. What paper?

Ans. The Bridgeton *Chronicle*.

Ques. What was your business in 1885?

Ans. Baggage agent of the West Jersey Railroad Company.

30 Ques. What was your business in September, 1884?

Ans. September, 1884?

Ques. Do you know The Porpoise Fishing Company?

Ans. Yes, sir.

Ques. Have you been connected with it?

Ans. Yes, sir; since September, 1884.

Ques. In what capacity ?

Ans. As secretary.

Ques. Are these the books of that company ?

Ans. Yes, sir.

Ques. What is that ? (Book shown witness.)

Ans. That is the minute book of The Porpoise Fishing Company, Cape May.

Ques. Is that the only minute book of the company ?

Ans. That is the only one I have any knowledge of.

Ques. Does it date back to the beginning of the com- 10
pany ?

Ans. Yes, sir ; it dates back to the beginning of The Porpoise Fishing Company.

Ques. What is this ?

Ans. That is the transfer book of The Porpoise Fishing Company, for the transfer of stock.

Ques. What is that ?

(Another book shown witness.)

20

Ans. That is the stock ledger.

Ques. Who preceded you as secretary of the company ?

Ans. George L. Sparks.

Ques. One of the defendants in this suit ?

Ans. I believe so ; yes, sir.

Mr. Miller : No, he is not a defendant.

(Minute book shown witness.)

Ques. Refer to minutes of the corporation.

30

(The witness is shown page Marked "M" on the minute book.)

Ques. What resolution is that ? That relates to the authorization of the mortgages, does it not ?

Ans. Yes, sir.

Ques. What mortgage does it refer to?

Ans. This mortgage on the real estate of The Porpoise Fishing Company.

Ques. The mortgage made to me on the real estate?

Ans. Yes, sir.

Ques. Only on the real estate?

Ans. And personal property; real and personal property.

10 Ques. It is the resolution authorizing the making of those mortgages?

Ans. Yes, sir.

Ques. How many votes were in favor of that?

Ans. Yeas 2,673; nays nothing.

Ques. There were no nays?

Ans. No nays.

Ques. Did any person vote against it?

Ans. No.

Overruled.

20 Mr Bergen : I offer in evidence the books.

Cross-examined.

By Mr. Wescott :

Ques. What is the date of the beginning of the Fishing Company, as shown by your books?

Ans. The Porpoise Fishing Company?

Ques. There were two?

30 Ans. Yes, sir; there were two. The first was the Atlantic Oil Fertilizing Company.

(To the Court :) February 1st, 1884.

By Mr. Wescott :

Ques. That is when it began ?

Ans. Yes, sir.

Ques. You said there were no nays against the mortgage business ?

Ans. No.

Ques. Were you there ?

Ans. Yes, sir.

Ques. Was Mr. Bergen there ?

Ans. I think he was ; yes, sir.

By Mr. Bergen :

10

Ques. How many shares of stock had been issued at the time ?

Ans. Four thousand.

By Mr. Wescott :

Ques. Is that all that had been issued ?

Ans. Yes, sir ; to the best of my knowledge.

Ques. Did any not come back to the company ?

20

Ans. Not at that time.

Ques. When did it ?

Ans. After September, 1885.

Ques. Were you a stockholder ?

Ans. Yes, sir.

Ques. And bondholder ?

Ans. No, sir.

Ques. Did you get any of these bonds ?

Ans. I did afterwards ; yes, sir.

Ques. Do you still hold them ?

30

Ans. No.

Ques. Who got them ?

Ans. W. W. Green holds the bonds now ; I did have.

Ques. He is a director of the company ?

Ans. Yes, sir.

Ques. How many bonds did you have ?

Ans. Two.

Ques. You transferred them to Mr. Green?

Ans. Yes, sir.

Ques. Did Mr. Green pay you anything on them?

Ans. He paid me the face value of the bonds.

Ques. What did you do with the money?

Ans. Spent it in my own family affairs.

Ques. You did not hand it back to him?

Ans. No.

10

By Mr. Bergen :

Ques. When did you get those bonds?

Ans. I got those bonds September, 1885. The first one I got September, 1885; the second one I got a little later.

Ques. When, how much later?

Ans. I suppose the first one I got——

Ques. Will not the books show exactly?

Ans. I think they will.

20

Ques. Refer to the book?

Ans. I don't think the minute book will show; the cash book will show.

Ques. Look at it? (The witness refers to book.)

By Mr. Wescott:

Ques. Are those books in your handwriting?

Ans. Yes, sir.

30

By Mr. Bergen :

Ques. When did you get the first one you speak of?

Ans. The first one I got was January, 1885.

Ques. When did you get the second one?

Ans. April 20th, 1885.

Ques. Did you hold a position at that time with the company?

Ans. Yes, sir.

Ques. What were those bonds given to you for?

Ans. Salary.

Ques. For your salary as secretary of the company?

Ans. Yes, sir.

Ques. For what salary?

Ans. Salary as secretary of the company.

Ques. For what month; what time?

Ans. I can't tell you; April, I suppose; I don't know exactly what time.

Ques. What salary were those bonds given to you for? 10

Ans. For the month of January; it was given the latter part of January

Ques. Were they given to you for salary for the month of January, 1885?

Ans. Yes, sir. One given in February, 1885, I suppose was given for the month of February, 1885.

Ques. Was the company then doing business?

Ans. Yes, sir.

Ques. With the expectation of continuing business? 20

Ans. Yes, sir.

Ques. When did you resign your position as secretary? Did you resign?

Ans. I sent my resignation to the president; I have not received any response to the same.

Ques. When did you send your resignation?

Ans. The 1st of November, 1885.

By Mr. Wescott:

Ques. Why did you resign? 30

Ans. Simply because I got in other business that paid me better.

Ques. Do the company owe you anything?

Ans. Not that I know of; the books will show.

Ques. Do they owe you?

Ans. I don't know ; I will have to refer ; I don't think they owe me a cent ; probably they do owe me.

(Referring to books.)

Ques. How much did they pay you a month ?

Ans. \$40 a month.

Ques. How much did you credit for each of these bonds on account of that salary ?

Ans. \$50.

10 Ques. The face amount ?

Ans. Yes, sir.

Ques. You did not take them at \$40 ?

Ans. No, sir ; \$50. I will have to balance them up.

Ques. They probably do owe you ?

Ans. I can't tell whether or not they owe me ; I have not balanced up the books.

Ques. You have not interest enough in the matter ?

Ans. Of the balancing up of the books ; no, sir.

Ques. Why don't you know ?

Ans. I have not balanced up the books—

20 (Objected to.)

Ques. Is it not because the company are not able to pay you, it is not worth your attention ?

Ans. Being a stockholder it didn't make any difference to me whether or not they paid.

Ques. Why ?

Ans. I had something else to do, to make my living.

Ques. Is the stock worth anything ?

Ans. I don't know ; probably it may be.

30 Ques. But you are not interested enough to know whether or not that stock has any value ?

Ans. Not at present.

The complainant rests.

Evidence closed.

COMPLAINANT'S EXHIBITS.

EXHIBIT B1 OF COMPLAINANT.

Mortgage on Chattels.

EXHIBIT B2.

Mortgage on Real Estate.

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EXHIBIT B3.

Account of B. Reynolds, president, with the Porpoise Fishing Company:

	Receipts.	D'sb'r'm'ts.	Bal. due Him.
Statement A, from Feb. 18, 1884 to May 13, 1884.	\$1,890	\$1,905 81	\$15 81
" B, from May 13, 1884 to Aug. 1, 1884.	1,480	1,730 25	266 06
" C, from Aug. 1, 1884 to Jan. 1, 1885.	2,715	2,714 25	265 31
" D, from Jan 1, 1885 to Jan. 1, 1886.	550	550 00	985 31 20
Salary as president from Feb. 1, 1884 to Aug. 1885, \$720.			

EXHIBIT B4.

B. REYNOLDS—"PER 60 MORTGAGE BONDS," IN ACCOUNT
WITH PORPOISE FISHING CO.

		DR.
Sept. 8 and 17.	Cash of W. W. Green for five bonds—1, 2, 3, 4, 5.....	\$250 00 30
9.	Cash of Julius Schwalber for five bonds—6, 7, 8, 9, 10.....	250 00
8 and 16.	Cash of C. Gallagher for five bonds—11, 12, 13, 14, 15..	250 00
6 and 17.	Cash of E. H. Rowley for five bonds—16, 17, 18, 19, 20..	250 00

Sept.	6 and 15.	Cash of L. T. Young for two bonds—21, 22.....	\$100 00
Oct.	2.	Cash of H. Ruhland for two bonds—23, 24.....	100 00
		Cash of J. Doughten for two bonds—25, 26.....	100 00
		Cash of G. Bahm for two bonds—27, 28.....	100 00
10		Cash of R. Vobrath for two bonds—29, 30.....	100 00
		Cash of A. Scholl for two bonds—32, 33.....	100 00
			<hr/>
			\$1,600 00
Dec.		Paid to John S. Corson two bonds—31, 34 ; W. W. Green paid Corson his bill.....	100 00
		Paid to F. Richardson for provision bill three bonds—36, 37, 38.....	150 00
20	Jany. 6.	Paid to W. Peacock, Sec'y, for salary, one bond—35.....	50 00
	April 2.	Paid to W. Peacock one bond—39..	50 00
	3.	Paid to W. Peacock one bond—40..	50 00
		Paid to W. W. Green to pay claims, 41, 42, 43.....	150 00
		Paid to W. W. Green to pay board bill, 54, 55.....	100 00
	May 14.	Paid C. A. Bergen act. prof. services and expenses, four bonds—57, 58, 59, 60.....	200 00
30		Paid E. H. Rowley, one bond—56, to pay printing bills, etc.....	50 00
		In hands of B. Reynolds to cover indebtedness of company to him, as per account, ten bonds—44, 45, 46, 47, 48, 49, 50, 51, 52, 53...	500 00
			<hr/>
		Sixty bonds of \$50.00 each =	\$3,000 00

EXHIBIT B5.

Demand from bondholders on trustee that he fore-close mortgages.

EXHIBIT B6.

Demand of bondholders on company for payment of bonds.

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EXHIBIT B7.

PHILADELPHIA, Sept. 4th, 1884.

We, the undersigned stockholders of The Porpoise Fishing Company, of Cape May, N. J., agree to advance the Company the amounts opposite our signatures, said advance to be secured by bond and mortgage on the real estate; also by chattel mortgage on steamer, nets and all movable property, the President binding himself to have the necessary papers drawn at earliest possible moment.

This agreement is binding only in the event of the sum of one thousand dollars being subscribed.

Edw. H. Rowley.....	pd	\$250 00	
Chas. J. Schwalber.....	pd	250 00	
Henry Ruhland.....	pd	100 00	
L. T. Young per B. R.....	pd	100 00	30
B. Reynolds.....	pd	100 00	
Chris. Gallagher.....	pd	250 00	
Walter W. Green.....	pd	250 00	
Isaac Doughten.....		\$100 00	
A. Schell.....		100 00	
M. Behn.....		100 00	
R. Vobrath.....		100 00	

EXHIBIT B8.

Book of account or journal of Company.

EXHIBIT B9.

Private account book of B. Reynolds.

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EXHIBIT B10.

Vouchers of B. Reynolds for his account.

EXHIBIT B11.

Notice of meeting of Stockholders for September 15th,
1884.

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EXHIBIT B12.

Minute Book of Company.

EXHIBIT B13.

Transfer of stock book of Company.

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EXHIBIT B14.

Stock Ledger of Company.

EXHIBIT B15.

Cash Book of Company.

EXHIBIT B16.

Day Book of Company.

EXHIBIT B17.

General Ledger of Company.

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DEFENDANTS EXHIBITS.

EXHIBIT M1 OF DEFENDANTS.

Bond of Commissioners to Solomon.

EXHIBIT M2.

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Statement by George L. Sparks.

EXHIBIT M3.

One of sixty mortgage bonds secured by mortgage.

OPINION BY VICE CHANCELLOR BIRD. 30

BIRD, V. C.

This bill is filed to foreclose two mortgages given by the defendant company to the complainant, as trustee of the bondholders, whose bonds the said mortgages were intended to secure—the one on the real estate, the other

on the personal estate of the company. The defendants Cook & Miller had claims against the company on which they recovered judgment, sold certain articles of the personal property, purchased some articles themselves, and removed them. By the bill, such a case was made as justified the court in issuing an injunction restraining Cook & Miller from in anywise disposing of the said goods. Cook & Miller answered the bill, alleging that the making of the said bonds and mortgages was fraudulent as to exist-
 10 ing creditors, and insisting, as to them, the bill should be dismissed.

The testimony discloses that in February, 1884, certain persons undertook to establish a company by the name of "The Porpoise Fishing Company." They filed a certificate according to law, but took no other steps towards an organization until the 15th of September following—in the mean time, carrying on business in the name of the company, and creating an indebtedness amounting to several thousands of dollars beyond any cash on hand to discharge. A short time prior to September 15th, an effort
 20 was made to raise money by assessing at per share the stock which had been issued, amounting in all to about four thousand shares, but which had not been paid for to any considerable extent. The effort to raise money by assessing this stock entirely failed.

On September 15th, 1884, the company, for the first time, endeavored to organize and to bring itself, as a corporation, within the purview of the law. On the same day the stockholders, by resolution, authorized the board of directors to borrow \$3,000, and to secure the same by
 30 bonds and mortgages on the real and personal property of the company, which resolution the board of directors resolved to execute. The bonds and mortgages named in the bill were executed, and delivered accordingly.

There is no doubt but that, on the 15th of September

and also on the 1st day of October, when the bonds and mortgages were executed, the company was largely insolvent. Its indebtedness was created before it was organized, but, in equity, its creditors should not suffer from such an irregularity. Having carried on business and held itself out to the world as a corporation, and having afterwards completed its organization according to law, the assets of such organization should be made liable for its debt, though created previously to the completion of such organization.

The judgments of the defendants Cook & Miller were founded on claims created prior to the execution of the mortgages. The question is whether these judgments are preferred in the law to the mortgages named in the bill. As has been said, the defendants Cook & Miller insist that the mortgages must stand aside until their judgments are paid. I think, to the extent that these judgments and levies are liens, or the extent of the sales made by virtue thereof, they are entitled to priority over said mortgages; beyond this I cannot advise. I cannot declare the corporation insolvent, because this court has no authority for that purpose, except by proceedings under the statute; and the pleadings present no case within the act. I can only take advantage of the fact of insolvency in aiding the defendants Cook & Miller in their resistance to the complainant. The defendants only answer and make proof; they do not come in either by bill or cross-bill.

As intimated, I think their defence is effectual. Look at the facts: the members of the corporation were, before its organization, neither more nor less than members of a co-partnership or joint stock concern, each individually liable for the whole indebtedness of the firm; while in this plight creating the indebtedness in favor of the defendants Cook & Miller, as well as of many others; to pay which, and to escape such liability, they organize accord-

ing to law; and, on the same day that they so organize, resolve to issue the bonds in question, and to secure them by the mortgages now being foreclosed. These bonds were all taken by the directors and stockholders except three; these three were delivered to one of the creditors in satisfaction of his demands.

I need not adjudge that the company intended to commit a fraud by thus conveying and covering up all their property at the very instant of its organization, and at a time when they knew it was unable to discharge all its liabilities. It is enough to know that if the company believed the method adopted was ever so wise or business-like, it was unlawful. It delayed and hindered creditors; as much so, to all intents and purposes, as any case of a similar nature to be found in the books. It was not an assignment for the benefit of creditors under the statute; it was, in reality, an assignment, by way of mortgage, of the assets of the corporation to the members thereof by way of protection from individual liability to pay the debts of the concern under which they had attempted to manage the business, or from such liabilities to pay for the stock which had been issued in the name of the corporation, and at that time (September 15th, 1884) valid by relation, and which they then held.

I think the foregoing views are sustained by the case of *Owen v. Arvis*, 2 *Dutch*. 22; *National Bank of the Metropolis v. Sprague*, 6 *C. E. Gr.* 458, 530; and *Livermore v. McNair*, 7 *Stew. Eq.* 478.

As to Cook & Miller, the bill should be dismissed, with costs.

FINAL DECREE.

(Filed April 22, 1886.)

This cause coming on to be heard at the February Term, 1886, of the court of Chancery, before his Honor Vice Chancellor Bird, at his chambers in the city of Camden, in the presence of Christopher A. Bergen, of counsel with complainant, and John W. Wescott, of counsel with the defendants, Jonas S. Miller and John A. Cook, and the pleadings of the defendants, Jonas S. Miller and John A. Cook, having been read, and the proofs and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that the complainant is not entitled to the relief sought and prayed for by him against the defendants, Jonas S. Miller and John A. Cook in his bill of complaint ;

It is, on this twenty-second day of April, one thousand eight hundred and eighty-six, by his Honor Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the complainant's bill as to the defendants, Jonas S. Miller and John A. Cook, be and the same is hereby dismissed with costs. Respectfully advised.

JOHN T. BIRD, V. C.

THEODORE RUNYON, C.

NOTICE OF APPEAL.

(Filed May 1, 1886.)

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The complainant hereby appeals from so much of the final decree made in this court in the above stated cause as declares "that the complainant's bill as to the defendants, Jonas S. Miller and John A. Cook, be and the same

is hereby dismissed with costs," to the Court of Errors and Appeals in the last resort in all causes.

Dated April 30, 1886.

S. D. BERGEN,
Sol. for and of Counsel with Complt.

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

S. D. BERGEN,
of Counsel with Complt.

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A true copy.

ALLAN McDERMOTT,
Clk.

PETITION OF APPEAL.

(Filed June 15, 1886.)

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

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The humble petition of Christopher A. Bergen, trustee, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-six, wherein the said Christopher A. Bergen, trustee, was complainant and the said The Porpoise Fishing Company, Jonas S. Miller and John A. Cook, were defendants, in this respect,

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to wit: that the said decree adjudges that the complainant's bill as to the defendants, Jonas S. Miller and John A. Cook, be and the same is hereby dismissed with costs; and your petitioner humbly appeals from that part of the decree which decrees as aforesaid, upon the ground that the same is erroneous, for that the Chancellor should have

ordered that the said Jonas S. Miller and John A. Cook were proper parties defendant, and the complainant was entitled to the relief prayed for in his bill against them

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

SAMUEL D. BERGEN,
Solicitor of Appellant. 10
SAMUEL D. BERGEN,
Of Counsel with Appellant.

STATE OF NEW NEW JERSEY.

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, &c., do hereby 20
certify the foregoing to be a true copy of the petition of appeal in the above stated cause as the same is taken from and compared with the original filed in my office on the fifteenth day of June, A. D. 1886, and now remaining on file therein.

In witness whereof, I have hereunto set my hand and affixed my official seal this fourteenth day of July, A. D. 1886.

HENRY C. KELSEY.