

IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. POTTS,
complainant,

vs.

ADDISON M. BURT, and als.,
defendants.

} *Bill for Injunction and Relief.*

To His Honor, Henry W. Green, Chancellor of the State of New Jersey :

Humbly complaining, sheweth unto your Honor your orator, William H. Potts, of the City of Trenton, in the 10 State of New Jersey, a creditor of and owner of shares of stock in The New Jersey Arms and Ordnance Company, for and on behalf of himself and all other creditors and owners of shares of stock in the said company, who shall come in and contribute to the expense of this suit, that on or about the eighteenth day of November, in the year of our Lord one thousand eight hundred and sixty-three, The Trenton Arms Company, a corporation existing under and by virtue of the laws of this State, became insolvent, and did thereupon suspend the ordinary business of said company for want 20 of funds to carry on the same.

And your orator further shews unto your Honor, that certain creditors of the said The Trenton Arms Company, to-wit: Cornet and Nightingale, of the State of Rhode Island, filed their bill of complaint in this Honorable Court, setting forth the fact of the insolvency of the said corporation, and praying that the said company should be so declared by this Honorable Court, and that they should likewise be enjoined from selling, transferring, encumbering or otherwise disposing of their stock, machinery, utensils in trade, or other 30 property, of whatever nature it might consist; and also,

that a Receiver might be appointed, with full power and authority to demand, sue for, collect, receive and take into his possession all the goods, chattels, rights, credits, moneys, effects, lands, tenements, books, papers, choses in action, bills, notes and property of every description belonging to the said company, and to sell, convey and assign all the real and personal estate aforesaid, and to pay the money received from said sales into this Honorable Court, to be disposed of as this Court should see fit to direct, as will more fully appear 10 by the bill of complaint of the said creditors and complainants, now on file in the office of the Clerk of this Honorable Court, and to which, for greater certainty, your orator begs leave to refer, if it be necessary for him to do so.

And your orator further shews unto your Honor, that upon the filing of the said bill of complaint the said The Trenton Arms Company, were declared to be an insolvent corporation by this Honorable Court, and a decree to that effect was made by your Honor, and the said insolvent corporation was enjoined as was prayed for in their bill of complaint by the 20 said parties complainant, and a Receiver was ordered to be appointed; and further, that Frederick Kingman, Esquire, one of the Solicitors of this Honorable Court, was appointed by this Court Receiver of the said The Trenton Arms Company, as will more fully and at large appear by the record of the proceedings in the cause aforesaid, now on file in the office of the Clerk of this Court, and to which, for greater certainty, your orator begs leave to refer, if it shall be necessary for them so to do.

And your orator further shews unto your Honor, that the 30 said Frederick Kingman, Esquire, forthwith accepted the said office of Receiver, to which he had been appointed as aforesaid, and that thereupon he did take and subscribe the oath required by the statute in such case made and provided, which said oath, so subscribed as aforesaid, was filed within ten days after the taking thereof in the office of the Clerk of this Court, as will more fully appear by the certificate of the said Clerk endorsed thereon, and to which, for greater certainty, your orator begs leave to refer.

And your orator further shews, that the said Receiver im- 40 mediately entered upon the duties of the said office, and did

proceed to take possession of all the rights, property and effects of the said Arms Company, as he was authorized and empowered to do by the statute in such case made and provided.

And your orator further shews unto your Honor, that afterwards, to-wit: on the thirtieth day of March, in the year of our Lord one thousand eight hundred and sixty-four, a supplement to the charter of the said The Trenton Arms Company was passed by the Legislature of this State, and was duly approved by His Excellency the Governor thereof, 10 which supplement is in the words following—to-wit:

“A supplement to an act entitled an act to incorporate The Trenton Arms Company, approved March eleventh, eighteen hundred and sixty-two.

“WHEREAS, The Trenton Arms Company was organized on the basis of one hundred and fifty thousand dollars capital in shares of five hundred dollars each, pursuant to section two of the act incorporating said company; AND WHEREAS, pursuant to section six of said act, the limit of capital was subsequently enlarged to four hundred thousand dollars, 20 which increased capital has not yet been subscribed; AND WHEREAS, the said company has become embarrassed in its financial affairs, and it is deemed for the interest of the creditors as well as of the stockholders, that the limit of capital be further enlarged and the size of the shares reduced; therefore,

“1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the capital stock of the company incorporated under the name of The Trenton Arms Company, shall be one million of dollars, divided into ten thousand shares of one hundred dollars each. 30

“2. And be it enacted, That the corporate name of the said company is hereby changed, and the said company shall hereafter be designated and known by the name of ‘The New Jersey Arms and Ordnance Company.’

“3. And be it enacted, That none of the corporate powers, rights or franchises conferred by the act incorporating said company, or by this supplement, shall be forfeited or impaired by the reason of the appointment or continuance of a Receiver, or of an injunction against said company by virtue 40

of any order or decree of the Court of Chancery heretofore made, but the charter of the said company shall remain in full force, the same as if no such order or decree had been made.

“4. And be it enacted, That the first section of this act shall not go into effect without the assent first obtained in writing of the owners or holders of a majority of the present capital stock of the said The Trenton Arms Company—and that the remaining sections of the act shall go into effect immediately ; provided, nevertheless, that nothing in this act
10 contained shall in any wise effect any suit or proceeding now pending at law or in equity against said company.”

For greater certainty in reference to said act of the Legislature, your orator begs leave to refer to the pamphlet laws of this State for the year of our Lord one thousand eight hundred and sixty-four.

Ang your orator further shews, that after the passage of the said act the assent of the holders as owners of the majority of the said stock of the said Trenton Arms Company was obtained, according to the terms and conditions of the
20 said act, and that the said act thereupon went into effect in all its parts.

And your orator further shews, that the said The New Jersey Arms and Ordnance Company, being greatly embarrassed by the debts existing against them, and those who were the directors being desirous that the creditors of said company should be paid and satisfied, and the property of the said company discharged from the numerous claims against it, proposed to the said creditors, that they, the creditors aforesaid, should accept, on settlement of their
30 claims, stock in the said New Jersey Arms and Ordnance Company, at par, for the amount of said claims, promising and guaranteeing to the said creditors that the property of the said The New Jersey Arms and Ordnance Company should be entirely freed from debt of all and every description, save that certain bonds issued by the Trenton Locomotive and Machine Manufacturing Company, the payment of which had been assumed by the said corporation when known as the Trenton Arms Company, and which were
40 the said the Trenton Locomotive and Machine Manufacturing

Company, now owned and in the possession of the said New Jersey Arms and Ordnance Company, should still remain a lien upon said property.

And your orator further shews unto your Honor, that at this time the said The Trenton Arms Company, now known as the New Jersey Arms and Ordnance Company, were indebted to him in the sum of three thousand four hundred and six dollars and fifty-nine cents, for goods, wares and merchandize furnished by him to the said corporation at their special instance and requests, and that your orator had 10 before then filed in the office of the Clerk of the county of Mercer, his claim against the said corporation, under and by virtue of, and in accordance with the act of this State, entitled "An act to secure to mechanics and others, payment for their labor and materials in erecting any building, approved March eleventh, eighteen hundred and fifty-three," for a part of said amount of the said indebtedness.

And your orator further shews unto your Honor, that afterward, to-wit: on or about the first day of April, one thousand eight hundred and sixty-four, an agreement was 20 effected and entered into by the creditors of the said The Trenton Arms Company, now The New Jersey Arms and Ordnance Company, at the earnest solicitation of the said The New Jersey Arms and Ordnance Company, and especially at the urgent solicitation of Oliver T. Burt, Addison M. Burt, Juan C. DeMier and others, directors of the said New Jersey Arms and Ordnance Company, which agreement was in writing, and is in the words following—that is to say:

"WHEREAS, The Legislature of New Jersey have passed a supplement to the act to incorporate The Trenton Arms 30 Company, a copy of which is hereunto annexed; AND WHEREAS, it is proposed to increase the capital of said company to one million of dollars, and out of the same to pay off the debts of the company, without interest, in the stock thereof at par, so that its property may be discharged from all mortgages, judgments, or other liens, except a first mortgage of forty-eight thousand dollars, to provide for the payment of which one hundred thousand dollars of the stock of the company is to be set apart and pledged; and further, that the company is to have the 40

benefit of the full price to be paid by Government for the muskets hereinafter manufactured under the contracts with A. M. Burt and James T. Hodge.

“Now, therefore, to carry out said plan, and upon condition that the same is carried out in good faith, the undersigned, creditors of The Trenton Arms Company, hereby agree to receive in payment the amount of their respective claim, without interest, the stock of the said company, at par, each share to be one hundred dollars; and where the claim
10 has a fraction over fifty dollars, one share for the fraction, and when the fraction is under fifty dollars, it is not to be counted; and we hereby consent and agree, that upon delivering to the Receiver for us, our portion of the stock as specified below, that the property of the said Arms Company may be discharged from the custody of the Receiver, April 1, 1864.”

And your orator shews, that the said agreement was entered into by all the creditors of The Trenton Arms Company, among whom was your orator, and that thereupon the
20 said property of the said Arms Company was discharged from the liens of the said claims, and from the custody of the said Receiver, and that certificates of stock on the said The New Jersey Arms and Ordnance Company, were issued to the said creditors, according to the terms of the said agreement.

And your orator further shews, that to him, as one of the said creditors, there were issued thirty-four shares of stocks, under the above agreement, and that upon the reception of the same by your orator, he immediately caused the lien entered by him as aforesaid, under and by virtue of the said
30 act of Legislature, entitled “An act to secure to mechanics and others payment for their labor and materials in erecting any building, approved March eleventh, eighteen hundred and fifty-three,” to be discharged, and the buildings of the said company and the curtailage whereon the same were erected, to be freed and cleared from his said lien claim.

And your orator charges and insists, that he did so accept the said certificates of stock, and did discharge the said lien upon the direct and positive assurance of the said Directors of the said New Jersey Arms and Ordnance Company, that
40 thereupon their property, real and personal should be freed

and discharged of and from all manner of debts and claims whatsoever, saving and excepting the said first mortgage debt of forty-eight thousand dollars.

And your orator further shews, that the Directors of the New Jersey Arms and Ordnance Company, since its organization under said name, were and are now Addison M. Burt, Oliver T. Burt, and Juan C. DeMier, of the city of New York, and William Johnson and Joseph G. Brearley, of the city of Trenton, in this State—and your orator further shews, that by the charter of the said company the number 10 of Directors cannot be less than three, nor more than five.

And your orator further shews, that by the connivance and with the consent of the said Directors, or a majority of them, there has been issued to Addison M. Burt, one of the said Directors, two thousand two hundred and fifty shares of the capital stock of the said The New Jersey Arms and Ordnance Company; and your orator believes and charges that the same were issued to him fraudulently, and without any consideration therefor, and for the purpose of defrauding 20 other stockholders of the said company.

And your orator further shews, that to Juan C. DeMier, there have been issued twelve hundred and fifty shares in the capital stock of the said The New Jersey Arms and Ordnance Company; to Oliver T. Burt, nine hundred and forty shares in said company, and to William Johnson, four hundred and forty shares in said company, ostensibly in settlement of their claims against the said Trenton Arms Company, they being creditors of the same; and your orator charges, that if they were issued to them in truth and in fact, in such settlement, yet that the said shares were not 30 issued to the said Burt, DeMier and Johnson, at par, as it was understood and agreed such shares were to be issued; but that with the connivance, consent and permission of the said Directors, or a majority of them, the said shares were issued to the persons just named, at the rate of three shares of the value of one hundred dollars each, for every one hundred dollars of indebtedness; and your orator charges, that the issuing of the said shares, or the permitting the issue of them, at such rate, was in direct contravention of the said agreement hereinbefore set forth as entered into by the credi- 40

tors of the said company, and is a fraud upon said creditors and shareholders.

And your orator further shews and charges, that the said shares of stock were issued to the said Addison M. Burt, Oliver T. Burt, Juan C. DeMier and William Johnson, by the permission and with the connivance and consent of the said above named Directors, or of a majority of them, and for the purpose of defrauding other shareholders.

- And your orator further shews, that immediately after the
 10 execution of the agreement hereinbefore set forth, and upon the extinguishment of the claims of the said creditors, the said Directors of the New Jersey Arms and Ordnance Company, or a majority of them, acting fraudulently, assumed on behalf of the said company, without consideration, the payment of the individual indebtedness of Addison M. Burt, one of the said Directors, which indebtedness amounted to quite if not more than one hundred thousand dollars, and had been contracted and incurred by the said Addison M. Burt, in conducting, prosecuting and carrying on his own private business affairs, and was not in any way or manner as indebted-
 20 ness of the said The Trenton Arms Company, or of The New Jersey Arms and Ordnance Company, or for which they or either of them were responsible; and your orator charges and respectfully insists before your Honor, that the said assumption of the said indebtedness of Addison M. Burt was illegal and fraudulent, and is in itself a gross fraud, and done by the said Directors for the purpose of wronging, injuring and defrauding the other creditors and shareholders of and in the said The New Jersey Arms and Ordnance Company.
- 30 And your orator further shews unto your Honor, that heretofore, to-wit: on or about the first day of April, in the year of our Lord one thousand eight hundred and fifty-six, The Trenton Locomotive and Machine Manufacturing Company, a corporation existing under and by virtue of the laws of this State. made, executed and delivered to certain parties, their several bonds or obligations, in writing, to the number of fifty, each bearing date the day and year last aforesaid, and each conditioned for the payment of one thousand dollars in — years from the date thereof, with legal interest.
- 40 And your orator further shews, that the said The Trenton

Locomotive and Machine Manufacturing Company, being then seized of the lands and buildings now belonging to and in possession of the said New Jersey Arms and Ordnance Company, in order to secure the payment of the said bonds and the interest that might acerue thereon to the holders thereof, did on the day and year last aforesaid make, execute and deliver their certain deed or indenture of mortgage, conveying to Joseph G. Brearley, as Trustee of the said bond holders, the said lands and buildings, which said mortgage was duly executed and acknowledged according to law, and 10 was recorded in the office of the Clerk of the county of Mercer, according to the statute in such case made and provided.

And your orator further shews unto your Honor, that afterwards, to wit: on the first day of January, in the year of our Lord eighteen hundred and sixty-three, the said Trenton Locomotive and Machine Manufacturing Company did, for a valuable consideration, bargain, sell, assign and convey the said lands and buildings, so mortgaged as aforesaid, to the said The Trenton Arms Company, now known 20 as The New Jersey Arms and Ordnance Company, but your orator has been informed, and believes it to be true, that the said lands and buildings were conveyed as aforesaid, subject to the said mortgage, given as aforesaid, to secure the said bonds.

And your orator further shews, that The Trenton Locomotive and Machine Manufacturing Company, being indebted to the said Oliver T. Burt and Juan C. DeMier, transferred and assigned to them certain of their said bonds—that is to say, thirty-five in number, representing thirty-five thousand 30 dollars, as collateral security for the said indebtedness.

And your orator further shews, that the said The Trenton Arms Company, assumed the payment of the said indebtedness of the said Trenton Locomotive and Machine Manufacturing Company, and that the said assumption was part of the consideration upon and for which the said lands and building of said Locomotive and Machine Manufacturing Company had been conveyed to the said Arms Company; and your orator shews and insists that by and in consequence of the said assumption of the payment of the said bonds of 40

the Locomotive and Machine Manufacturing Company by the said Trenton Arms Company, the said Oliver T. Burt and Juan C. DeMier became creditors of the said The Trenton Arms Company to the amount of the said indebtedness.

And your orator further shews, that under the arrangement with creditors hereinbefore set forth, certificates of stock in The New Jersey Arms and Ordnance Company to the amount of the said indebtedness have been issued to the said Oliver T. Burt and Juan C. DeMier, and that thereby
 10 and by force of the terms of the said agreement, such indebtedness has been cancelled and is extinguished. And your orator insists, that the said Oliver T. Burt and Juan C. DeMier ought, and were in duty bound, to redeliver the said bonds which they held as collateral, so that they might be cancelled. But your orator shews and charges that said Oliver T. Burt and the said Juan C. DeMier refuse to deliver up the said bonds, but insist upon holding them, and claim that they are a *bona fide* debt against the said The New Jersey Arms and Ordnance Company, and that the assign-
 20 ment to them of the said bonds was positive and final, and was not intended to be merely for collateral security, all of which actings, doings and pretences your orator charges to be fraudulent, false and contrary to truth.

And your orator further shews, that as he has been informed, and believes to be true, the Directors of the said The New Jersey Arms and Ordnance Company, or a majority of them, uphold the said Oliver T. Burt and Juan C. DeMier in their fraudulent claims concerning said bonds, and are aiding and countenancing the said Oliver T. Burt and Juan
 30 C. DeMier in their proceedings.

And your orator further shews, that lately, as he has been informed, the said Directors have issued, or are about issuing bonds of the said Arms and Ordnance Company to the amount of one hundred and twenty-five thousand dollars, each of the said bonds being conditioned for the payment of one thousand dollars, in ——— years from the date thereof, with legal interest thereon, which said bonds are secured, or to be secured, by a mortgage executed by the said New Jersey Arms and Ordnance Company to Joseph G. Brearley,
 40 as Trustee.

And your orator further shews unto your Honor, that he has been informed, and believes and charges to be true, that the said Directors, or a majority of them, by a formal vote, passed on the seventeenth day of October, in the year of our Lord one thousand eight hundred and sixty-four, have ordered that thirty-five of the said new bonds shall be given to the said Oliver T. Burt and Juan C. DeMier in lieu of and for the thirty-five bonds of the Trenton Locomotive and Machine Manufacturing Company, which they hold as before set forth.

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But your orator most respectfully insists that this action of the said Directors is illegal, and is a fraud upon the rights of other creditors and shareholders of The New Jersey Arms and Ordnance Company.

And your orator further shews, that he has been informed, and believes to be true, that Oliver T. Burt and Juan C. DeMier had, in some way unknown to your orator, rendered themselves personally liable to pay the indebtedness of the said Addison M. Burt, assumed as aforesaid by the said New Jersey Arms and Ordnance Company, and that the said the 20 Directors of the said New Jersey Arms and Ordnance Company, assumed the payment of the same, so that the said Oliver T. Burt and Juan C. DeMier might be saved harmless from the said liability.

And your orator further shews unto your Honor, that he has been informed, and believes to be true, that the said Oliver T. Burt, with the permission and connivance of the said Directors, or a majority of them, has issued a large amount of the stock of the said The New Jersey Arms and Ordnance Company to pay off and liquidate his own 30 personal and private indebtedness, by transferring or issuing the same to his private and personal creditors, and without accounting to the company in any way for such stock.

And your orator shews that certificates of stock, to the value of seven hundred and fifty thousand dollars, of the capital stock of the said New Jersey Arms and Ordnance Company, have been issued by the consent of the Directors of said company, or of a majority of them, and at the instigation of them, or of a majority of them, and your orator believes and charges that a large portion of said stock has 40

been issued fraudulently, and without consideration, and has been taken by some of said Directors, and at less than par value.

And your orator charges, that the said New Jersey Arms and Ordnance Company are, in fact, insolvent, and that they have not funds to carry on the ordinary business of the said corporation, and that they are now carrying on their said business at a great pecuniary loss to the stockholders of the said company; and that owing to various causes, the business of said company cannot now be carried on or prosecuted without such loss and damage pecuniarily.

And your orator further shews unto your Honor, that the said Oliver T. Burt and Addison M. Burt are brothers, and that Juan C. DeMier, as your orator has been informed, and believes to be true, is connected by marriage with the said Oliver T. and Addison M. Burt; and your orator shews that the said Oliver T. Burt, Juan C. DeMier and Addison M. Burt, are a majority of the said Directors of the New Jersey Arms and Ordnance Company, and practically and in effect control its affairs and direct its operations.

And your orator charges, that the said Directors, or a majority of them, are carrying on and operating the said The New Jersey Arms and Ordnance Company, for their own pecuniary benefit and profit, and not for the benefit and pecuniary profit of all the stockholders thereof; and that the said Directors, or a majority of them, are so acting that they have, and are, sacrificing, injuring and depreciating the rights and interests of other shareholders; and further, that the said Directors, or a majority of them, are needlessly, and without just cause, encumbering the property of the said New Jersey Arms and Ordnance Company solely for their own personal gain and profit, and that, in consequence thereof, the credit of the said company has become seriously impaired, and the interests of the shareholders placed in great jeopardy.

And your orator further shews unto your Honor, that ever since the organization of the said The New Jersey Arms and Ordnance Company, that corporation have been carrying on the manufacture of muskets and their other business at a great pecuniary loss—that, in consequence thereof, the

Directors of the said company have abandoned the contracts under and by virtue of which they were engaged in the manufacture of muskets for the Government of the United States, and have discharged from their employment a large number of their workmen; and that the said company are now engaged only in the working up of such material as they may already be possessed of, without adding thereto by purchases.

And your orator further shews, that recently, Addison M. Burt, one of the said Directors, openly expressed his intention to leave the said concern within a very short time, giving as a reason therefor that the company were so greatly involved that its business could not be carried on properly.

All of which actings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orator; in tender consideration whereof, and for as much as your orator is without adequate remedy by the strict rules of the common law, and without the assistance of this Honorable Court, where matters of 20 this nature are particularly cognisable and relievable.

To the end therefor that the said defendants and their confederates when discovered may, upon their several and respective oaths and affirmations, full, true, perfect and distinct answers, make to all and every the matters aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interrogated, paragraph by paragraph, and that they may be decreed by this Honorable Court to make a true, perfect and complete account and exhibit of the shares or certificates of stock in the said The 30 New Jersey Arms and Ordnance Company, which have been issued by the said Directors of the said The New Jersey Arms and Ordnance Company, and to discover and to make known to whom and in what amounts the said shares or certificates of stock have been issued, and at what price, and for what consideration the same have been sold or issued, and if issued in payment of an alleged debt, how the same occurred; and that the said defendants may make discovery and account for all moneys received by them or by any person or persons for them, on the sale of said stock, bonds, 40

mortgages or other property, or things in action of the said New Jersey Arms and Ordnance Company, since the said company has been in operation, and to discover what disposition has been made of said moneys, and to render a general account of the financial affairs of said company, and that the said defendants may be decreed to deliver up the said bonds of the said The Trenton Locomotive and Machine Manufacturing Company, and the said shares of stock fraudulently issued as aforesaid to be cancelled, and that the said defend-
 10 ants may be restrained and enjoined from encumbering the said property of the said The New Jersey Arms and Ordnance Company by making, executing and delivering any bonds, mortgages. or by the confession of judgments, or the making of any other encumbrances, or if such bonds and mortgages have been made, that the said defendants may be restrained and enjoined from selling, assigning or transferring the same, or any or either of them, or in any way disposing of the same, or any or either of them, and that the said defendants shall be restrained from selling, assigning or
 20 transferring, or otherwise disposing of the stock issued to them as aforesaid, and that the said company shall be declared insolvent, and that a Receiver may be appointed according to the statute in such case made and provided, and that your orator may have such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your orator the State's writ of injunction issuing out of and under the seal of this Honorable Court directed
 30 to the said Addison M. Burt, Oliver T. Burt, Juan C. DeMier, Wm. Johnson and Joseph G. Brearley, the said Directors of the said New Jersey Arms and Ordnance Company, and their agents and officers, enjoining and restraining them and each and every one of them from encumbering the said property of the said company by making, executing and delivering any bonds or mortgages, or by the confession of judgments or the making of any other encumbrances, or if such bonds and mortgages have been made, restraining and enjoining them from selling, assigning or transferring the same or any
 40 of them, or in any way disposing of the same or any or

either of them, and also restraining and enjoining the said defendants from selling, assigning or transferring, or otherwise disposing of the stock issued to them as aforesaid, and also the State's writ of subpœna, likewise issuing out of and under the seal of this Honorable Court, to be directed to the said Addison M. Burt, Oliver T. Burt, Juan C. DeMier, Wm. Johnson and Joseph G. Brearley, and to The New Jersey Arms and Ordnance Company, therein and thereby commanding them, and each of them, at a certain day and under a certain penalty therein to be expressed, personally to be 10 and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to, abide and perform such decree as to your Honor shall seem meet, &c., and your orator will ever pray, &c.

EDWARD T. GREEN,
Solicitor, and of Counsel with Complainant.

State of New Jersey, ss.—Joseph C. Potts, alleging himself to be conscientiously scrupulous of taking an oath, and being solemnly affirmed, upon his affirmation doth depose and say, that he was one of the original subscribers to the 20 stock of The Trenton Arms Company, the corporation mentioned in the within bill of complaint; that he was also a Director, and one of the officers of the said company from its organization until it was declared to be insolvent by the Chancellor of this State, and a Receiver appointed; that during all of said time he was the financial agent of the said corporation, and was well acquainted with its pecuniary condition; that at the time of its being declared insolvent the said Arms Company were indebted to Addison M. Burt, as appears by the books of the said company, in the sum of 30 twenty-three thousand two hundred and seventy-nine dollars and thirteen cents. And this affirmant further saith, that he has been informed, and believes to be true, that between the said eighteenth day of November, in the year eighteen hundred and sixty-three, when the said Arms Company became insolvent, and the day upon which a writ of injunction issuing out of the Court of Chancery in this State, directed to the said Addison M. Burt, was served upon the

said Addison M. Burt, he, the said Addison M. Burt, disposed of and sold of the materials and property of the said Arms Company more than was sufficient to pay and satisfy fully the said indebtedness; and that the said Addison M. Burt did pay to himself the money realized from said sales.

And this deponent further saith, upon his said solemn affirmation, that at the time of the said insolvency of the said corporation the said Arms Company were indebted to Oliver T. Burt in the sum of seventy-two thousand five hundred dollars, and for interest thereon; and to Juan C. DeMier in the sum of seventy-two thousand five hundred dollars, and for the interest thereon.

And this deponent saith, that the said Arms Company was not indebted to the said above named persons in any other sum or sums whatever, to the best of this deponent's knowledge and belief.

And this deponent, upon his said solemn oath and affirmation, doth further say, that the making of the agreement by and between the creditors of the said The Trenton Arms Company, whereby they agreed to receive stock in the New Jersey Arms and Ordnance Company in settlement of their respective claims, is rightfully and truthfully set forth in the above bill of complaint which he has read; and this deponent further saith, that the said agreement was urged upon the said creditors by the said Addison M. Burt, Juan C. DeMier and Oliver T. Burt, as is charged in the said bill, and was entered into, made and accepted by this deponent and the other creditors, upon the guarantee and explicit promise of the Directors of the said Arms Company, that its property should be entirely freed and discharged of and from all debts, claims and liabilities then existing, except the mortgage debt of forty-eight thousand dollars; and this deponent further saith, that the Directors of the New Jersey Arms and Ordnance Company are Addison M. Burt, Oliver T. Burt, Juan C. DeMier, William Johnson and Joseph G. Brearley.

And this deponent further saith, upon his said solemn affirmation, that Oliver T. Burt, one of the said Directors, informed him, the said deponent, soon after the organization of The New Jersey Arms and Ordnance Company, that the said company, or the Directors thereof, acting for and in

behalf of the said company, had assumed the payment of the private indebtedness of Addison M. Burt, amounting to about the sum of one hundred thousand dollars.

Affirmed and subscribed before me, this third day of November, A. D. 1864. } Joseph C. Potts.

JAMES S. AITKEN, Master in Chancery.

State of New Jersey, ss.—William H. Potts, alleging himself conscientiously scrupulous of taking an oath, and being solemnly affirmed, upon his solemn affirmation, doth depose and say, that he is the complainant in the foregoing bill of complaint—that the facts, matters and things therein set forth, so far as they relate to his own acts and deeds, are true, and so far as they relate to the acts and deeds of any other person or persons, he believes them to be true.

And the said deponent, upon his said solemn affirmation further saith, that he was a creditor of The Trenton Arms Company at the time of its being declared insolvent, as is set forth in said bill of complaint, and in the amount and the sum therein mentioned; that upon the express promise and guarantee of the Directors of the said Arms Company that the property of said company should be freed from and discharged of all debts, claims and liabilities whatsoever, save the mortgage debt of forty-eight thousand dollars, if the arrangement or agreement with the creditors as in said bill is set forth should be entered into, the said deponent did enter into and sign the said agreement, did receive from the Receiver of the said company certificates of stock in the said New Jersey Arms and Ordnance Company, and did give a receipt in full for all his claims against the said Arms Company up to the date of its insolvency, in pursuance of the terms of said agreement.

And this deponent, upon his said solemn affirmation, further saith, that having in this way become a stockholder in the said The New Jersey Arms and Ordnance Company, he did, as such, attend the annual meeting of said stockholders of the said company called by public advertisement by the officers of the said company, on the tenth day of October last past, and held at the office of the said company; that at said meet-

ing an election for Directors to serve during the ensuing year was held, according to law, at which election each stockholder was entitled to cast one vote and no more, for each share of stock held and owned by him ; that at said election Addison M. Burt for himself, and on his own behalf, cast two thousand two hundred and fifty votes, representing two thousand two hundred and fifty shares, being one vote for each share which he claimed to own ; that at the said election Oliver T. Burt for himself, and on his own behalf,

10 cast nine hundred and forty votes, representing nine hundred and forty shares, being one vote for each share which he claimed to own ; that Juan C. DeMier cast, at said election, one thousand two hundred and fifty votes, representing one thousand two hundred and fifty shares, being one vote for each share which he claimed to own ; that at said election William Johnson cast, on his own behalf, four hundred and forty-four votes, representing four hundred and forty-four shares, being one vote for each share which he claimed to own.

20 And this deponent, upon his said solemn affirmation, further saith, that the said Oliver T. Burt, at the said meeting, acknowledged that other shares of stock of said company other than those mentioned hereinbefore, had been issued to him, or to some other person or persons on his account ; and this deponent further saith, that Joseph G. Brearley, one of the Directors of the said The New Jersey Arms and Ordnance Company, informed and confessed to this deponent that the said Directors, mentioned in the above bill of complaint, to-wit : Addison M. Burt, Oliver T. Burt, Juan C. DeMier,

30 Joseph G. Brearley and William Johnson, in their capacity as Directors, and acting on behalf of the said The New Jersey Arms and Ordnance Company, had assumed the payment of the private indebtedness of Addison M. Burt and of the said Directors, which indebtedness has been incurred by the said Addison M. Burt in the transaction of his own private business, and that the said indebtedness amounted to nearly, if not more, than one hundred thousand dollars.

And this deponent further saith, upon his said solemn affirmation, that the said Joseph G. Brearley, one of the

40 aforesaid Directors of the said New Jersey Arms and Ord-

nance Company, informed this deponent that the said Directors of the said company had, by a formal resolution, adopted by them on the — day of October now last past, resolved to issue the bonds or obligations of the company to the number of one hundred and twenty-five, each bond or obligation being conditioned for the payment of the sum of one thousand dollars in — years after the date thereof with legal interest.

And this deponent further saith, that the said Joseph G. Brearley further informed him that the said bonds were to be secured by a mortgage to be made by the Directors of the said New Jersey Arms and Ordnance Company to him, the said Brearley, as Trustee, and was to cover the real estate of the said company.

And this deponent further saith, upon his solemn affirmation, that Oliver T. Burt, one of the said Directors, informed him lately that after the first day of January now next ensuing, the said Arms and Ordnance Company did not purpose to make any more arms under or by virtue of the contract or contracts which the said company had entered into with the Government of these United States, and that no money could be made by the said company under said contract or contracts.

And this deponent further saith, that he has been informed, and believes to be true, that the said company have discharged a large number of their hands, and have practically ceased to carry on their business.

Affirmed and subscribed, this }
3d day of November, A. D. 1864, } Wm. H. Potts.
before me.

WM. C. HOWELL, M. C. C. 30

IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. POTTS,
complainant,
and
The New Jersey Arms and
Ordnance Company, ADDI-
SON M. BURT and others,
defendants.

On bill, &c.

Amendment.

Insert on page twenty-eight, commencing at line nine, after the words "could not be carried on properly," the following paragraph :

"And your orator further shews unto your Honor, that he has been informed, and believes to be true, that certificates of stock in the said The New Jersey Arms and Ordnance Company, amounting in value to the sum of ninety thousand dollars or thereabouts, have been issued by the Directors of the said company, or with the assent and by the order of a majority of them, to Joseph C. Potts, for a good and valuable and *bona fide* consideration. And your orator believes and admits that the said shares were legally and properly issued to the said Joseph C. Potts, but learns, and believes it to be true, that certain of the Directors of the said company, that is to say, Addison M. Burt, Juan C. DeMier and Oliver T. Burt dispute the validity of the issuing of said shares, and charge that the said shares were issued without consideration.

And amend further, by inserting on page thirty-three, line three, after the words "Brearley," the words "Joseph C. Potts."

EDWARD T. GREEN,
Of counsel with complainant.

December 27, 1864.

IN CHANCERY OF NEW JERSEY.

The joint and several answer of Addison M. Burt, Oliver T. Burt, Juan C. DeMier, William Johnson, Joseph G. Brearley and the New Jersey Arms and Ordnance Company, defendants to the bill of complaint of William H. Potts, complainant.

These defendants, saving to themselves all manner of benefit and exception to the many errors and insufficiencies in the complainant's bill of complaint contained for answer thereunto or unto so much and such parts thereof as they are 10 advised is material for them to make answer unto, they answering say :

That they admit that the complainant was at the time of filing of said bill, and is now the owner of thirty-four shares of the capital stock of the aforesaid company, and that he was at the time of filing said bill a creditor of said defendant The New Jersey Arms and Ordnance Company, which owed him the sum of one hundred and seventy-two dollars and six cents, which sum has since that time been paid to him by said company, and accepted by him, and that said 20 company does not now owe him anything.

They admit that said Trenton Arms Company did, as stated in said bill, on or about the time therein stated, become insolvent and suspend business, and that a bill was filed against it in this court by Henry F. Cornett and Horatio R. Nightingale, and that such proceedings were thereupon had in said suit as in said bill stated.

That they admit that Frederick Kingman, the receiver appointed in said suit, entered on the duties of his office, and took possession of some of the property of said com-30 pany; but they deny that he ever had possession of the real estate of said company, which was in possession of this defendant, Addison M. Burt, of Norman Wiard, and of the Trenton Car Works, to each of which different parts of the same had been leased, and who each retained the possession of the part leased to each respectively until said receiver was discharged, he having brought an ejectment against this defendant, Addison M. Burt, for the part held by him.

That they admit that the act in said bill set forth, entitled "A supplement to the act entitled An act to incorporate The Trenton Arms Company," was passed and approved at the time and in the manner in said bill stated, and that the owners of a majority of the stock of said Trenton Arms Company assented to said act, and that the same thereupon went into effect in all its parts as in said bill stated.

They admit that the directors of said company were desirous that the claims against said company should be paid 10 and satisfied, and its property discharged from all liens, and that they proposed to the creditors of said company that they should accept in settlement of their claims the stock of the said The New Jersey Arms and Ordnance Company, at par, for the amount of their claims; but they deny that they, or any one, by their authority, promised, and guaranteed to said creditors (except so far as may be implied in the condition in the agreement of said creditors, set forth in said bill, dated April first, eighteen hundred and sixty-four), that the property of said company should be entirely freed from 20 debt, except certain mortgage bonds, as in said bill averred and stated.

They admit that said Trenton Arms Company were indebted to the complainant in the sum of three thousand four hundred and six dollars and fifty cents, as in said bill stated, and that he had filed his lien claim for about one thousand four hundred dollars of the same, as therein stated; but they deny that said claim was a lawful lien on said premises.

They admit that the agreement set forth in said bill, dated April first, eighteen hundred and sixty-four, was signed and 30 entered into, as therein stated; but these defendants, Addison M. Burt, Oliver T. Burt, and Juan C. DeMier, while they admit that they were desirous that said agreement should be entered into, deny that they, or either of them, urged or solicited the creditors of said company to enter into the same.

They deny that all the creditors of the company entered into said agreement, and say that Gabriel Leverick, Josiah Buzby, Fisher and Norris, William Robertson, and others, being at least forty in all, who were creditors of said com- 40 pany, did not sign or enter into said agreement, and that the

debts of the above named creditors who did not enter into said agreement were paid and satisfied by said company in cash.

That, at the time of entering into said agreement of April first, eighteen hundred and sixty-four, there were divers liens upon the property of said company, consisting of,

1. A mortgage to Joseph G. Brearley, as trustee, to secure fifty bonds, of one thousand dollars each, of which the forty-eight bonds, mentioned in said agreement, were part, the other two having been cancelled. 10

2. A mortgage given by the Trenton Locomotive and Machine Company, to Oliver T. Burt and Juan C. DeMier, on real estate and machinery, to secure ninety-two thousand dollars.

3. A judgment in favor of Joseph C. Potts, against The Trenton Locomotive and Machine Company, for thirty thousand dollars, or thereabouts.

4. A judgment in favor of George Barnes, against The Trenton Arms Company, for fifty-seven thousand seven hundred and ninety-nine dollars and fourteen cents. 20

5. A judgment in favor of Charles Palmer and John Fairbanks, against The Trenton Arms Company, for thirty-one thousand two hundred and forty-seven dollars and fifty-three cents.

6. A disputed Mechanic's Lien Claim of the complainant, for part of the above sum of three thousand four hundred and six dollars and fifty-nine cents.

7. A Mechanic's Lien Claim of J. M. Steward, for one thousand and ninety-nine dollars and nine-two cents.

That it was agreed and understood by said creditors, and 30 these defendants, at the time of entering into said agreement of April first, eighteen hundred and sixty-four, that said liens upon said property should be discharged and cancelled, except said mortgage to secure said forty-eight bonds of one thousand dollars each, which it was expressly agreed should remain upon said property, for the payment of said bonds; and these defendants deny that it was agreed, either by said written agreement or by any other agreement made by them, or either of them, that all other debts of the said

company should be paid, or that such is the fair and lawful construction of said written agreement.

They admit that the property of the said company was, as stated in said bill, discharged from the liens of all said claims, except said forty-eight bonds, and also from the custody of said receiver, and that certificates of the stock of the said New Jersey Arms and Ordnance Company were issued to said creditors, according to the terms of said agreement.

- 10 They admit that the complainant, upon the receipt of a certificate for thirty-four shares of said stock, discharged his lien claim, as in said bill stated; but they deny that he had any assurance of these defendants, or either of them, that the property of said company should be free from debts and claims, except such as is contained in said written agreement.

That the directors of said The New Jersey Arms and Ordnance Company, from its organization under that name, until July twenty-first, eighteen hundred and sixty-four, 20 were Addison M. Burt, Oliver T. Burt, Juan C. DeMier, Joseph G. Brearley and Joseph C. Potts; that Joseph C. Potts resigned on said last mentioned day, and upon the same day William Johnson was appointed in his place, and has, with the four other directors above named, continued such until now.

They admit that two thousand two hundred and fifty shares of the capital stock of the said company were issued to this defendant, Addison M. Burt, and that the same was done with the consent of said Addison M. Burt, Oliver T. 30 Burt, Juan C. DeMier, and Joseph C. Potts, four of the five directors of said company, at a meeting of said directors, regularly held, at Trenton, on the twenty-eighth day of June, eighteen hundred and sixty-four, at which, said four directors were present, and at which Joseph G. Brearley, the other director, was not present.

That the same was not done by connivance or any indirection, but by a direct vote of said directors, in which all concurred, and which was duly entered on the minutes of said company, expressing in said minutes the consideration of 40 said issue, which entry is of the tenor following: "Mr. A.

M. Burt proposed to sell, transfer and convey to the company all his right, title and interest, of, in and to all the real estate now occupied by him, as an armory, and being the premises situate at the corner of Broad street and Sandtown road, lately conveyed by the Trenton Locomotive Company to the said The Trenton Arms Company, and also, all the machinery, tools and other personal property therein and thereto belonging, with all the appurtenances, &c., for the sum of two hundred and twenty-five thousand dollars, in the capital stock of the company, at par, which was unanimously 10 accepted:

They deny that said stock was issued to said Addison M. Burt, without a consideration, or for the purpose of defrauding other stockholders of said company, and answering say, that this defendant, Addison M. Burt, by virtue of certain contracts and agreements before that time made, was in the possession of the premises on which the business which said company was to assume was to be carried on, with a large amount of machinery belonging thereto, and was entitled to hold the same for a time then unexpired, which right was of 20 great value to him and of greater value to said company, that said Addison also owned a large amount of machinery and tools for the manufacture of Springfield muskets, which tools and machinery were of very superior quality, and in all respects adapted to the manufacture of Springfield muskets, the arms then and now required by the Government in large quantities. That said machinery had cost said Addison, when procured by him, one hundred and twenty thousand dollars, and was in July last, owing to the greatly 30 increased cost of obtaining such articles, which had risen nearly three-fold, could not have been procured, as these defendants believe, for less than three hundred thousand dollars, and could not have been procured at all under some months, and which, owing to the great immediate demand for machinery fitted to make the Springfield musket, was worth to said Addison M. Burt, in the market and to said company about that sum, that this machinery and tools of said Addison M. Burt was encumbered by a mortgage to Oliver T. Burt and Juan C. DeMier for one hundred and twenty thousand dollars, the actual cost of the same which 40

they had advanced and was worth with said leases of land, shops and other machinery thereon, said sum of two hundred and twenty-five thousand dollars, and was the real and true consideration of the issue of said stock.

They admit that said company issued to this defendant, Juan C. DeMier, one thousand two hundred and fifty shares of their capital stock, and to Oliver T. Burt one thousand two hundred and fifty shares of their capital stock, and that they issued to this defendant, William Johnson, five shares
10 of said capital stock which was so issued in part payment of his salary as general agent of the said company, which was a fair consideration, and that they deny that said company issued to said Johnson four hundred and forty shares of said capital stock, and say that the residue of the shares now held by said Johnson, amounting to four hundred and forty-nine in all, were transferred to him by Oliver T. Burt out of the shares so issued to him.

They admit that said shares were issued to said Oliver T. Burt and Juan C. DeMier by the consent of Joseph C. Potts and
20 the defendants, except said William Johnson, openly given at a meeting of the directors of said company, held at Trenton on the eighth day of June, eighteen hundred and sixty-four, being the same meeting at which said twenty-two hundred and fifty shares were directed to be issued to said Addison M. Burt by the vote of the same four directors and entered upon the minutes of said directors, in which the consideration of the issue of said stock was in part set forth, which entry is of the tenor following: Mr. A. M. Burt moved that
30 two hundred and fifty thousand dollars of the stock of the company, at par, be issued to Messrs. O. T. Burt and J. C. DeMier, as a consideration for releasing and satisfying the several mortgages held by them, one against the real estate of the company, dated October 15, 1862, made by the Trenton Locomotive and Machine Manufacturing Company, for \$92,000 00, with arrears of interest, and one against the personal estate of the company, dated May 30, 1863, for \$12,000 00, with arrears of interest from date, which was unanimously agreed to.

That the mortgage for one hundred and twenty thousand
40 dollars, mentioned in said resolution, is the mortgage herein-

above mentioned, given by Addison M. Burt upon the machinery then belonging to him, and was in said resolution called a mortgage upon the personal estate of the company, the company agreeing, by a resolution at the same meeting, in accordance with a previous agreement, to purchase and take said property from Addison M. Burt.

And these defendants, Oliver T. Burt and Juan C. DeMier, for themselves answering, say that the sums of one hundred and twenty thousand dollars and ninety thousand dollars were due to them on said two mortgages, with interest 10 thereon from the dates thereof respectively, and that besides said sums, said company was indebted to them in a large amount for advances made by them to and for said company, and that said indebtedness, including the sums due on said two mortgages, did, on the twenty-eighth day of June last, amount to more than the sum of two hundred and fifty thousand dollars.

That said stock was issued to them to an amount less than said indebtedness, and that upon receiving said stock they surrendered and gave up said mortgages; and that this 20 indebtedness as to the complainant and the other creditors who, with him, took stock for their indebtedness under the agreement of April first, eighteen hundred and sixty-four, would be a full and fair consideration; although as between these defendants and Joseph C. Potts, other considerations, hereinafter stated, were received therefor, for which part of said stock was issued as hereinafter set forth.

And these defendants, further answering say, that they deny that shares of said stock were issued to said Oliver T. Burt and Juan C. DeMier at the rate of three shares for 30 every one hundred dollars of indebtedness, or at any other or greater rate than one share for every one hundred dollars of indebtedness, and were not issued in contravention of said agreement, or to defraud the other stockholders, or against good faith.

They deny that said company, or the other defendants, assumed any individual indebtedness of Addison M. Burt, fraudulently or without consideration, and answering say, that on the eighteenth day of November, eighteen hundred and sixty-three, the said Trenton Arms Company, bein-

barrassed, and from want of funds and credit, unable to continue the business of manufacturing Springfield muskets for the government, gave up said business to said Addison, to carry on the same on his own account, he using and accounting for all materials on hand, and that said Addison carried on said business and manufacture until the reorganization of said company, after said supplement to their charter, and that after said company were relieved from the injunction, and receiver and reorganized on the fourteenth day of July, 10 eighteen hundred and sixty-four, said Addison M. Burt agreed with said company to give over and transfer to them all the proceeds of the business carried on by him from the said eighteenth day of November, upon the said company, assuming all the costs incurred by him in carrying on said business, so that said company and said Addison would both be in the same position as if said company had never been embarrassed or ceased to carry on business, so far as that business was concerned, which arrangement was deemed by these defendants for the advantage of said company, and 20 therefore said debts of said Addison were to that extent assumed by said company by a resolution passed at a regular meeting of its directors, on the fourteenth day of July, eighteen hundred and sixty-four, which is of the tenor following:

“WHEREAS, Mr. A. M. Burt, since the 18th of November last, has continued in his individual name the business theretofore carried on under the names of the Trenton Locomotive and Machine Manufacturing Company, and The Trenton Arms Company, in the course of which business he 30 has purchased sundry materials, tools and machinery, and incurred sundry liabilities for the purposes of said business; AND WHEREAS, this company intend from the first of July, instant, to resume said business, taking the place of said Burt in respect to said business; therefore,

Resolved, That in consideration of the sale and transfer by said A. M. Burt to this company of all his stock of materials, fuel, machinery, tools and property of every kind, necessary and proper for carrying on said business, including all the proceeds of said business, this company assume and under- 40 take to discharge and hold the said Burt, harmless from all

contracts, obligations or liabilities of every kind or description, arising out of or incurred by him for the purposes of said business, and that the notes or other proper obligations of this company may be issued to secure the same or any part thereof, and that the account books and papers of said Burt be adopted as the account books and papers of this company, which was unanimously adopted."

That said assumption of indebtedness was not a wrong or fraud upon, or an injury to the complainant, or other of the stockholders of said company, but was done for their benefit, 10 and was a benefit to them, and without the surrender of the materials and partly *finished* arms and muskets then on hand, which had been purchased and manufactured by said Addison, said business could not have been resumed by said company with the slightest prospect of success.

They admit that the Trenton Locomotive and Machine Company did, on the first day of April, eighteen hundred and fifty-six, make and issue fifty-bonds, and execute and deliver to Joseph G. Brearley, as trustee, a mortgage to secure the same, as in said bill stated, and that the same was re- 20 corded as therein stated, and that it did on or about the first of January, eighteen hundred and sixty-three, convey said mortgaged lands to said Trenton Arms Company, subject to said mortgage, and that it transferred thirty-five of said bonds to these defendants, Oliver T. Burt and Juan C. Demier, as collateral security for the indebtedness of said Locomotive and Machine Company to them.

That said debts of the Locomotive and Machine Company were assumed by the Trenton Arms Company.

And these defendants, further answering say, that on the 30 twenty-second day of January, eighteen hundred and sixty-three, Joseph C. Potts owned one hundred and ninety-seven shares of the capital stock of the Trenton Arms Company, of five hundred dollars each; that Joseph P. Gill owned four shares of said stock; A. G. M. Provost owned ten shares; that Andrew W. Gayley owned sixty-eight shares, and Aaron H. Vaneleve owned one share, and the Trenton Locomotive and Machine Manufacturing Company owned twenty shares, being three hundred shares in the whole, and that on said day, in pursuance and execution of a previous agreement 40

made between them, said parties so holding said stock acting in concert, transferred to the defendants, Oliver T. Burt, Juan C. DeMier and Addison M. Burt, one hundred and fifty-one shares of said capital stock, being a majority of said shares, to be held in trust for the purpose of choosing directors and controlling said company, and that said three hundred shares belonged to said Potts, Provost, Gayley and Van Cleve, and said Manufacturing and Machine Company, who were in general associated and acted together in the affairs
10 of said company.

That said Potts also held a judgment against said Trenton Locomotive and Machine Manufacturing Company *company* for thirty thousand dollars, or thereabouts, which was a lien on the property of said Arms and Ordnance Company, and was a valid subsisting debt.

That on the twenty-eighth day of March, eighteen hundred and sixty-four, said Joseph C. Potts, acting for himself and his associates whom these defendants supposed and believe comprised said other share holders, entered into an
20 agreement with these defendants, Oliver T. Burt and Juan C. DeMier, in which he undertook that one thousand shares of the stock of said Arms and Ordnance Company should be set aside and devoted to the payment of the said forty-eight mortgage bonds, of which thirty-five were held by said DeMier and Oliver, and further agreed that he would endeavor to procure the other creditors of said Arms and Ordnance Company, except said two Burts and DeMier, to settle and give up their claims for seven hundred shares of said stock, and that he, the said Potts, thereby undertook for himself
30 and his associates, to receive one thousand shares of said stock, in full payment and liquidation of all their rights and claims in and to the property of said company, whether represented by stock or otherwise, so that all the property and stock of said company, except said twenty-seven hundred shares of its stock should be owned by said DeMier and Oliver; and the said Joseph C. Potts in said agreement further agreed with said DeMier and Oliver to cancel said judgment of thirty thousand dollars. That by said agreement between said Joseph C. Potts, and said DeMier and
40 Oliver, of March twenty-eighth, eighteen hundred and sixty-

four, and also by the agreement of the complainant and other creditors, of April first, eighteen hundred and sixty-four, it was expressly stipulated and provided that said forty-eight bonds were to be provided for and paid by one thousand shares of the stock reserved therefor, and were not to be paid and surrendered, as other debts of the company were paid by stock at its par value for the amount due on said bonds; and these defendants insist that although said bonds were held as collateral security for other debts of the company, it was lawful for said company and said Joseph C. 10 Potts, and his associate stockholders, with the consent and knowledge of the creditors who agreed to accept stock for their debts, to allow said bonds to remain outstanding in the hands of said DeMier and Oliver, and to provide for the payment of the same.

That the consideration of such agreement on the part of said DeMier and Oliver, was their surrender of claims secured by two good mortgages, for their par value in stock of said company, putting themselves on par with creditors at large whose claims were not secured by any valid lien. 20 That said Joseph C. Potts, and his associates, owing one hundred and fifty thousand dollars of stock in said company, and said judgment of thirty thousand dollars, had the right consistently with said agreement of April first, eighteen hundred and sixty-four, to dispose of one hundred and eighty thousand dollars of the stock of said company. That the agreement of said Potts for himself and his associates to accept stock of said company in full discharge of their claims as stockholders and otherwise, was consummated by their accepting one thousand and fifty shares of said stock in satisfaction thereof, of which nine hundred were issued to and accepted by said Joseph C. Potts; eighty to Aaron H. Van- 30 cleve, for his claim, and that of A. W. Gayley; fifty to the Mechanics and Manufactures Bank of Trenton, for the stock of A. G. M. Provost; and twenty to Joseph P. Gill; and that said Potts and his associates were then entitled as against the complainant and other creditors, who signed the agreement of April first, eighteen hundred and sixty-four, to transfer to said DeMier and Oliver, or any other persons the remaining seven hundred and fifty shares of said company 40

belonging to them, and to which they were entitled, and that said Joseph C. Potts and his associates were by said agreement of March twenty-eighth, eighteen hundred and sixty-four, bound to transfer to said DeMier and Oliver all their said remaining stock.

That these defendants, DeMier and Oliver, insist that under the provisions of said two agreements of March twenty-eighth and April first, eighteen hundred and sixty-four, which expressly provided stock to be set aside for the
 10 payment of said forty-eight bonds of more than their then par value, that said complainant and the other creditors who signed the agreement of April first, eighteen hundred and sixty-four, were not entitled to have said bonds, or the debts for which they were given, either directly or as a collateral security, surrendered and paid off in stock at its par value, but that the stock issued to them was to be issued subject to the lien of these bonds on the property of the company, and that the said DeMier and Oliver were entitled to retain
 20 them, to the amount of said bonds, and that said bonds were retained and intended to be retained by these defendants, DeMier and Oliver, as their own property under and by virtue of the arrangement and agreement of March twenty-eighth, eighteen hundred and sixty-four, by which they were entitled to receive seventy-five thousand dollars of the stock transferred to them, as part of the stock and interest of said Joseph C. Potts and his associates in said company, thus leaving debts to the amount of these thirty-five bonds due to said DeMier and Oliver. They admit that the said direc-
 30 tors of the said Arms and Ordnance Company intended to issue bonds to the amount of one hundred and twenty-five thousand dollars, secured by a mortgage upon the property of said company, and to give thirty-five of said bonds in exchange for said thirty-five bonds held by said DeMier and Oliver, thirty-three of which bonds are now held by the Trenton Banking Company and the Mechanics and Manufacturers Bank at Trenton, as collateral security for debts for which they were pledged by said DeMier and Oliver.

That these defendants, Oliver T. Burt and Juan C. DeMier, 40 deny that to their knowledge or belief they or either of them

have in any way made themselves personally liable to pay the indebtedness of said Addison M. Burt, assumed by said company, except for so much thereof as is secured by notes or bills drawn, endorsed or accepted by them.

And these defendants deny that said Oliver T. Burt has used any part of the stock of said Arms and Ordnance Company to pay his individual indebtedness, or for any purpose whatever, except the twelve hundred and fifty shares so issued to him as aforesaid.

These defendants admit that certificates of stock of said 10 company to the amount of seven hundred and forty-two thousand eight hundred dollars, or for seven thousand four hundred and twenty-eight shares, have been issued by them; but they deny that any larger amount or greater number has been issued. That the same were issued as follows: To the complainant, and the other creditors who signed said agreement of April first, eighteen hundred and sixty-four, one thousand five hundred and sixty-four shares were issued, being the number to which they were entitled according to said agreement. To Joseph C. Potts and his 20 associates, as above named and enumerated, one thousand and fifty shares were issued; to Addison M. Burt, two thousand two hundred and fifty shares were issued as above stated; to Juan C. DeMier, twelve hundred and fifty shares were issued; to Oliver T. Burt, twelve hundred and fifty shares; to Frederick Kingman, fifty shares; to William Johnson five shares, and to Addison M. Burt five other shares, which last mentioned sixty shares were issued to said persons in payment of services done by them respectively 30 for said company, for which these defendants thought said shares proper and adequate remuneration.

And they further say, that nineteen of the shares which were as above stated, issued to the creditors who signed said agreement were afterwards redeemed and taken up—the company and the claims of the creditors to whom they were issued were paid and satisfied by the company; and that two others of said shares, being found to have been erroneously issued, were recalled by the company with the consent of the creditor to whom they were issued, and who then

held the same. And afterwards twenty-five shares were issued to other creditors who had not signed said agreement, the same being so issued to and accepted by them in settlement of their claims. And that the whole number of shares so as aforesaid issued by said company (not including the shares so as aforesaid redeemed or recalled) amount in the whole to seven thousand four hundred and twenty-eight shares.

And they deny that any of said stock has been issued fraudulently, or without consideration, or that the same has
10 been taken by any of said directors for less than its par value.

And these defendants deny that said defendant, The New Jersey Arms and Ordnance Company is insolvent, or that it has not funds to carry on its ordinary business, or that it is carrying on its business at a great pecuniary loss to its stockholders. And they say that whatever may be the result of its operations for one year, the business which it is now carrying on is the finishing and making up into muskets
20 now on hand, and which are of great value, and have been bought and made at great cost, and which will be almost wholly sacrificed and lost if they are not completed and made into muskets, or disposed of to advantage, and with care and prudence to the Government of the United States, or persons who want them for that purpose.

That these defendants believe that unless their business is arrested by an injunction, or some such interference therewith, or be placed in the hands of a receiver, or other such officer, that the property of said company, if prudently and
30 carefully worked up and disposed of, will pay all their debts and leave an amount equal to nearly or quite fifty per cent. of the par value of the stock, to be divided among the stockholders.

And these defendants, Oliver T. Burt, Juan C. DeMier, Addison M. Burt, Joseph G. Brearley and William Johnson, deny that they are carrying on or operating the business of said Arms and Ordnance Company to their own advantage, benefit or profit, or that they are for their own personal benefit encumbering said property, or doing any other thing

relating thereto, except so far as they may derive personal benefit therefrom as stockholders in common with all other stockholders.

These defendants deny that said Arms and Ordnance Company has been carrying on its business since its organization at a pecuniary loss. They deny that it has abandoned the contracts under which it was manufacturing muskets, but they admit that the Government has refused to extend the time for the performance of the contracts with it, beyond the thirty-first day of December, eighteen hundred and sixty-10 four, and that after that time their work under such contracts will cease, and they admit that in consequence thereof it has discharged some workmen and ceased buying new material, and is now engaged only in finishing such muskets as can be finished from material on hand and partly finished, of which it has a large amount, far greater than can be made up by the thirty-first of December, instant.

And this defendant, Addison M. Burt, answering says, that when said Trenton Arms Company were declared insolvent, they owed to him over thirty thousand dollars, and that it so 20 appears by the affidavit of Joseph C. Potts, annexed to the bill of Cornett and Nightingale in their original suit in this Court, and he denies that the same, or any part thereof, was paid by the proceeds of sale made by him between the eighteenth of November, eighteen hundred and sixty-three, and the issuing of the injunction in said suit, or at any other time, but answering, says, that all the proceeds of such sales made by him were applied to carrying on the business at said works, and the whole proceeds and results of said business were fully and honestly transferred to said 30 company on its resumption of business, and no part thereof was retained by this defendant, or appropriated to his use.

And the said defendant, Addison M. Burt, answering for himself, says, that it is not true, as in the complainant's bill is alleged, that this defendant recently, before the filing of said bill openly expressed his intent to leave said concern within a very short time, giving as a reason therefor, that the company were so greatly insolvent that its business could not be carried on properly.

And this defendant expressly says, that he never did, at any time, make use of any such expression, nor any other of like purport and effect. But this defendant says that the aforesaid contract with the Government for the manufacture of said muskets will expire on the thirty-first day of December, A. D. 1864, and he may have used, and thinks it probable he did say, before the filing of said bill, that as said contract was to expire at that time, this defendant would therefore have no connection with said business after the
 10 first day of January next. And these defendants deny all manner of unlawful combination and confederacy wherewith they are, by the said bill charged, without this that there is any other matter, cause or thing in the said complainants said bill of complaint, contained material for these defendant's to make answer unto, and not herein and hereby, well and sufficiently answered, confessed, traversed and avoided, or denied is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to ever maintain and prove as this Honorable Court
 20 shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

A. O. ZABRISKIE & SON, Solicitors.

A. O. ZABRISKIE, of Counsel with Def'ts.

State of New Jersey, ss.—Addison M. Burt, Joseph Brearley, and William Johnson, three of the defendant named in the above answer, being duly and severally sworn each for himself, on his oath saith, that the facts, statements
 30 matters and things set forth in the above answer, are true so far as they relate to his own acts, or to facts within his own knowledge, and so far as they relate to other facts and matters he believes them to be true—and each for himself says that the said The New Jersey Arms and Ordnance Company is not to his knowledge or belief insolvent, or unable to carry on its ordinary business for want of funds, but on the contrary, that the property of said company is ample to pay its debts, and with proper management, to pay a large dividend to each of the stockholders on his share of the

stock, and said company are going on with their business,
in said answer stated.

Sworn to and subscribed, this }
15th day of December, A. D. } A. M. Burt,
1864, before me, by said Addi- } Wm. Johnson,
son M. Burt, William Johnson, } Jos. G. Brearley.
and Joseph G. Brearley. }

ISAAC W. LANNING,
Master in Chancery of New Jersey.

The above answer is hereby given under and attested by 10
the common seal of The New Jersey Arms and Ordnance
Company, hereto affixed by the order of the said company,
and with the name of their President.

Done December 15th, A. D. }
[L. s.] 1864, at Trenton, in } A. M. Burt, Pres't.
presence of }

ISAAC W. LANNING,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

The answer of Joseph C. Potts, one of the defendants, to the bill of complaint of William H. Potts, complainant.

This defendant, saving to himself all manner of benefit and exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much, and such parts thereof as he is advised is material for him to make answer unto, he answers and says, that he admits, that the complainant at the time
10 of filing his bill owned, and still owns thirty-four shares of the capital stock of The New Jersey Arms and Ordnance Company, and that at the time of filing said bill he was a creditor of the said company, as he has in that behalf alleged.

He admits that The Trenton Arms Company, as in said bill stated, did, on or about the time therein mentioned, become insolvent, and suspend business, and that upon a bill filed against it, in this court, by Henry F. Cornett and Horatio R. Nightingale, such proceedings were had, as in
20 said bill stated.

That Frederick Kingman, the receiver appointed in said suit, entered on the duties of his office, and took possession of the property and assets of said company.

That the act in said bill recited, entitled "A supplement to the act entitled An act to incorporate The Trenton Arms Company," was passed and approved as in said bill set forth, and that the owners of a majority of the stock of said Trenton Arms Company assented to said act, whereupon the same went into effect.

30 That the directors of said company were desirous that the claims against said company should be paid and satisfied, and its property discharged from lien, and that they proposed to the creditors of said company that they should accept in settlement of their claims the stock of the New Jersey Arms and Ordnance Company, upon the terms specified in the complainant's bill.

That the said The Trenton Arms Company was indebted to the complainant in the sum of thirty-four hundred and

six dollars and fifty cents, and that he had filed his lien claim for a portion thereof, as in said bill is stated.

That the agreement of April the first, eighteen hundred and sixty-four, was signed and entered into as in said bill stated, by the procurement of Addison M. Burt, Oliver T. Burt, and Juan C. DeMier.

That the spirit and intention of the last mentioned agreement was, that the liens upon the property of the said company should be discharged, and all other debts of the company be liquidated, and that such is the fair construction of 10 said agreement.

That the property of the said company was discharged from the custody of the said receiver, and also from all liens upon it, except forty-eight bonds of one thousand dollars each, secured by the first mortgage upon their premises, and that certificates of the stock of The New Jersey Arms and Ordnance Company were issued to the creditors for their claims.

That the complainant discharged his lien claim, as in his bill stated, upon receiving a certificate for thirty-four shares 20 of the said stock.

That the directors of said The New Jersey Arms and Ordnance Company, from its organization under that name until the twenty-first day of July, eighteen hundred and sixty-four, were Addison M. Burt, Oliver T. Burt, Juan C. DeMier, Joseph G. Brearley, and this defendant. That upon the day last mentioned this defendant resigned, and on the same day William Johnson was appointed in his place, and has, with the four first named, continued such until the present time. 30

That two thousand two hundred and fifty shares of the capital stock of the said New Jersey Arms and Ordnance Company were issued to the defendant, Addison M. Burt, but insists that the same was done without consideration, and that it is void.

And this defendant says, that at the time of entering into said agreement of April first, eighteen hundred and sixty-four, the only liens outstanding upon the property of said Arms Company, were the following:

1. A mortgage given by The Trenton Locomotive and 40

Machine Manufacturing Company to Joseph G. Brearley, trustee, to secure fifty bonds of one thousand dollars each, of which the forty-eight bonds before mentioned were part, the other two having been cancelled.

2. A mortgage bearing date October the fifteenth, eighteen hundred and sixty-two, given by The Trenton Locomotive and Machine Manufacturing Company to said O. T. Burt and J. C. DeMier, on their real estate and machinery, to secure ninety-two thousand dollars.

10 3. A judgment in favor of this defendant against said Locomotive Company, for twenty-nine thousand nine hundred and forty-two dollars and sixty-two cents, obtained May twenty-third, eighteen hundred and sixty-one.

4. A judgment in favor of George Barnes, against The Trenton Arms Company, for fifty-seven thousand seven hundred and ninety-nine dollars and fourteen cents.

5. A judgment in favor of Charles Palmer and John Fairbanks, against The Trenton Arms Company, for thirty-one thousand two hundred and forty-seven dollars and fifty-three
20 cents.

6. A mechanic's lien claim, filed by the complainant, as aforesaid.

7. A mechanic's lien claim of J. M. Steward, for one thousand and ninety-nine dollars and ninety-two cents.

8. A chattel mortgage executed by the said A. M. Burt to the said O. T. Burt and J. C. DeMier, for one hundred and twenty thousand dollars, upon certain machinery purchased as hereinafter mentioned, for said Locomotive Company.

That on the thirteenth day of January, eighteen hundred
30 and sixty-two, the said A. M. Burt made a contract with the said The Trenton Locomotive and Machine Manufacturing Company, for the manufacture of certain muskets, and that in order to enable the said company to perform said contract, the said A. M. Burt agreed to raise sixty-thousand dollars for said company, on its notes, endorsed by this defendant and Aaron H. Vancleve, to purchase machinery adapted to the manufacture of muskets; and that subsequently the said A. M. Burt agreed to raise an additional sixty thousand dollars, upon the notes of said company, endorsed as aforesaid,
40 for the purpose of purchasing other machinery, the title to

all which machinery was to be put in said A. M. Burt, until the said notes were paid. That in pursuance of said agreements, the said A. H. Vancleve and this defendant sometimes drew their own notes for the accommodation of the said company, and sometimes the notes of the said company, endorsed from time to time by said Vancleve and this defendant, to the amount of one hundred and twenty thousand dollars, which notes the said A. M. Burt procured to be discounted by the said O. T. Burt and J. C. DeMier. That as collateral security for the payment of said notes, and the interest 10 which had accrued thereon, the said company subsequently passed to said O. T. Burt and J. C. DeMier, thirty-five of the aforesaid forty-eight mortgage bonds, which they still hold, and also executed to them the aforesaid mortgage for ninety-two thousand dollars.

That at the time of executing the aforesaid contract for the manufacture of muskets, this defendant assigned to the said A. M. Burt, his aforesaid judgment against said Locomotive Company, as collateral security for the payment of the said loan of sixty thousand dollars, which the said A. M. 20 Burt was to procure for said company as aforesaid, which judgment has not as yet been reassigned by said A. M. Burt to this defendant.

That with the proceeds of said notes, amounting to one hundred and twenty thousand dollars, less the discount, the said A. M. Burt, through the said A. H. Vancleve and this defendant as his agents, purchased machinery for manufacturing muskets, and placed it in the buildings of the said company, holding the title thereto in himself until the said notes were paid, when the title to such machinery was to 30 pass at once to said company.

That subsequently the said A. M. Burt executed a mortgage on the machinery so purchased, to the said O. T. Burt and J. C. DeMier, for the sum of one hundred and twenty thousand dollars, as collateral security for the aforesaid notes given to purchase the same machinery, or notes given in renewal of the original notes, which is the same mortgage before mentioned.

That at the time of the execution of said last mentioned mortgage, the whole indebtedness of the said Locomotive 40

Company, and of the said Arms Company, to said O. T. Burt and J. C. DeMier (except what is hereinafter specified), was the sum of one hundred and twenty thousand dollars, with such interest as may have accrued thereon, that they had no other claim whatever against either of said companies, and that as security for the payment of said sum of one hundred and twenty thousand dollars, the said O. T. Burt and J. C. DeMier held the following securities:

1. The aforesaid thirty-five bonds for one thousand dollars
10 each.

2. The said mortgage for ninety-two thousand dollars.

3. The said chattel mortgage, executed by A. M. Burt, for one hundred and twenty thousand dollars.

And the said A. M. Burt, to whom the said companies were not indebted in any amount, held the assignment of the aforesaid judgment as collateral security as aforesaid.

That the payment and satisfaction of said sum of one hundred and twenty thousand dollars, with such interest as may have accrued thereon, will discharge the entire claim for
20 which the four last mentioned securities were held, and upon the satisfaction of said last mentioned sum, with interest, the said The Trenton Locomotive and Machine Manufacturing Company is entitled to have the said thirty-five bonds redelivered to them, this defendant is entitled to a reassignment of his said judgment, and The New Jersey Arms and Ordnance Company is entitled to have the two last mentioned mortgages delivered up to be cancelled, and to be vested with the full and clear title to the machinery in said chattel mortgage mentioned.

30 And this defendant further says, that on the fourth day of September, eighteen hundred and sixty-two, the said A. M. Burt agreed to procure for the said Locomotive Company, a further loan of twenty-five thousand dollars upon the promissory notes of said Vancleve and this defendant, in consideration whereof the said company were to allow said A. M. Burt twenty cents per musket on forty-five thousand muskets, made or to be made by them; that in pursuance of said agreement the said A. M. Burt did procure the sum of
40 twenty-five thousand dollars for said company, upon the notes of this defendant and said Vancleve, from the said O.

T. Burt and J. C. DeMier; that the last mentioned notes of said Vancleve and this defendant were drawn for the accommodation of said company, that said Vancleve and this defendant received no consideration for them, and that the said sum of twenty-five thousand dollars raised upon them was applied by said company in the manufacture of muskets, that said notes have not been paid, and that it is now the debt of The New Jersey Arms and Ordnance Company.

That on the twenty-sixth day of December, eighteen hundred and sixty-two, the said O. T. Burt, J. C. DeMier, and 10 A. M. Burt, agreed to advance to The Trenton Arms Company the sum of fifty thousand dollars, to enable said company to prosecute their business of manufacturing muskets, and in pursuance of such agreement the said O. T. Burt and J. C. DeMier advanced the said sum of fifty thousand dollars to said Arms Company, and subsequently the said A. M. Burt, as president of said Arms Company, gave the notes of the said Company for this same fifty thousand dollars, to said O. T. Burt and J. C. DeMier, who endorsed them over to George Barnes, cashier of The Central Bank, at Syracuse, 20 of which bank the said O. T. Burt then was and still is the president, and that the aforesaid judgment of George Barnes was afterwards recovered upon the same notes last mentioned.

That on or about the twelfth day of June, eighteen hundred and sixty two, the said A. M. Burt agreed to procure for said Locomotive Company, upon their notes, endorsed by said Vancleve and this defendant, the further sum of twenty thousand dollars, and that said A. M. Burt afterwards procured such notes to the amount of twenty thousand dollars, 30 to be discounted by Palmer & Fairbanks; that said A. M. Burt, afterwards, as president of The Trenton Arms Company, gave the notes of the said Arms Company in renewal of the last above mentioned notes, and that said Palmer & Fairbanks, who had no other or greater claim against said Arms Company or against said Locomotive Company than the said twenty thousand dollars with lawful interest, by the aid and fraudulent contrivance of said A. M. Burt, O. T. Burt and J. C. DeMier or one of them, obtained the aforesaid judgment against the said Arms Company for thirty-one thou-40

sand two hundred and forty-seven dollars and fifty-three cents.

That all the aforesaid transactions of the said A. M. Burt with the said Locomotive Company and with the said Arms Company, and with said A. H. Vancleve, and this defendant, were made and had by the said A. M. Burt, in connection with, under the direction of, and for the said O. T. Burt and J. C. DeMier, who were fully cognizant of the details thereof, before and at the time of making the same.

10 That the said Arms Company, at the time of the issue of said twenty-two hundred and fifty shares of stock to said A. M. Burt, was not justly indebted to him to the amount of one dollar, as this defendant believes, and that he had no valid interest whatever in any of the property, real or personal, of said company (except the title of the machinery, which was purchased as aforesaid with the said one hundred and twenty thousand dollars, which title remained in him only so long as the said sum of one hundred and twenty thousand dollars was unpaid, and upon the payment of said
20 sum would at once pass to said Arms Company, without further payment or other consideration), and that he had no title to any other machinery whatever, in the buildings or upon the premises of the said company, as this deponent believes.

That on or about the eighteenth day of November, eighteen hundred and sixty-three, this defendant was informed that there would be a meeting of the directors of said Arms Company on that day, but the purpose and object of such meeting was not specified or intimated to this defendant.

30 That this defendant attended said meeting, at which all the other directors were present, and, much to his surprise, the said O. T. Burt stated that it was apparent that the said company could not proceed in the prosecution of its business for want of funds, and thereupon the said A. M. Burt offered at said meeting the following resolutions, which had been prepared by said O. T. Burt, J. C. DeMier, and A. M. Burt, or one of them, before the meeting was called to order, to wit:

1. *Resolved*, That the possession of all the muskets, ma-
40 chinery, tools and fixtures, with the shops, premises, engines,

boilers, powder, and appliances used or necessary to be used, for the musket business, be surrendered to said A. M. Burt, according to the terms and conditions of the said first mentioned agreement, recited in the preamble hereto, said surrender to take effect immediately.

2. *Resolved*, That all the muskets, machinery, tools, fixtures, and appurtenances, together with the steam engines, power and appliances to use the same, be let and rented to said A. M. Burt, for such term as may be required for the completion of the fifty thousand muskets contracted for with 10 the Government, and that the rent thereof be at the rate of twenty-four thousand dollars per year for the time he shall so occupy and use the same, to be paid at the end of each six months from this date.

That said resolutions were adopted by the votes of said O. T. Burt, J. C. DeMier and A. M. Burt, the said Joseph G. Brearley and this defendant protesting and voting against the same.

That by virtue of said resolutions, the said A. M. Burt took possession, on that day, of the property of said com- 20 pany, both real and personal; that at that time the said company had material for muskets in every stage of manufacture, to the value, at current market rates, of about one hundred and forty thousand dollars, all of which the said A. M. Burt took into his possession, and applied to the making of muskets, until he was enjoined in January, eighteen hundred and sixty-four, and a receiver was appointed.

That said A. M. Burt carried on the business of manufacturing muskets, in the shops of said company, until July the 30 fourteenth, eighteen hundred and sixty-four, during which time, he involved himself in debt, as this deponent is credibly informed and believes, to an amount exceeding one hundred thousand dollars.

That on the said fourteenth day of July the said O. T. Burt, J. C. DeMier, and A. M. Burt, who constituted a majority of the board of directors of said Arms Company passed a resolution by their votes, that the said company should assume all the contracts, obligations or liabilities of every kind, arising out of, or incurred by said A. M. Burt, in the prosecution of the said business, and thereupon, the said 40

A. M. Burt surrendered the said real and personal estate to the said company.

That the said A. M. Burt paid no rent to said company for the time he occupied and possessed their property, he made no schedule of the liabilities which he had incurred in the prosecution of the said business, and which the said directors undertook to assume by said resolution; nor did he make any exhibit of the purchases and sales which he had made during the said time that he carried on said business in his
 10 own name, and that upon a true statement and account of said A. M. Burt's said transactions, it would be apparent, that said last mentioned resolution involved the said company in a loss of many thousands of dollars, and was a fraud upon said company.

And this defendant admits that the aforesaid assumption of the individual indebtedness of said A. M. Burt, incurred by him in prosecuting his own private business, was without consideration, that it was assumed by the three last named directors, for the purpose of subserving their own private in-
 20 terests, and of defrauding the other shareholders and creditors of said company.

And this defendant admits that there was no consideration whatever for the issue of the said twenty-two hundred and fifty shares of stock to said A. M. Burt, that such issue is void, that he is not entitled to a single share of said stock, and, upon a fair and just settlement, he would be largely indebted to said company.

That The New Jersey Arms and Ordnance Company issued to said Juan C. DeDier one thousand two hundred and fifty
 30 shares of their stock, and to said O. T. Burt the same number of shares, and that such issue was at a greater rate than one share for every one hundred dollars of indebtedness of said company to them.

That the only just claims which the said O. T. Burt and J. C. DeMier, or either of them, had against said company, were the aforesaid sum of one hundred and twenty thousand dollars, for which they held the several securities before mentioned, the aforesaid sum of twenty-five thousand dol-
 40 lars loaned on or about the fourth day of September, eighteen hundred and sixty-two, with lawful interest thereon,

together with some advances of inconsiderable amount, made by them, or one of them, after the discharge of the receiver, which advances they do not take in stock, but have been, or are to be paid in cash.

That said C. T. Burt and J. C. DeMier, were entitled to stock, at par value, to the amount of one hundred and forty-five thousand dollars, with lawful interest thereon, and no more, and that upon the issue thereof to them, the aforesaid thirty-five bonds should have been restored to The Trenton Locomotive and Machine Manufacturing Company, the afore-10 said judgment reassigned to said Joseph C. Potts, the mortgages for ninety-two thousand dollars, and one hundred and twenty thousand dollars, respectively, delivered to said Arms and Ordnance Company to be cancelled, and the title to all the machinery mentioned in said chattel mortgage of one hundred and twenty thousand dollars, vested in said company unincumbered.

He admits, that The Trenton Locomotive and Machine Manufacturing Company did, on the first day of April, eighteen hundred and fifty-six, issue fifty bonds of one thousand 20 dollars each, and execute and deliver to Joseph G. Brearley, as trustee, a mortgage to secure the same, as in said bill is stated, and that on or about the twenty-eighth day of January, eighteen hundred and sixty-three, conveyed the mortgaged premises to The Trenton Arms Company.

That the last named conveyance was made and executed in pursuance of an agreement in writing made by and between the said Locomotive Company, Aaron H. Vancleve, and this defendant, and said A. M. Burt, J. C. DeMier and O. T. Burt, bearing date December the twenty-eighth, eighteen 30 hundred and sixty-two, in and by which it was among other things agreed, that Aaron H. Vancleve, A. G. M. Prevost, Joseph P. Gill, Andrew W. Gayley, and this defendant, should become the owners, each of the same number of shares, in The Trenton Arms Company, that they then severally owned in the said Locomotive Company, and that they should transfer a majority of said shares to the said A. M. Burt, J. C. DeMier and O. T. Burt, to be held by them, in trust, for the purpose of electing as directors of said Arms Company, the said A. M. Burt, J. C. DeMier, O. T. Burt, Joseph G. 40

Brearley, and this defendant, and for the further purpose of voting at any lawful stockholders meeting of said company, and of doing all acts which stockholders could lawfully do, with the express provision that said stock was to be returned without charge, and unincumbered, to the parties so transferring the same, upon the complete performance of said agreement, to wit, when the contracts with the government, and all matters arising out of the same should be closed.

That at the time of making the last mentioned agreement, 10 this defendant was the lawful owner of one hundred and ninety seven shares of the capital stock of The Trenton Locomotive and Machine Manufacturing Company, of the par value of five hundred dollars per share, and upon the said conveyance by said Locomotive to said Arms Company, this defendant became and was the owner of one hundred and ninety-seven shares of the capital stock of the said Arms Company, of the par value of five hundred dollars per share; Joseph P. Gill became the owner of four shares; A. G. M. Prevost of ten shares; Andrew W. Gayley of sixty-eight 20 shares; Aaron H. Vancleve of one share; and the said Locomotive Company of twenty shares, being three hundred shares in all, and that in pursuance of the last mentioned agreement, and for the purposes therein specified, and for no other purpose whatever, the said parties so owning said stock, acting in concert, transferred to the said O. T. Burt, J. C. DeMier and A. M. Burt, in trust, one hundred and fifty-one shares of said capital stock, being a majority of said shares.

That neither the said O. T. Burt, J. C. Demier, or A. M. 30 Burt, has, as this deponent believes, ever owned a single share of the capital stock, either of said Locomotive or of the said Arms Company, except in trust, as above stated.

That this defendant, upon the satisfaction of the aforesaid claim of O. T. Burt and J. C. DeMier, for one hundred and twenty thousand dollars, was entitled to have a reassignment of his aforesaid judgment against the Locomotive Company, and to hold it as a valid incumbrance against the property of the Arms Company, and that before and at the time of the acceptance by the owners of a majority of the 40 stock of The Trenton Arms Company, of the said act enti-

tled "A supplement to the act entitled An act to incorporate The Trenton Arms Company," this defendant was entitled to have his said one hundred and ninety-seven shares of the capital stock of said Arms Company returned to him unincumbered, by said O. T. Burt, J. C. DeMier and A. M. Burt, and to hold the same in his own right as valid stock.

That on the twenty-eighth day of March, eighteen hundred and sixty-four, this defendant entered into an agreement with the said O. T. Burt, J. C. DeMier and A. M. Burt, in which it was stipulated, that one thousand shares of the 10 capital stock of The Trenton Arms and Ordnance Company, of the par value of one hundred dollars per share, should be set aside, and constitute a fund to pay off and discharge the aforesaid mortgage for fifty thousand dollars, executed to said Joseph G. Brearley, as trustee.

That this defendant should make an effort to settle the claims of all the creditors of said company, except those of said O. T. Burt, J. C. DeMier, A. M. Burt, George Barnes and Fairbanks & Palmer, for seven hundred shares of the capital stock of said company. 20

That the said mortgage for one hundred and twenty thousand dollars should be cancelled, and the machinery, &c., thereby encumbered, returned unincumbered to said company.

That the said mortgage for ninety-two thousand dollars should be cancelled.

That the judgments of George Barnes, and of Palmer & Fairbanks, should be satisfied of record.

That said O. T. Burt and J. C. DeMier, should surrender up, to be cancelled, all notes or obligations theretofore made 30 by A. H. Vancleve, or this defendant, or the said Locomotive Company, and endorsed by either, or both of them.

That the said Arms Company should be left entirely clear of debt.

That this defendant, and his associates, should receive one thousand shares of the capital stock of said Arms and Ordnance Company, in full payment and liquidation of all their rights and claims in and to the property of said company, whether represented by stock or otherwise, and that the aforesaid judgment of this defendant should be cancelled. 40

And this defendant says, that at the time of making said last mentioned agreement The Hunterdon County Bank held twelve of the aforesaid bonds, secured by said mortgage, for fifty thousand dollars, as collateral security for the payment of certain notes held by said bank against said Locomotive Company, and that according to the spirit and fair construction of said last mentioned agreement, the said O. T. Burt and J. C. DeMier, were to pay and satisfy said bank claim, and to take stock of the said Arms and Ordnance Company for
 10 all their claims against said company, including said bank claim.

And this defendant further says, that he was ready and desirous to make an effort to settle with said creditors for said seven hundred shares of stock, set apart as aforesaid for that purpose, but the said stock was never placed in the hands of this defendant for that purpose, and after this defendant had called upon a number of said creditors, for the purpose of effecting said object, the said A. M. Burt, J. C. DeMier and O. T. Burt, without the knowledge of the de-
 20 fendant, gave Frederick Kingman, the aforesaid receiver, fifty shares of the stock of said company, if he would effect such settlement with said creditors, and this defendant being afterwards apprised thereof, took no further action in the premises, except to aid Mr. Kingman so far as he could.

And this defendant further says, that he was ready and willing to take the aforesaid one thousand shares of stock, for himself and his associates, but the said A. M. Burt, J. C. DeMier and O. T. Burt, who controlled the issue of said stock, refused to issue said one thousand shares to this de-
 30 fendant, and subsequently agreed that if this defendant would take nine hundred shares for his own interest, they would settle directly with this defendant's associates, and that they would also issue to The Mechanics' and Manufacturers' Bank of Trenton, which held Prevost's stock in the Arms Company as collateral security, fifty shares of the stock of said Arms and Ordnance Company.

That thereupon nine hundred shares of said stock, of the par value of one hundred dollars per share, were issued to this defendant, who is justly entitled to more than that num-
 40 ber of shares.

That said O. T. Burt and J. C. DeMier, in making settlement with said Vancleve, agreed to issue, and did issue, eighty shares to him for his interest.

And this defendant further says, that when the said A. M. Burt took possession of the property of said Arms Company, under the afore-said resolution passed by himself, said J. C. DeMier and O. T. Burt, it was for the benefit and advantage of said J. C. DeMier and O. T. Burt, that it was their joint act, and for their joint benefit, and they all became liable to said Arms Company for the stock to the value 10 of about one hundred and forty thousand dollars, taken as afore-said by said A. M. Burt, into his possession, and that they must be held to account to said Arms and Ordnance Company for the value of said stock, less such part thereof as was subsequently restored to the company.

That the said J. C. DeMier and O. T. Burt became and are liable with the said A. M. Burt, to pay to said Arms Company, rent, at the rate of twenty-four thousand dollars per annum, for the use of the premises and machinery of said company, by the said A. M. Burt, from the eighteenth day 20 of November, eighteen hundred and sixty-three, to the fourteenth day of July, eighteen hundred and sixty-four, and that they are also liable to said company, for a fair rent, for that portion of the premises of said company used by Norman Wiard during the same period.

That the said O. T. Burt and J. C. DeMier, are liable to said Arms and Ordnance Company for all damages which said company has sustained by the aforesaid unwarrantable assumption of A. M. Burt's debts, and also for all monies they have paid or permitted to be paid out of the funds of 30 said company to liquidate the individual debts of said A. M. Burt.

And this defendant further says, that the said O. T. Burt, J. C. DeMier and A. M. Burt, are all non-residents in this State, that they have no property or effects of any kind in this State, other than their shares of stock in The Trenton Arms and Ordnance Company, as this defendant believes, and this defendant therefore respectfully insists that the liabilities of the said O. T. Burt, J. C. DeMier and A. M. Burt, to said company, shall be distinctly ascertained, under 40

the direction of this Court, and that such liabilities, when ascertained, shall be deducted from any just claims which they may have against said company, and that they shall be allowed to retain stock of said company at par, only for such balance as shall be justly due them.

And this defendant admits, that the directors of said Arms and Ordnance Company, or a majority of them, are carrying on and operating said company, for their own private benefit and profit, and not for the benefit of the stockholders there-
10 of; that they have, needlessly, and without just cause, encumbered the property of said company for their own personal gain, that the credit of said company has thereby become greatly impaired, and the interests of the stockholders placed in great jeopardy.

That the said company have not funds to carry on the ordinary business of the corporation, and are, in fact, insolvent, and that their business for a long time has been carried on at a great pecuniary loss to the stockholders.

And this defendant denies all and all manner of unlawful
20 combination and confederacy, without this that there is any other matter or thing in said bill of complaint contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed and avoided, traversed or denied, is true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

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B. & C. VANSYCKEL, Solicitors.

B. VANSYCKEL, of Counsel with Defd't.

New Jersey, ss.—Joseph C. Potts, the defendant named in the foregoing answer, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed says, that the matters and things set forth in the foregoing answer are true, so far as they relate to his own acts, or to facts within his own knowledge, and so far as they relate to the

acts of others, or information derived from others, he believes them to be true.

Affirmed and subscribed before me, February 9th, A. D. 1865. } Joseph C. Potts.

JOS. H. HOUGH, M. C. C.

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IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. POTTS, }
 complainant, }
and }
 The New Jersey Arms and } *On bill, &c.*
 Ordnance Company, et. als. }
 defendants. }

Application having been made to the Court for the ap-
 pointment of a Receiver in this case, and it appearing to the
 10 Court reasonable and proper that such application should be
 granted, and the said defendants not opposing the said ap-
 plication, it is, on motion of Edward T. Green, solicitor for
 and of counsel with the complainant, ordered, on this fourth
 day of April, in the year of our Lord one thousand eight
 hundred and sixty-five, that Caleb S. Green, Esquire, be, and
 he hereby is appointed Receiver in this cause, with full
 power to demand, sue for, collect and receive, and take into
 his possession all the goods and chattels, rights and credits,
 moneys and effects, lands and tenements, books, paper,
 20 choses in action, bills, notes, and property of any and every
 description, belonging to the said The New Jersey Arms and
 Ordnance Company, the said defendants, the said company
 hereby being declared to be insolvent, and to sell, convey or
 assign all the said real or personal estate, and to pay into
 the Court of Chancery all the moneys and securities for
 money arising from such sales, or which the said Receiver
 shall collect or receive by virtue of the authority vested in
 him, and to do all and such further acts and things as are
 prescribed by the statute in such cases, made and provided
 30 and entitled an "act to prevent frauds by incorporated com-
 panies, approved April 13th, 1846."

HENRY W. GREEN, C.

A true copy:

B. GUMMERE, Clerk.

IN CHANCERY OF NEW JERSEY.

To His Honor Henry W. Green, Esq., Chancellor of the State of New Jersey:

The petition of William H. Potts, of the city of Trenton, in the State of New Jersey, respectfully sheweth that on or about the _____ day of November, in the year of our Lord one thousand eight hundred and sixty-four, your petitioner filed in this Honorable Court, his certain bill of complaint against The New Jersey Arms and Ordnance Company and Addison M. Burt, Oliver T. Burt, Juan C. 10 DeMier, William Johnson and Joseph G. Brearley, in which among other things, he prayed that the said "The New Jersey Arms and Ordnance Company" might be decreed by this Honorable Court to be insolvent, and that some suitable person might be appointed Receiver therefor, according to the terms of the act of the Legislature of the State of New Jersey, entitled "An act to prevent frauds by incorporated Companies," approved April 15, 1846.

And your petitioner further sheweth unto your Honor that afterward, to wit, on or about the fourth day of April, in 20 the year of our Lord one thousand eight hundred and sixty-four, your Honor, by virtue of the power vested in you as the Chancellor of the State of New Jersey, and in pursuance of the terms of the act of the Legislature of this State heretofore referred to, did grant the said prayer of your said petitioner, contained as aforesaid in your said petitioner's bill of complaint, and did decree that the said "The New Jersey Arms and Ordnance Company" were insolvent, and did appoint one Caleb S. Green, Esquire, to be the Receiver of and 30 for the said insolvent corporation, and did authorize him to do and perform all such acts and things as are by the act of the Legislature heretofore referred to, set forth to be done and performed by a Receiver of an insolvent corporation.

And your petitioner further shews, that the said Caleb S. Green did accept the said office of Receiver, and did file satisfactory security for the due performance of his duties, and did take and subscribe the oath required by the act of the

Legislature of this State, heretofore referred to—all of which will more fully and at large appear, reference being had thereunto, by the records of this Honorable Court now on file in the office of the Clerk of this Court, and to which your petitioner begs leave to refer, if it shall be necessary for him so to do.

And your petitioner further shews, that in and by his said bill of complaint, and the answers of the said above named parties defendants thereto, it appears that the said The New Jersey Arms and Ordnance Company, were, at the time aforesaid when by this Honorable Court they were declared insolvent, and a Receiver appointed, possessed of a large amount of both real and personal property—that the real property consisted of a large parcel of ground situate at the corner of Broad street and Sandtown road, in the city of Trenton, upon which is erected the Armory buildings of the said Company, and that the personal property consisted mainly of machinery for the manufacture of guns, and other machinery usual in a large foundry or iron manufactory, the
20 said machinery being contained in the said Armory building, or were upon the lot or curtilage spoken of.

And your petitioner further shews, that the said real and personal property was, at the said time when the said Caleb S. Green, Esquire, was appointed Receiver, as aforesaid, subject to the following liens or incumbrances:

First. To a mortgage given by The Trenton Locomotive and Machine Manufacturing Company (formerly owners in fee of the said buildings and parcel of land) to Joseph G. Brearley, trustee, to secure fifty bonds of the value of one
30 thousand dollars each, of which said bonds two have been paid and cancelled, leaving forty-eight still outstanding.

Second. To a mortgage given by the said "The New Jersey Arms and Ordnance Company," to Joseph G. Brearley, trustee, to secure the sum of one hundred and twenty-five thousand dollars.

And your petitioner shews, that the said mortgages cover both the real and personal property heretofore spoken of.

And your petitioner further shews, that the legality of the liens of the said mortgages is one of the principal matters in
40 dispute between your petitioner and the said above men-

tioned parties defendant; and that your petitioner, in his said bill of complaint distinctly charges, that of the bonds secured by the first mortgage, thirty-five had been paid and satisfied, but that the said defendants who had them in their possession, or who controlled them, refused to deliver them up to be cancelled, but claimed that they constituted an existing and valid lien upon the property of the said company, which said claim your petitioner in his said bill of complaint charged to be false in every particular.

And your petitioner further charges in his said bill of complaint, that the second mortgage was conceived and executed by the directors of the said "The New Jersey Arms and Ordnance Company" fraudulently, and without consideration, and for the express purpose of defrauding and cheating the creditors and stockholders of the said company. And that these charges and allegations may the more fully appear to your Honor, your petitioner begs leave to refer to his said bill of complaint, now on file in the office of the clerk of this Honorable Court.

And your petitioner further shews, that the bonds secured 20 by the mortgages aforesaid, amount in value to the sum of one hundred and seventy-five thousand dollars, and of this amount your petitioner in said bill of complaint charges that bonds amounting in value to the sum of one hundred and sixty thousand dollars, are either paid and satisfied, or have been issued fraudulently, and for the express purpose of wronging and defrauding the creditors and stockholders of the said company.

And your petitioner further shews, that the United States of America claim that the said Company are indebted to 30 them in a sum exceeding five thousand dollars, for tax accrued from the manufacture of muskets, and that by virtue of the statute in such case made and provided, they have distrained all the said property, both real and personal, of the said company, and will sell the same at public sale, to the highest bidder, unless the said tax be liquidated.

And your petitioner further shews, that the Receiver has informed him that he has no funds in his possession wherewith to pay the said tax and satisfy the said claim of the United States of America.

And your petitioner further shews, that the said Receiver has notified your petitioner that he purposes and intends to sell the said real and personal property of the said company, subject to the said incumbrance and lien of the said mortgages.

And your petitioner shews, that to make such sale, the said Receiver must sell all the said property in bulk, and as one parcel, and that such sale could only be had at a great and immense pecuniary loss, and that it would in consequence
10 work irreparable injury and mischief to your petitioner's interest as stockholder.

And your petitioner further shews, that purchasers would not present themselves to buy the said property, subjected to the said lien of the incumbrances heretofore spoken of and set forth, and that in consequence thereof the said property must of necessity be sacrificed, or be purchased by or on account, or fall into the hands of those holding the fraudulent bonds, thus, in effect, totally destroying any hope or expectation which the creditors and stockholders now
20 certain of receiving upon their claims and shares of stock, any money or moneys arising from the said sale.

And your petitioner further shews, that if the said property were to be sold clear and free of the said disputed incumbrances, that the said Receiver would be enabled to obtain much larger prices for the property, and purchasers would be more ready and willing to bid for it, as then their title to their purchases would be beyond a doubt, and they could safely invest their means by buying each part as they might desire, while if the said property should be sold
30 subject to the incumbrance, each purchaser would be liable to have the property bought, resold to satisfy the claims of the mortgages.

And your petitioner further shews, that various persons have already made proposals to the said Receiver to buy of him certain portions of the said machinery, or certain single machines, and have signified their willingness to give a large price therefor, but that the said Receiver did not make sale thereof, nor could he if he be decreed to sell the said property subject to the incumbrances; and the said proposed

ourchasers did not nor would they bid for the same in the bulk.

And your petitioner further shews unto your Honor, that the mortgages above mentioned bear different dates, and were made at different times, and that the first mortgage covers certain property upon which the second mortgage is not a lien; and the second mortgage covers property upon which the first is not a lien; and that other property of the company is covered by both mortgages.

Your petitioner therefore prays that the Receiver of the 10 said company may be ordered and decreed to sell and dispose of the said real and personal property of the said company, free and clear of the liens and incumbrances of the said two mortgages, and that the proceeds of said sale be paid into this Court, to await the decision of the said matters now before the Court for adjudication, and abide the issue of the said suit of your said petitioner; and your petitioner will ever pray, &c.

EDW. T. GREEN,

Solicitor of and of Counsel with the Petitioner. 20

State of New Jersey.—William H. Potts, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed on his said solemn affirmation, saith that the matters set forth in the above petition are true, as he verily believes.

Affirmed and subscribed this }
 12th day of May, A. D. } Wm. H. Potts.
 1865, before me.

JAMES S. AITKEN, Master in Chancery.

State of New Jersey, ss.—Joseph C. Potts, alleging him- 30 self to be conscientiously scrupulous of taking an oath, and being duly affirmed according to law, on his said affirmation doth affirm and say, that he was formerly one of the directors of The Trenton Arms Company, now known as The New Jersey Arms and Ordnance Company, that he is well acquainted with the property of the said company, both real and personal, and with the first cost thereof, and with its present value; that it cost about the sum of three hundred

and seventy-five thousand dollars, and would now be worth and could be sold for about the sum of two hundred and fifty thousand dollars, provided said sale could be made of the property in detail, and free of incumbrance; that in his opinion no bona fide purchaser could be found except at a nominal price, to buy the said property if the same should be sold subject to the incumbrance of the mortgage mentioned in the above petition, and that the same would therefore fall into the hands of the bond-holders; that various
 10 persons have made application to this deponent for the purchase of parts of the said personal property, without purchasing therewith the real estate, and that others have applied to him to purchase the real estate without any of the personal property; that the said persons however would not buy either the real or the personal estate if the same should be sold subject to the incumbrances above mentioned.

And this deponent further saith, that the second mortgage referred to in above petition, and which is alleged to be fraudulent by the said petitioner, covers property amounting
 20 in value to the sum of one hundred and twenty thousand dollars, which is not covered by the first mortgage; and that the first mortgage covers real estate amounting in value to the sum of \$15,000, which was after the making of the said mortgage and before the execution of the second mortgage, and while this deponent was still a director, as aforesaid, leased for a term of years, not yet expired, to A. G. M. Prevost & Co., and that upon said leased premises a factory for the building of cars has been erected.

And this deponent further saith, that the property of the
 30 said company is depreciating rapidly in value, and that it would be for the best interest of all parties concerned if the said property should be speedily sold and the proceeds thereof brought into court to await the issue of the petitioner's suit.

And this deponent further saith, that in the event of the sale of the said property of the said company, subject to the said incumbrances, nothing would be realized from said sale for the benefit of the stockholders or creditors other than the mortgage creditors.

40 And that he is informed, and verily believes, that all the

bonds contested in the said suit and secured by the said mortgages, are held and controlled by Oliver T. Burt and Juan C. DeMier, two of the directors of the said company, and parties defendant to the suit of the said petitioner.

And this deponent further saith, that the United States of America have a claim upon said property for tax accrued from the manufacture of guns, and that the property has been advertised for sale by the Collector of Taxes for this District, but that the sale was adjourned for four weeks from the twelfth day of May inst., upon the personal applica- 10 tion of this deponent, so that this matter might be brought before the Chancellor for decision.

Affirmed and subscribed this }
16th day of May, A. D. } Jos. C. Potts.
1865, before me.

JAMES S. AITKEN, Master in Chancery.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. POTTS, }
 complainant, }
and }
 The New Jersey Arms and } *On Petition, &c.*
 Ordnance Company, et. als. }
 defendants. }

Depositions of witnesses taken in the above cause, before James S. Aitken, one of the Masters and Examiners of the
 10 Court of Chancery, at his office, in the City of Trenton, on Saturday, the twenty-seventh day of May, A. D. eighteen hundred and sixty-five, in the presence of Edward T. Green, Esquire, Solicitor and of counsel with the complainant, pursuant to written notice given to A. O. Zabriskie & Son, Solicitors of the defendants.

Edward T. Green, of the city of Trenton, being duly sworn, on his oath says:

I am acquainted with the handwriting of A. O. Zabriskie, Esq., the Solicitor of the defendants; exhibit G, 1, being a
 20 notice of the taking of examination of witnesses, dated May 23d, 1865, being shown to witness, he says, the signature endorsed thereon, A. O. Zabriskie & Son, is in the handwriting of Mr. A. O. Zabriskie; it was mailed to him by me on the twenty-third day of May, instant, and I received it back on the twenty-fourth day of May, instant, by mail, with the endorsement thereon.

Sworn and subscribed, this 27th }
 day of May, A. D. 1865, be- } Edw. T. Green.
 fore me. }

30

JAMES S. AITKEN, M. C. C.

Caleb S. Green, a witness produced on the part of the complainant, being duly sworn, on his oath says:

I am the Receiver of The New Jersey Arms and Ordnance Company, appointed by the Chancellor; exhibit G, 2, on the part of the complainant, being shown witness, he says, I wrote and sent to Mr. Edward T. Green this letter; I have

been through the mills of The Arms and Ordnance Company, and examined the machinery and property with some care, since my appointment as Receiver; the property consists of the real estate, formerly of The Trenton Locomotive and Machine Company, including a lot of land on the east side of Broad street, in the city of Trenton, with a basin, machine shops, foundry, and other buildings thereon; the personal property consists principally of machinery, part of it which is ordinarily used in machine shops, the other part of it designed exclusively for the manufacture of muskets; there is 10 also in the mill a considerable quantity of detached parts of muskets, commonly called component parts, in various stages of manufacture; also, a small quantity of merchant iron, unmanufactured, and some scrap iron and loose material on the premises; the component parts and loose material are comparatively of little value; the chief value of the property is in the real estate and machinery; there are mortgages on the real estate and machinery, the exact amount of which I do not know; I think the sooner the property is sold the better it will be for all parties interested. 20

Quest. In what way should the property be sold so that the stockholders and creditors of the company shall be the more greatly benefited—subject to the incumbrances or free from them?

Ans. I think more money could be realized from the property by a sale clear of the incumbrances.

Quest. Would the stockholders or creditors, excepting mortgage creditors, realize anything from the property if it should be sold subject to the incumbrances?

Ans. I think they would receive something, but I cannot 30 tell how much; I do think that outside parties would be willing to buy the property at any thing like its value, subject to the incumbrances as they stand.

Quest. Do you mean that it would probably go into the hands of the mortgage creditors, if sold subject to the incumbrances?

Ans. That is my impression; if the property should be sold subject to the incumbrances, it would have to be sold in bulk; the machinery would have to be sold altogether; the real estate might be sold separately. There have been some ap-40

plications to myself for parts of the property, of persons who wished to buy parts of the machinery, and who did not wish to buy the whole land; I understand that other applications of the same kind have been made to the clerk at the mill.

And being cross-examined by Mr. Zabriskie, the witness says :

I do not know when the mortgages on the property become due; I have never examined the incumbrances particularly; I believe the bonds have a number of years to run; it is a good location for carrying on the manufacture of the musket business, for which this machinery is adapted; the premises on which the machinery is located, together with the machinery, taken as a whole, are well adapted to the manufacture of muskets; there is more room on the premises than is needed for that business; a part of it has been rented out for other purposes; these parts are so located that they can be rented out again for the same purposes.

Quest. Would not the credit given by mortgages having some time to run, for a large part of the purchase money, be a benefit to the sale of so large a property as this is, if sold together as a whole?

Ans. If the property is sold as a whole, it would sell equally as well, if not better, by being sold subject to a mortgage, if the amount due was definitely fixed thereon and ascertained, I have no doubt that it would sell better.

Quest. Would not, in your opinion, this property bring more if sold by proper advertisement, as a whole, than if sold in parts? I mean all except the loose materials?

Ans. My judgment is that it would not, for the following reasons: The machinery in these works, as I have before stated, is of different kinds; some of the machinery which was in the works before they were used for the manufacture of muskets, is designed for and only suitable for general machine works; a part of the machinery put in for the manufacture of muskets, is suitable for that purpose, and no other; another part of the machinery put in for the manufacture of muskets, I am informed, can easily be changed, and made suitable for ordinary machine work; a large part of the gun machinery would be of very little value for gen-

eral machine business; the heavy machinery, designed for the manufacture of locomotives, &c., is of no use for the manufacture of muskets; there is now a good demand for machinery suitable for general machine shops, and I am informed that it will bring its full value, if sold; in the works there are a good many machines of substantially the same kind for the same purpose; small manufacturers would buy one or two of these machines, who would be unable or unwilling to purchase the whole; I do not think that any outside parties would now wish to purchase the works for the 10 manufacture of muskets, the Government having ceased buying the article; in my judgment, the best way of selling the property would be to sell the machinery designed exclusively for the manufacture of muskets, and useful for no other purpose, either as a whole or in sets, as might be deemed best by the parties interested; to sell the machines suitable for ordinary machine shops in several parcels; and sell the real estate, with permanent fixtures, by itself.

Quest. Can you say what proportion of the musket machinery could be used for any other purpose? 20

Ans. I cannot. My knowledge in that respect is derived entirely from other parties, in going through the works.

Quest. Is not the machinery, other than the musket machinery, a very small portion in value, as compared with the musket machinery?

Ans. It may have originally cost much less, but I think, at present, it constitutes a considerable part of the value of the machinery in the mill,—my reason for this is, that I do not think there is any demand for gun machinery at present, while, I am informed, there is a great demand for machinery 30 for general machine work; unless needed for the manufacture of muskets, the machinery specially designed for that purpose, which is very expensive, would be nothing compared with its cost price.

Quest. For what machinery did you have application?

Ans. It was machinery to put in the machine shops of railroad companies; I believe for the manufacture of locomotives; it was a part of the machinery belonging to the locomotive works, before the gun company was started; the applications were made, some before I was appointed 40

Receiver, and while I was acting as Trustee, and had no power to sell; I do not recollect the names of the machines, they were lathes or planing machines; there were only two applications made to me personally; they were both made on behalf of railroad companies; there were no prices mentioned; it has been several years—I think as much as three or four years, since the locomotive business was discontinued at this place.

Sworn and subscribed, this 27th }
 10 day of May, A. D. 1865, before me. } Caleb S. Green.

JAMES S. AITKEN, M. C. C.

The complainant's Solicitor offered in evidence a transcript of a deed of mortgage from The Trenton Locomotive and Machine Manufacturing Company, to Joseph G. Brearley, Trustee, dated April 1st, 1856, and marked Exhibit G, 3, on the part of the complainant.

Also, a transcript of a mortgage deed from The New Jersey Arms and Ordnance Company, to Joseph G. Brearley, 20 Trustee, dated October 5th, 1864, and marked Exhibit G, 4, on the part of the complainant.

IN CHANCERY OF NEW JERSEY.

Between W. H. POTTS, com-
plainant,
and
The New Jersey Arms and
Ordnance Company, and
others, defendants.

State of New York, City and County of New York, ss.—
Norman Wiard, being duly sworn, deposes and says:

That he is well acquainted with the property in contro-10
versy in this action, and has been at said works a greater
portion of the time during the past two years, engaged in
manufacturing arms in the same building; that he has a
practical knowledge of the business carried on by said com-
pany, and of the cost and value of such property; that de-
ponent has been for twenty-five years a master machinist,
engaged in the business of building and adjusting machinery,
and in the getting up and disposing of manufactories and
machinery; that he has a general knowledge of the business
of manufacturing arms in this country; that such business 20
has been, and he believes it will continue to be, a very lucra-
tive business, as all military restrictions upon the exporta-
tion of arms have lately been removed—and he believes that
parties can be, without great difficulty, found who would be
desirous of investing money in such business, in case a pur-
chase could be made of a complete set of machinery and
tools, already set up and adjusted for carrying it on at a con-
venient location; that the property aforesaid is, in his judg-
ment, admirably situated, and that if the same could be pur-
chased at a reasonable price, the said business could be car-30
ried on at that place to great advantage and profit; and de-
ponent further says, that he verily believes that parties could
easily be found, and, as he believes, he knows several such
parties, who would purchase the said property for the pur-
pose of so carrying on the said business—provided the same
could be sold as a whole; that the said property would, in
his judgment, sell for a very much larger price, if sold as a
whole, than it would sell for if sold in parcels and detached

parts, for the obvious reasons that very much the greater part of it is of comparatively little value for any purpose save to carry on said business of manufacturing arms—and, if parts of it were selected and sold, the remainder could be sold, if at all, only with great difficulty, and at a price little, if anything, above its value as old iron—and for the further reason that a very large part of the expense—and he believes thirty-three per cent. of the whole expense of building such a manufactory, and putting the same into operation, 10 consists in setting up and adjusting the machinery, all of which would be a total loss in case the same were taken down or sold in detached parts, and for the further reason that the small tools connected with the said manufactory, and necessary to run and carry on the same, are fitted and adapted to that particular machinery, and to no other machinery, and, if sold, to be used in any other manufactory—even a manufactory engaged in the same identical business—would not fit the machinery or work of such manufactory, and would for that reason be almost wholly useless; that 20 such tools cost, as deponent believes, about forty per cent. of the entire cost of such a manufacturing establishment; that were a portion of the said property to be so separated from the remainder, he believes it would be impossible to find parties who would purchase the whole for the purpose of carrying on the business aforesaid, or for any purpose whatsoever, save as old iron; that the fact that the works are complete in respect of tools and machinery, and that the same are set up and adjusted, would be the principal inducement that would lead capitalists to purchase said property— 30 but without that inducement it would be wholly impossible to find such purchaser; and if a part of it were selected and sold—even to the amount of a few thousand dollars—it would render it very difficult, and, as he believes, absolutely impossible to induce capitalists to purchase the remainder for the purpose of embarking in said business, and for any other purpose such remainder would be almost valueless.

Sworn to, before me, this 29th } Norman Wiard.
day of May, 1865. }

IN CHANCERY OF NEW JERSEY.

Between W. H. Potts, com-
plainant,
and
The New Jersey Arms and
Ordnance Company, and
others, defendants.

State of New York, City and County of New York, ss.—
Albert H. Almy, being duly sworn, says :

That he is President of The Norwich Arms Company, 10
which said company are and for years last past have been
engaged in the manufacture of muskets, known as Spring-
field muskets, at Norwich, in the State of Connecticut; that
deponent is intimately acquainted with the business of such
manufacture, and with the nature and operation of the ma-
chinery required therefor, and with the cost and expense of
establishing works for the manufacture of such arms upon a
large scale; that the business of manufacturing muskets
promises to be a valuable and lucrative one; that in the
opinion of deponent the sale of any portion of the machinery 20
used and employed in such an establishment, separately and
piecemeal, would operate very disadvantageously against
the sale of the residue, either in parcels or as a whole; that
the machinery used in such a factory is made up of a num-
ber of parts, of which none could be withdrawn and sepe-
rated without greatly diminishing the value of the remainder,
and that while some small portions of it might possibly rea-
lize by themselves a fair price, other, and those the larger
and more expensive, portions would become absolutely use-
less and unsaleable, when disconnected from the portions so 30
sold; that much of the machinery is designed exclusively,
and can only be used, for the manufacture of muskets, and is
entirely useless for any other purpose; that, in the opinion
of deponent, the only mode of disposing of such a property
to advantage, would be to sell it as a whole, and with that
view to advertise the same for sale in all the principal marts
for a sufficient length of time, so as to draw the attention of

capitalists and moneyed corporations to the advantage of investing capital in such an establishment.

Sworn to, before me, this 27th }
day of May, 1865, all which }
I certify under my hand and } Albert H. Almy.
official seal. }

CHARLES NETTLETON,
Commissioner for New Jersey, in the City and County of
New York, in the State of New York.

IN CHANCERY OF NEW JERSEY.

Between W. H. POTTS, com-
plainant,
and
The New Jersey Arms and
Ordnance Company, and
others.

State of New York, City and County of New York, ss.—
Benjamin S. Moulton, of the City, County and State of New
York, being duly sworn, says :

10

That he has, for three years last past, been employed
under Government in The New York Ordnance Agency, and
for six years previous he was employed as Superintendent of
The Remington Works, at Ilion, in the State of New York,
and was for seven years employed in the Robin's & Lawrence
Manufacturing Company, engaged in making gun machinery
and tools for making guns ; that deponent has read the affi-
davit of Albert H. Almy, hereunto annexed, and deponent
coincides in and confirms the opinions therein expressed, in
every particular ; that deponent believes that many capi-20
talists would be willing to purchase the establishment of the
defendant therein referred to, if the same were sold as a
whole, but were the machinery broken up by the sale of por-
tions of it, no capitalist, in the opinion of deponent, would
be induced to become the purchaser.

Sworn to, before me, this 29th } B. S. Moulton.
day of May, 1865.

E. B. BARNUM,
Commissioner for New Jersey in New York.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. POTTS, }
 complainant, }
and }
 The New Jersey Arms and } *On Petition, &c.*
 Ordnance Company, et. al. }
 defendants. }

Examination of witnesses on part of defendants, taken before me, Cornelius Christie, a Master in Chancery of New Jersey, at my office, No. 7 Exchange Place, in Jersey City, on Wednesday, the thirty-first day of May, A. D. eighteen hundred and sixty-five, at ten o'clock in the forenoon, pursuant to notice duly given and admitted.

Present—Abraham O. Zabriskie, Esquire, of Counsel for the defendants, and Edward T. Green, Esquire, of Counsel with the complainant.

Examination of John T. Plass.

Quest. Where do you reside?

Ans. Thirtieth street, New York City.

20 *Quest.* What is your business?

Ans. Machinist.

Quest. Have you had any experience or knowledge of gun or ordnance machinery?

Ans. I have.

Quest. In what manner?

Ans. In manufacturing guns and tools for the same in almost all departments.

Quest. How long have you been so engaged?

Ans. Twenty-five or thirty years past as a machinist.

30 *Quest.* How long have you been engaged in manufacturing arms?

Ans. About one year and a half in the direct manufactory of tools and arms. I have been familiar with all departments of the manufacture of arms for five or six years past.

Quest. What kind of arms have you manufactured?

Ans. Cannon, principally.

Quest. Have you any knowledge of the machinery and tools that are necessary for the manufacture of muskets?

Ans. General knowledge of all that is necessary for the manufacture of muskets, I believe.

Quest. May the tools and machinery for manufacturing muskets be easily, or in any manner, applied to the manufacturing of other articles?

Ans. They cannot, to any advantage, without great sacrifice of the first cost and the details attached to them.

Quest. Are the small tools ordinarily used about such machinery easily applied to, or in any manner applied to, or adapted to other machinery?

Ans. They are almost useless for any other purpose.

Quest. Suppose such small tools were sold to be used in some other musket manufactory, would they be adapted to the machinery of such other manufactory?

Ans. Do you mean the same style of muskets?

Quest. Yes, the same style.

Ans. They could be used to a limited extent.

Quest. To what extent ordinarily?

20

Ans. I should not say as a general thing they would be adapted to the extent of over ten per cent.

Quest. Do you mean to say that such small tools are so made as to be adapted to the particular machinery they were designed for, and that they would not be serviceable or adapted to any other machinery than that for which they were originally made? [Objected to.]

Ans. As a general thing, they are made adapted to the machinery they were originally designed for, and to carry out the views of the master mechanic who has the work in charge, which varies in almost every shop you go into.

Quest. Then what proportion of their original cost would they reasonably bring if sold to be used in any other manufactory?

Ans. Probably not over ten per cent. Such things are almost worthless, unless they meet the views of the master mechanic who has the works in charge where they are purchased.

Quest. If sold for any purpose other than to be used in some other manufactory where similar arms are manu-40

factured, what purpose could they be sold for or applied to, and what would be their value for such purposes?

Ans. Very few of them could be used for any other purpose, and if not so useful, valuable only for old iron.

Quest. What percentage of the entire cost of the machinery and tools for manufacturing muskets, is the cost of the small tools referred to by you in your last answer?

Ans. I should suppose the small tools would be about half the entire cost.

10 *Quest.* What proportion of the machinery and tools not referred to by you in your last answer could be used in any other manufactory of similar arms?

Ans. I do not think, to exceed two-thirds.

Quest. For what purpose would the remaining one-third, if sold and carried away, be useful?

Ans. I hardly know, except for old stock.

Quest. What proportion of the entire cost of the tools and machinery of such a manufactory is the cost of putting up, fitting and adapting the tools and machinery?

20 *Ans.* I should judge it would not be far from twenty per cent.

Quest. In case of a sale of such machinery and tools, to be removed from the premises, would such cost of such putting up, fitting or adapting, be a dead loss, or otherwise?

Ans. The fitting and putting up would be, and not the shafting and belting.

Quest. Did you include in your last answer but one, the expense of getting the machinery on to the ground, the laying and adapting the foundations on which it may be placed?

30 [Objected to.]

Ans. I did not include any foundation.

Quest. Suppose a portion of the tools and machinery of such an establishment were to be sold separate from the rest, how would it effect the sale of the remainder?

Ans. It would effect it very seriously, it would disarrange the whole affair as a manufactory.

Quest. In what manner do you think the sale of such a property would be most advantageous—as a whole, to parties who desired to carry on the same business at the same place,

or in detached parts, as purchasers might be found, to be carried away from the premises? [Objected to.]

Ans. As a whole, most decidedly.

Quest. What proportion of what you believe it might reasonably be sold for as a whole to such parties, do you think it would bring if sold in detached parts as purchasers should desire or could be found, to be carried away from the premises?

Ans. I do not think it would realize over one-third.

Quest. Have you such knowledge upon the subject of musket manufactories as that you are able to form an opinion as to whether parties could be found who would purchase the whole of such a property at a reasonable price, for the purpose of carrying on the same business upon the premises?

Ans. No, I do not think I have, at the present moment.

Quest. Will you now speak of the manufacturing of ordnance, and say whether or not the same opinion you have expressed concerning the machinery and tools for the manufacturing muskets is applicable to the machinery and tools for the manufacture of ordnance, and point out the difference, 20 if there be such?

Ans. The principal difference would be that the arranging the foundations for ordnance machinery would be much more expensive than that for musket machinery, in other respects the difference would be trifling.

Quest. What percentage of the entire cost of the machinery and tools for manufacturing ordnance would be the cost of getting on to the ground, putting up, adjusting, fitting and preparing for operation the tools and machinery?

Ans. It would amount to over one-half of the entire cost. 30

Quest. In case such machinery were taken down, and sold and carried away, what do you say as to such one-half expense, as to whether it would be a loss or otherwise?

Ans. A large portion of it would be dead loss. Some old stock could be got out of it.

Quest. In your estimate of the cost of setting up and adjusting the musket machinery, did you include the drop and trip hammers?

Ans. I did not in the twenty per cent.

Quest. Did you include the heavy shears, the rolls and punches set on foundations in the ground, and furnaces for heating, annealing and tempering?

Ans. No; I have merely in my mind the finishing of the muskets.

Quest. Did you take into consideration in that estimate the time and expense of the nice adjusting of the tools and machinery, for the purpose of making the work perfect? [Objected to.]

10 *Ans.* I took into consideration as regards finishing, but not the preparations for forging.

Quest. Did you take into consideration the cost and expense attendant upon such fitting as ordinarily results from accident, mishap, carelessness of workmen, and the usual and ordinary loss and costs from such sources? [Objected to.]

Ans. Yes.

Quest. Do you now wish to make any change in your estimate of twenty per cent. with regard to the matters to
20 which your attention has now been called?

Ans. Yes, sir; including those things, I should say double—forty per cent.

Cross-Examined.—I am a machinist; I own works myself in 108 and 110 East Twenty-ninth street, New York City; I employ thirty or forty men there; I manufacture almost anything in the way of general machinery; I have never seen the premises belonging to The New Jersey Arms and Ordnance Company; they are located in Trenton, I believe; I don't know anything of their capacity; do not know for
30 what purpose they were used before they were used for the manufacture of muskets; a machinist terms as tools, lathes, milling machines, &c., every thing connected with this machine, excepting such as gives it motion, we consider as small tools; a lathe itself from a gun manufactory may be used in many other manufactories; a planer may be used in the same way; a milling machine of itself, aside from its small tools and attachments, is of the same nature; certain kinds of drills could be so used, and some could not; a portion of the punches could be so used.

Quest. Tell me why all punching machines from a musket factory could not be used in other factories?

Ans. Because some of them are of such peculiar form that they could not be adapted to other work with advantage.

Quest. What peculiar work in a gun factory requires that form of punch which cannot be used in another factory?

Ans. Some parts about the lock and sight, and some of that little work, which requires a peculiar adaptation of the punch.

Quest. State specifically what part you refer to? 10

Ans. I can't specify any more than I have. I mean to state that the punch can't be used for any other work with advantage, unless with essential alteration.

Quest. Can you use the vices used in a gun manufactory in any other manufactory?

Ans. As a general thing we can, there are some peculiarities about those however.

Quest. Do you know the vices now in the market known as Parker's vices, made in Connecticut?

Ans. I do. 20

Quest. What is there peculiar about those vices which prevents them from being used in other manufactories?

Ans. Nothing that I know of. The files could be used in other manufactories; the hammers could generally be used also in other manufactories.

I have attended a sale at a machine shop; I have attended a sale at a musket factory; the sale was at Thirty-third street, in New York City, last fall; almost everything that pertained to the works was sold; it was a public sale; I don't know whether it was by order of court or owners; the 30 machinery was sold in detail.

Re-Direct.—Quest. Have you ever sold out a set of machinery and tools used in the manufacturing of ordnance?

Ans. No, sir; I cannot say that I have, myself. I sold out my interest in the concern before the tools were sold.

Quest. Were the tools afterwards sold?

Ans. I believe they were; they were taken away.

Re-Cross-Examined.—I am not concerned in any business

relations with Norman Wiard; I have manufactured guns for him at one time.

Taken, sworn and subscribed, }
 before me, May 31, A. D. } J. T. Plass.
 1865, at Jersey City. }

C. CHRISTIE,
 Master in Chancery of New Jersey.

Examination of Norman Wiard.

Quest. Are you the lessee of any portion of the premises
 10 in question, if yea, of what portion?

Ans. I am, of that portion of the works occupied by The
 Trenton Locomotive Company, while The Trenton Arms
 Company were manufacturing arms on the premises.

Quest. About what proportion of the whole premises is
 that?

Ans. If you refer to the space, it is about half of the
 whole.

Quest. What period has your lease yet to run?

Ans. It is to terminate when The Locomotive Company,
 20 The Trenton Arms Company, or The New Jersey Arms and
 Ordnance Company, or any of them, exhibit to me their
 ability, by preparation and stock on hand, to manufacture
 guns at the rate of fifty tons per day, and when they have
 paid me whatever I have invested in preparation for that
 amount of business. I have a contract with the aforesaid
 companies to manufacture for me ordnance to the amount of
 fifty tons a day, and my lease is to run till they comply with
 the terms of that contract, and pay me as I have before
 stated. [Answer objected to, unless contract produced.]

30 *Quest.* Are you now engaged in the manufacturing of arms
 on the premises?

Ans. I am not. By the terms of the contract, The Tren-
 ton Arms Company, or The New Jersey Arms and Ordnance
 Company, are to furnish me with steam power, and since
 they have ceased to manufacture, I have been unable to go

on with the work for want of steam power—prior to that time I was so engaged, and had been so engaged for more than a year. [Foregoing testimony objected to, unless leases and contracts are produced.

Quest. Have you ever examined, and have you a knowledge of that portion of the tools and machinery that was formerly owned by The Trenton Locomotive and Machine Company, now upon the premises in question?

Ans. I have knowledge of it. I have examined it frequently and carefully. 10

Quest. Of what does it mainly consist?

Ans. It consists principally of heavy machine tools, such as heavy lathes, planers, mortising machines, drills, cupolo furnaces, forges, air furnaces, pits, cranes, &c.

Quest. Are any of those articles, and if so, what proportion of them, included in your lease?

Ans. All of them, I believe.

Quest. To what purposes are they now adapted?

Ans. They are now adapted to the manufacture of heavy ordnance, field artillery, ordnance stores, and steam engines 20 for steam ships.

Quest. Speak of such adaptation, and of the extent and cost of it?

Ans. I have no doubt that seventy per cent of the whole cost of them was expended in the adaptation of that machinery to the purposes I have named.

Quest. What do you say as to such seventy per cent. in case such machinery were to be taken and applied to manufacturing articles other than those to which they are now adapted? 30

Ans. I meant to convey the idea that they would be worth only thirty per cent. as much to be used in any other business, and upon any other premises, as they are for the purposes to which they are adapted, and upon those premises, in other words it would be a dead loss of seventy per cent. if they were taken down or moved and used for any other purpose.

Quest. Do you mean seventy per cent. of their intrinsic value?

Ans. I do. 40

Quest. Speaking of the machinery that formerly belonged to The Trenton Locomotive and Machine Company, what proportion of its net cost consists in the expense of putting up and adjusting the same?

Ans. It is usually considered in machine shop to be thirty per cent., but in this establishment I should think it would be more.

Quest. What proportion of it consists in small tools that are particularly adapted to and fitted for that particular
10 machinery?

Ans. Forty per cent.

Quest. What would be the relative value of such small tools if separated from that particular machinery and offered for sale, to be used with other similar machinery such as is used in establishments generally of that same general character?

Ans. Detached from the machinery to which they are adapted, they would not be worth much more than which they would bring as old iron or steel, or whatever metal
20 they might be of.

Quest. What proportion of the machinery that belonged to The Trenton Locomotive and Machine Company, has been adapted to the manufacturing of steam engines?

Ans. Very little of it. Those parts of it which were originally adapted to locomotives, have been taken away and disposed of; at least, I have not seen them.

Quest. Are there any small tools now about the works which are now adapted to the manufacturing of steam engines or locomotives?

Ans. It requires very few tools for the manufacture of
30 steam engines. There are very few small tools there now adapted to the manufacture of locomotives.

Quest. To what amount in value?

Ans. A very few hundred dollars.

Quest. Is there any machinery upon the premises that is designed only for, and only suitable for, machine work, and not suitable for the manufacturing of muskets and ord-
nance?

Ans. I only now recollect of one machine—a press for put-
40 ting wheels on axles.

Quest. What is the worth of that press if taken from the premises?

Ans. It might bring two hundred dollars.

Quest. For how long a period are those companies bound to manufacture for you, as you have before stated?

Ans. I cannot now recollect.

Cross-Examined.—I can't tell when I commenced operations in Trenton; nearly two years ago I took possession of the premises in question, under authority from The Trenton Locomotive Company and The Trenton Arms Company, for 10 the purpose of continuing the preparation for the manufacture of ordnance and steam engines for steamers; the lease spoken of by me (I can't recollect the date), was made shortly after I took possession; the lease I spoke of is contained in the contract to which I have referred.

Quest. Who were the lessees in that lease?

Ans. The Trenton Arms Company.

Quest. Who signed the contract spoken of?

Ans. Mr. Joseph C. Potts and A. M. Burt.

Quest. Where was that contract signed?

20

Ans. At The Trenton Arms Company's office.

Quest. What rent was you to pay for the premises?

Ans. A nominal rent—a consideration for the steam power of three hundred dollars per month.

Quest. Did they furnish you with steam power?

Ans. They continued to furnish us with it until the New Jersey Arms Company ceased operations.

Quest. When was that?

Ans. I should think seven or eight months ago.

Quest. Don't you know that they continued working until 30 January 1st, 1865?

Ans. Not regularly; they were working irregular for some time before.

Quest. How much rent have you paid for the steam power and the use and occupation of the premises?

Ans. I believe all, and more than the lease called for.

Quest. Have you paid a single dollar under that contract for steam power, or for use and occupation of the premises, and if so, to whom?

Ans. To The Trenton Arms Company and to The New Jersey Arms Company.

Quest. Was there any rent due after your last payment to either of these companies?

Ans. I do not know; my impression is there was no rent due.

Quest. When did you make your last payment?

Ans. I can't tell, as my book-keeper and superintendent had charge of that matter. I have seen the statements of
10 account between us in which the rents were entered. I have been doing work for both companies during the whole time in castings and machinery, and in the settlement of these accounts I have seen items of rent charged against my bill.

Quest. What have you manufactured at that place since your occupation of it?

Ans. Ordnance and steam engines.

Quest. What amount of ordnance, and for whom?

Ans. A very large amount for the United States Govern-
20 ment.

Quest. What was it?

Ans. One fifteen inch gun, ordnance stores to arm six steamers, and a large amount of ordnance stores besides.

Quest. Was that the gun that burst on trial?

Ans. Yes, sir.

Quest. Are you in possession of the premises at the present time?

Ans. I believe there is an attachment on the premises, but my employees are still there—they have never been away.
30 There has been no examination under the attachment, and I believe it will be shown that I do not owe the principal debt for which the first attachment was put on. There are some
08 small attachments put on since which I have not attended to.

Quest. When was that writ of attachment issued?

Ans. I don't know; my impression is it was about five
months ago. I went to Trenton and made inquiries whether I could have an examination, whether the debt was due, and I found I could not until June, and therefore let it lay. A
40 smaller part of the machinery on the premises can be used

in other manufactories, but at a loss of thirty per cent. for taking up and putting down. I include all the machinery there.

Quest. In your affidavit in this cause, served on the Solicitor of the complainant, you speak of knowing certain parties who are willing to buy the property in question in bulk—name them? [Counsel for defendants objected that if the witness' information on that subject be of a confidential nature he is not bound to disclose it.]

Ans. It is of a confidential nature, and I only received in-10 formation on the promise not to disclose it.

Quest. Do I understand you as declining to answer my question?

Ans. I should prefer not to answer it. I will leave the matter to the direction of the court.

Quest. Do you decline to answer it now?

Ans. I am not a lawyer. I imagine it would be improper for me to answer it here. [Counsel for defendants objected to cross-examination as to matters contained in affidavit, the same having been served.]

20

Quest. Do you decline answering?

Ans. Yes; at this particular time; unless I can see some reason for it, or have advice of counsel. I have heard six or seven persons express a desire to buy that property in bulk. They communicated the fact to me personally, making inquiries of me concerning it. All of them—one or two—have not spoken to me confidentially on the subject; they were O. M. Beach, Cashier of Farmers and Citizens Bank, New York, and Samuel Sinclair, Cashier of The Tribune Association. The others were confidential; they were not con-30 nected in interest with the two I have named. My superintendent lives in Brooklyn, his name is C. C. Martin. I have never paid rent save in work, rent or coal; I am not sure about that however, but I suppose so. There was no condition to any bargain with A. M. Burt that I was to take thirty thousand dollars worth of the stock of The New Jersey Arms Company. On reflection, my recollection is that in a certain contingency I was to take thirty thousand dollars

worth of that stock—this was before the Trenton Arms Company was organized.

Taken, sworn and subscribed, }
 before me, May 31, A. D. } Norman Wiard.
 1865, at Jersey City. }

C. CHRISTIE,
 Master in Chancery of New Jersey.

Examination of Elisha W. Andrews.

I am engaged in the People's Gas Light Company, in the
 10 City of New York; I am Superintendent therein; I have
 practical knowledge of the manufacture of muskets, having
 superintended the manufacture of thirty-three thousand mus-
 kets of the Springfield pattern, between the Spring of 1861
 and the fall of 1864, at Windsor Locks, in the State of Con-
 necticut; I am familiar with the machinery for manufact-
 uring the different parts of a musket; I superintended and
 had put in the machinery for the manufacture of the musket
 barrels, and I was familiar with the machinery used in the
 manufacture of the different parts of the musket used at
 20 different places; I am a practical but not an educated me-
 chanic; I have been engaged in the manufacture of iron and
 steel, as superintendent of such manufacture, for the last
 eight or ten years; as such superintendent, I have had the
 purchase of and put up the machinery for manufacturing; I
 have put up and put in operation three rolling mills for iron
 and steel.

Quest. Did you hear the testimony of Mr. Plass and Mr.
 Wiard, touching the machinery and tools in the manufacture
 of muskets?

30 *Ans.* I heard them, partly.

Quest. What proportion of the whole expense of the ma-
 chinery for manufacturing muskets is the expense of putting
 up, fitting and adapting, and putting into operation such
 machinery.

Ans. I should think from twenty to thirty per cent. The

small tools are another thing; they cost about as much as the machinery, and they are made for a special purpose—especially for the manufacture of a particular part of the musket, and being adapted to that particular purpose are worth very little, if anything, above the value of the iron or steel they are made of for any other purpose.

Quest. In your judgment, would a manufactory of muskets consisting of such tools and machinery sell better as a whole than if sold in detached parts? [Objected to.]

Ans. My impression is decidedly that it would sell better 10 as a whole.

Quest. Why would it sell better as a whole?

Ans. As the machinery and tools are simply adapted to one purpose, when broken up they are not of the same value.

Quest. What percentage of difference do you think there would be between the two methods of sale?

Ans. My impression is there would be thirty-three and a half to fifty per cent.

Quest. Have you had personal experience in the sale of such kind of property? 20

Ans. I have.

Quest. Have you seen the property in question, at Trenton?

Ans. Yes, sir; I have been at the works and examined the machinery and tools.

Quest. Do you think that particular property would sell better as a whole, provided parties could be found as well to purchase it as a whole as to purchase detached parts of it; I mean, would it nett the vender most, sold as whole, provided purchasers could be found? 30

Ans. My impression is, that as this property is a large one, and cost a great deal of money, and was fitted up in part at least, with a view to being an arms and ordnance manufacturing establishment, it could be disposed of better as a whole than in detached parts.

Quest. Do you think the fact that it has mortgages upon it would in anywise prevent its sale as a whole, or diminish the price for which it would sell, in any sum beyond the amount of such mortgages, assuming the mortgages to amount to one hundred and fourteen thousand dollars? 40

Ans. I should not think it would, it would rather benefit the sale.

Cross-Examined.—I was in the employ of Oliver T. Burt, one of the defendants in this cause, but was not aware until this moment that he was one of the defendants.

Quest. Do you know of any persons now engaged in the manufacture of the Springfield musket?

Ans. Yes, sir; Jenks & Son., of Pennsylvania, and the Norwich Manufacturing Company, of Connecticut, they have
10 neither finished their contracts, they are both working under old contracts with the Government, as I believe; my impression is that Mason is working under the Providence Tool Company; our contract was 30,000 muskets; we ceased working because our contracts was out; my impression is we stopped November last; I suppose we could not get any more contracts from the Government; we had no other contracts at the time we stopped; we had no work to do at all when we sold out; the manufacture of muskets is not brisk now; my impression is that breech loading muskets will be
20 manufactured, and gun machinery, if kept together as gun machinery, can be sold for that purpose.

Re-Direct.—*Quest.* Why?

Ans. The foreign market is opened, and the restrictions are removed; my impression is that a large amount of guns will be wanted for shipment abroad.

Taken, sworn and subscribed, }
before me, May 31, A. D. } Elisha W. Andrews.
1865, at Jersey City. }

C. CHRISTIE,

30

Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between W. H. POTTS, com-
plainant,
and
The New Jersey Arms and
Ordnance Company, and
others. } *On Petition, &c.*

Examination of witnesses taken in the above stated matter, before James S. Aitken, a Master and Examiner of the Court of Chancery of New Jersey, at his office, in the City of Trenton, on Friday, the 2nd day of June, 1865, in the 10 presence of E. T. Green, Solicitor of Petitioner.

Edw. T. Green being duly sworn, &c., (proved service of notice, &c.)

Joseph C. Potts, alleging himself conscientiously scrupulous of taking an oath, being duly affirmed according to law, upon his affirmation saith :

I was present at Jersey City at the taking of the depositions of witnesses on the part of the defendants in this case, on Wednesday last, and heard all their testimony.

Quest. In your opinion, how should the property of the 20 Arms Company be sold so that the sale may be of the greatest pecuniary advantage to the stockholders and creditors? Please give your reasons upon which you base your opinion?

Ans. The real estate of the Arms Company I consider worth about \$110,000. The engines, machines, tools and fixtures have cost about \$160,000. I mean those which are particularly connected with the manufacture of the musket. The machines, tools and fixtures not connected with the manufacture of the musket, but used in the shop for building 30 locomotives, and afterwards for general machine work, including foundry and smith shop, cost over \$100,000. These three classes of property would interest entirely different classes of purchasers. The real estate would be especially interesting and desirable to locomotive builders and general machinists desiring to establish large works, and would invite at private or public sale, owing to its admitted great local advantages, considerable competition. To such persons

the locomotive and general machine tools would be wanted in bulk. But a large amount, probably three-fourths of the gun machines, tools and fixtures, would be of no use to them. If the works were sold for an armory, the manufacture of Springfield muskets, breech-loading rifles, or other ordnance, the locomotive tools and general machine tools would not be wanted by them for that purpose, so that either way the purchaser, whether for a locomotive works or an armory, if he had to buy in bulk, would have to take from fifty
 10 to eighty thousand dollars worth of machinery that he would not want for his purposes. I think, therefore, the true way of selling the property would be for the receiver to advertise that he would receive bids for it, clear of incumbrance, on the following terms :

First—For the whole property in bulk.

Second—For the real estate and locomotive tools and general machine tools, foundry, etc., excluding everything that relates to the making of muskets.

Third—For bids for the real estate, including everything
 20 which relates to making muskets, and excluding the general locomotive and machine tools; and to be governed by the character of those bids as to whether he would sell in lots as thus arranged.

If he receives no satisfactory bids, then to proceed and sell the machines, tools and fixtures in detail, and the real estate by itself. If sold in detail it would no doubt invite the largest competition, as at least seventy per cent. of all the tools and machines in the shop are adapted to classes of work such as building locomotives, general machines, sewing ma-
 30 chines, and a variety of special machine work, which is now being manufactured in a very large number of shops in the country. Of these machines, at least eighty per cent. of them are merely set upon floors without any special foundation prepared and connected with the shafting in the ordinary way, so that they can be removed with no more loss than the changing of a machine in the same shop from one position to another. Twenty per cent. of the machines are set upon solid stone foundations, and in case of removal the cost of foundations would be very nearly lost. The whole of that,
 40 probably, would not exceed six thousand dollars. There are

all the tools in the shop for locomotive building which were there when the shop carried on that as its chief business. The manufacture of cannon at the establishment, although having all the advantages which the great demand, occasioned by the war, created, proved a total failure, so far as business profits were concerned. In four years there were made and delivered to Government from that shop, but four eleven inch guns, at \$1400 apiece which were good, and one fifteen inch gun at about \$6,000, which burst on the first charge. As the great customer for ordnance in this country 10 is the Government, and as they were unwilling to continue any further orders to the establishment, under these circumstances, I consider that branch of the business as having failed, and the property entirely out of the market for any such use. The arms machinery was entirely adapted for the manufacture of the Springfield musket. The contracts with the Government under which the Company were working, being for 50,000 muskets, at twenty dollars each, the Company made, I think, and delivered but twenty thousand of these, and failed to deliver the remaining thirty thousand; 20 first—because Government did not want the muskets, and therefore would not extend the time limited in their contract for the manufacture; and second—because the contractors found in their experience that \$20 was not a remunerating price. And as no more arms are wanted by Government, and the state of the times, the high price of labor, the taxes, and the duties on the raw material, preclude us from competing with foreign manufacturers in their own markets, I think there is but little field for the profitable manufacture of arms in that establishment, and therefore that the true 30 interest of the creditors and stockholders will probably be found in selling it for a locomotive and machine shop, and selling the gun machinery in such miscellaneous lots as will suit purchasers. Of this gun machinery, there are one hundred and twenty-one machines, costing about \$90,000, which are applicable to locomotive, general, or miscellaneous machine work; the armory, the pulleys, the shafting, are always applicable to such shops; the vices and the files, inventoried at about \$7,000, are also applicable to such shops. The stocking machines could be sold in bulk, and probably 40

would be bought by the U. S. Government, at a low valuation, as they are exact duplicates of the best machines of that description in the Springfield armory; they cost about \$23,000, and can be moved without the least difficulty, and very little loss. If this property is sold subject to the incumbrances, of which nearly the whole are disputed, no one can safely buy except the holder of those disputed bonds.

Quest. What do you know concerning the occupation of part of these premises in dispute by Norman Wiard?

10 *Ans.* Mr. Wiard went into the possession of these premises in September 1863. He never was the tenant under any written lease. He went in under an agreement, which he never performed, and is liable to the Locomotive Company for rent, largely in arrears. His property then was attached and taken possession of by the Sheriff, several months ago, as I believe, before the Arms Company stopped manufacturing, but of this I am not certain. He has never resumed operations. The Sheriff is still in possession.

Affirmed and subscribed, be-
20 fore me, this 22d day of } Jos. C. Potts.
June, A. D. 1865.

JAMES S. AITKIN, M. C. C.

Charles Hewitt, being duly sworn according to law, on his oath saith:

I am acquainted with the works of The New Jersey Arms and Ordnance Company, situate in Trenton; I know the nature of the machinery generally, especially the old machinery.

Quest. In your opinion, how should that property be sold
30 now so as to realize the most for stockholders and creditors?
Please give the reasons upon which you base your opinion?

Ans. I think it would be best to give discretionary power to some competent person to determine whether it would best promote the interest of the stockholders and creditors to sell in bulk or detail. I think it possible that it might be

best to sell a part in bulk, and the rest in small lots, but I am more inclined to believe that it would be best to sell all in small lots; my reason for the opinion I have given is that I now see at the close of the war no inducement for any person to start a new arms manufacturing establishment. Establishments already manufacturing arms may need single machines, or a few machines to make their existing establishments more efficient. Again, with regard to locomotive machinery suited to a general machine work that was in the establishment before arms making begun, there are 10 very strong reasons, in my judgment, for not selling that in connection with the gun machinery, nor in bulk, by itself. The effect of selling it in connection with gun making machinery would be, I think, to exclude as purchasers a very large class of persons engaged in general machine work, while the effect of selling such machinery in bulk would be similar in effect but not equal in degree.

Quest. Mr. Potts has testified that eighty per cent. of the machines in that building are set simply upon the floors, without any special foundation work, would there be much 20 loss, if any, in removing such machines to other factories?

Ans. Not much. The only loss I can think of would arise from making useless the shafting for driving the machinery as now set; it would make the shafting useless, but only useless where now set. Such shafting might be used in same establishment with no loss, and could be removed to another and used with but little loss. I am general manager of The Trenton Iron Company's works, and am now engaged in the manufacture of musket barrel iron, under an old contract with the Government. The trade is so depressed that 30 our barrel rolling machinery has been idle for some time, and we see no prospects of operating it. We would be glad to sell it, and would not think of selling it in bulk at public sale.

Sworn and subscribed, this }
 22d day of June, A. D. } C. Hewitt.
 1865, before me.

JAMES S. AITKIN, M. C. C.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. POTTS, complainant, <i>and</i> The New Jersey Arms and Ordnance Company, and others, defendants.	}	<i>On Bill for Injunction</i> <i>and</i> <i>Receiver.</i>
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The complainants having filed a petition in this cause praying that the Receiver appointed therein may be ordered
 10 to sell the real and personal property of the defendant, The New Jersey Arms and Ordnance Company, free and clear of the liens and incumbrance of two certain mortgages in said petition mentioned, and that the proceeds of said sale be brought into this court, and the hearing of the same being brought on before the Chancellor, pursuant to an order made for that purpose, and the Chancellor having heard the proofs and exhibits taken to be used on said application, and heard the arguments of the counsel for both parties, and duly considered the same, and being of opinion that such order is not
 20 within the power of the court and ought not to be made—

It is thereupon ordered and adjudged by the Chancellor that the order applied for in such petition be refused and denied, without costs.

HENRY W. GREEN, C.

Dated June 20, 1865.

A true copy :

B. GUMMERE, Clerk.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. POTTS,
 complainant,
and
 The New Jersey Arms and
 Ordnance Company, et. als.
 defendants.

On Bill, Petition, &c.

Appeal.

The complainant hereby appeals from so much of the interlocutory decree made in this court, on the twentieth day of June inst., in the above stated cause, as declares that it is not within the power of the Court to make an order directing the Receiver appointed in said cause to sell the real and personal property of the said company, free and clear of the liens and incumbrance of two certain mortgages, in the petition of the complainant mentioned, and that such order ought not to be made, to the Court of Appeals in the last resort in all causes of law.

Dated June 27, 1865.

E. T. GREEN,
 Solicitor of Complainant. 20

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

B. VANSYCKEL,
 Of Counsel, &c.

COURT OF APPEALS, IN THE LAST RESORT, &c.

Between WILLIAM H. POTTS, }
 appellant, }
and }
 The New Jersey Arms and }
 Ordnance Company, et. als. }
 appellees. }

*On Bill, Petition, &c.**Petition of Appeal.*

To the Honorable the Court of Appeals, in the last resort in all causes of law:

- 10 The humble petition of William H. Potts, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by an interlocutory decree made in the Court of Chancery by his Honor, Henry W. Green, Chancellor, bearing date the twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-five, wherein the said William H. Potts is complainant and petitioner, and the said The New Jersey Arms and Ordnance Company, and others, are defendants, in this respect, to wit: That the said decree adjudges, that it is not within
- 20 the power of the court to make an order directing the Receiver appointed in said cause to sell the real and personal property of the said company, free and clear of the liens and incumbrance of two certain mortgages, in the petition of the complainant mentioned, and that such order ought not to be made. And your petitioner humbly appeals from that part of the said decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that it is within the power of said Court of Chancery to make such order as aforesaid, and that such order ought to
- 30 be made.

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

Dated June 27, 1865.

E. T. GREEN,
 Solicitor of Appellant.

IN CHANCERY OF NEW JERSEY.

Notice of taking of Depositions.	}	<i>Exhibit G, 1.</i> <i>ex parte</i> <i>Complainant.</i>
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IN CHANCERY OF NEW JERSEY.

Between Wm. H. POTTS, complainant, <i>and</i> The New Jersey Arms and Ordnance Company, defendants.	}	<i>Exhibit G, 2.</i> <i>ex parte</i> <i>Complainant.</i>	10
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JAMES S. AITKEN, M. C. C.

IN CHANCERY.

Between WILLIAM H. POTTS, compl't, <i>and</i> The New Jersey Arms and Ordnance Co., et. al. defnt's.	}	<i>On Bill, &c.</i>
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Sir:—Application having been made to me on behalf of the Complainant in the above suit, to sell the property of 20 The New Jersey Arms and Ordnance Company, free from the liens of the mortgages and other incumbrances thereon, and having duly considered said application, I am clearly of opinion that a Receiver has no power or authority to sell the property, real or personal, of an insolvent corporation, clear of incumbrances, without the express order of the Court.

I shall, therefore, advertise and sell the property of the above named defendants, subject to all legal and equitable incumbrances, unless otherwise ordered by the Chancellor.

May 2nd, 1865.

Resp'y Ys,

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CALEB S. GREEN,
Receiver, &c.

To EDWARD T. GREEN, Esq., }
Sole'r of Complt. }

IN CHANCERY OF NEW JERSEY.

Between Wm. H. Potts, com- plainant, <i>and</i> The New Jersey Arms and Ordnance Company, et. als. defendants.	}	<i>On Petition, &c.</i> <i>Exhibit G, 3.</i> <i>ex parte</i> <i>Complainant.</i>
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JAMES S. AITKIN, M. C. C.

10 The Trenton Locomotive and Machine Manufacturing Com- pany, <i>to</i> Joseph G. Brearley, Trustee.	}	\$50,000.
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This Indenture, made this first day of April, in the year of our Lord one thousand eight hundred and fifty-six, between "The Trenton Locomotive and Machine Manufacturing Company," party of the first part, and Joseph G. Brearley, of the City of Trenton, in the State of New Jersey, Trustee, for the holders of certain bonds hereinafter mentioned, party of the second part; whereas, &c., all that certain tract or parcel of land, situate in the City of Trenton aforesaid, bounded and described as follows, viz: Beginning at the southeast corner of Broad street and the Sandtown road, and running thence (1) by Broad street, southeasterly, six hundred and twenty-one feet; thence (2) at right angles to Broad street, north fifty-seven degrees east, one hundred feet; thence (3) northwesterly and parallel with Broad street twenty-five feet; thence (4) north eighty-five degrees east, one hundred and thirteen feet and a half, to a corner in the Basin; thence (5) north thirty-three degrees west, along the westerly side of said Basin three hundred and sixty-seven feet eight inches, to the northwesterly corner of said Basin; thence (6) along the northerly side of said Basin north eighty-five degrees east, three hundred and forty-eight feet, more or less, to the line of land of the Delaware and Raritan Canal Company; thence (7) by their line northerly to the Sandtown road; and thence (8) by the Sandtown westerly to the beginning. And also all the buildings,

factories and shops erected upon the said tract of land, with all machinery, fixtures, engines and tools connected therewith, used therein, or belonging thereto, together with the right and privilege at all times forever hereafter, fully and freely to enter the said Basin, and to use the same in common with the owners of the remaining wharf front in said Basin, excepting always out of said tract of land the right of way for a railroad, reserved to Abraham S. Hewitt and Edward Cooper, their heirs and assigns, in and by a certain deed made by them to Aaron H. Vancleve, William R. Mc-10 Kean, Joseph C. Potts and Isaac Dripps, bearing date of the first day of February, A. D. eighteen hundred and fifty-three, together, &c. To secure the payment of fifty several bonds of one thousand dollars each, with interest, &c. To mortgage was acknowledged on the twelfth day of April, A. D. 1856, before Caleb S. Green, a Master in Chancery, and recorded April 29th, same year.

WM. R. MURPHY, Clerk.

State of New Jersey, Mercer County, ss.

I, Robert C. Belville, Clerk of the Court of Common Pleas, 20 in and for said County of Mercer, do hereby certify that the foregoing is a true copy of the records of the above mortgage as the same remains in my office, in book I, of mortgages, page 340.

In testimony whereof, I have hereunto set my hand and [L. s.] affixed the seal of said Courts, at Trenton, this 30th day of May, A. D. 1865.

R. C. BELVILLE, Clerk.

(Revenue Stamp cancelled.)

IN CHANCERY OF NEW JERSEY.

Between WM. H. POTTS, com- plainant, <i>and</i> The New Jersey Arms and Ordnance Company defend- ants.	}	<i>On Petition, &c.</i> <i>Exhibit G, 4.</i> <i>ex parte</i> <i>Complainant.</i>
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JAMES S. AITKEN, M. C. C.

10 "The New Jersey Arms and Ordnance Company, <i>to</i> Joseph G. Brearley, Trustee.	}	\$125,000.00.
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This indenture, made the fifth day of October, A. D. eighteen hundred and sixty-four, between The New Jersey Arms and Ordnance Company, party of the first part, and Joseph G. Brearley, of Trenton, New Jersey, Trustee for the holders of certain bonds hereinafter mentioned, party of the second part. Whereas, the said party of the first part have made, executed and issued, one hundred and fifty several bonds or obligations, bearing even date herewith, one hundred of said bonds being for the sum of one thousand dollars each, and fifty of them being for the sum of five hundred dollars each, amounting in the aggregate to one hundred and twenty-five thousand dollars, which said several bonds are numbered from one to one hundred and fifty, both inclusive, and are payable to the bearer thereof at the Mechanics' and Manufacturers' Bank, at Trenton, one year after date, with interest on each of said bonds from date, at the rate of six per cent. per annum, as by said bonds, reference being thereunto had will appear. Now this indenture witnesseth, that

30 the said party of the first part, for the better securing the payment of the said bonds, with interest, as aforesaid, to the holders thereof, and for and in consideration of the sum of one dollar to them, the said party of the first part, paid by the said party of the second part, at and before the sealing of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, en-

feoff, release and confirm unto the said party of the second part, his heirs and assigns, all that certain tract or parcel of land situate in the city of Trenton, in the State of New Jersey, bounded and described as follows, viz: Beginning at the southeast corner of Broad street and the Sandtown road, and running thence (1) by Broad street southeasterly, six hundred and twenty-one feet; thence (2) at right angles to Broad street, north fifty-seven degrees east, one hundred feet; thence (3) northwesterly and parallel with Broad street twenty-five feet; thence (4) north eighty-five degrees 10 east one hundred and thirteen feet and a half to a corner in the Basin; thence (5) north thirty-three degrees west, along the westerly side of said Basin three hundred and sixty-seven feet eight inches to the northwesterly corner of said Basin; thence (6) along the northerly side of said Basin, north eighty-five degrees east, three hundred and forty-eight feet, more or less, to the line of land of the Delaware and Raritan Canal Company; thence (7) by their line, northerly, to the Sandtown road, and thence (8) by the Sandtown road, westerly, to the beginning; and also all the 20 buildings, factories and shops upon the said tract of land, (except certain buildings erected by A. G. M. Prevost, or by the Trenton Car Company, for the manufacture of railway cars), with all the machinery, fixtures, engines, tools, and property of every kind belonging to the party of the first part (except the stock of materials on hand), upon said premises, or connected therewith, or belonging thereto, together with the right and privilege at all times forever hereafter fully and freely to enter the said Basin, and to use the same in common with the owners of the remaining wharf 30 front on said Basin, excepting always out of said tract of land the right way for a railroad, reserved to Abram S. Hewitt and Edward Cooper, their heirs and assigns, in and by a certain deed made by them to Aaron H. Vancleve, William H. McKean, Joseph C. Potts and Isaac Dripps, bearing date the first day of February, A. D. eighteen hundred and fifty three. Together with all and singular the buildings, (except as aforesaid), improvements, ways, waters, water courses, rights, liberties, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the 40

reversions, remainders, rents, issues and profits thereof, and of every part and parcel thereof; and also, all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, both in law and equity of them, the said party of the first part, of, in and to the said premises, with the appurtenances. To have and to hold the said lands, hereditaments and real estate, and also the said machinery, tools and fixtures and personal estate unto the said Joseph G. Brearley, Trustee, as aforesaid, his heirs and assigns, to

10 the only proper use, benefit and behoof of the said Joseph G. Brearley, Trustee, as aforesaid, his heirs and assigns, forever, except that the said real estate, together with such of the said machinery, engines, fixtures, tools and personal property as were on said premises, belonging to The Trenton Locomotive and Machine Manufacturing Company on the first day of April, A. D. eighteen hundred and fifty-six, are subject to a mortgage made by said last mentioned company on said last mentioned date, to the party of the second

20 part hereto, as Trustee, for the sum of fifty thousand dollars, recorded in the Mercer County Clerk's Office, on the 29th of April, 1856, in book I, of Mortgages, page 340: Provided always, nevertheless, and it is the true intent and meaning of these presents, that if the said "The New Jersey Arms and Ordnance Company," party aforesaid of the first part hereto, and their successors do and shall, well and truly, pay or cause to be paid unto the said Joseph G. Brearley, Trustee, as aforesaid, his executors, administrators or assigns, or to the holder and holders respectively of each and every of the

30 said bonds or obligations hereinbefore mentioned, their, and each of their executors, administrators or assigns, the several and respective sums of money in the said bonds specified, with the interest thereof, as the same shall become due and payable, according to the tenor and effect, true intent and meaning of the said several bonds respectively, and without any deduction or defalcation, or allotment for or by reason of any taxes, charges or assessments whatever, then and from thenceforth, as well the said several bonds or obligations, as also these presents and every thing herein contained shall cease and become null and void, anything herein

40 to the contrary in any wise notwithstanding, but on failure

of payment thereof to be and remain in full force and virtue.

In witness whereof, the said party of the first part have hereunto set their common seal, the day and year first above written by the hand of A. M. Burt, their President, and the said President hath subscribed his name, being thereunto duly authorized

[L. s.] by an order or resolution of the Directors of the said corporation, passed on the fourth day of October, 1864.

10

A. M. BURT, President.

Signed, sealed and delivered in the presence of John R. Chandler.

State of New Jersey, ss.—John R. Chandler, of the City of Trenton, in the State of New Jersey, being duly sworn, on his oath saith :

That he is the book keeper and confidential clerk of "The New Jersey Arms and Ordnance Company," the mortgagers in the foregoing deed of mortgage, and was so before and the time of the date and the execution of said mortgage, and that he knows the common seal of the said company; that the seal affixed to said mortgage is the common seal of said company, and that he saw Addison M. Burt, who is the President of said company, affix said seal to said mortgage, and sign his name thereto as President of said company, and heard him declare that he signed, sealed and delivered the same as the act and deed of said company, by the order and authority of the board of directors thereof; that deponent has seen upon the minutes of the directors of said company the resolution of said directors authorizing the execution and delivery of said mortgage by the said President of said company; that deponent, at the time of the execution of said mortgage, signed his name thereto as subscribing witness, by request of the said A. M. Burt, President, and that the

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name "A. M. Burt, President," signed to said mortgage, is the proper hand writing of said A. M. Burt, and was signed by him in the presence of this deponent.

Sworn and subscribed, this 7th }
 day of October, A. D. 1864, } John R. Chandler.
 before me.

J. WILSON, Master in Chancery N. J.

Recorded in full, October 7, 1864.

R. C. BELVILLE, Clerk.

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State of New Jersey, Mercer County, ss.

I, Robert C. Belville, Clerk of the Court of Common Pleas in and for said county, do hereby certify that the foregoing is a true copy of the records of the above mortgage, as the same remains in my office, in book P, of Mortgages, page 436, &c.

In testimony whereof, I have hereunto set my hand and official seal, at Trenton, this 30th day of May, A.
 [L. s.] D. 1865.

R. C. BELVILLE, Clerk.

20 (*Revenue Stamp cancelled.*)

name "A. M. Hart, President," signed to said mortgage is
 the proper legal writing of said A. M. Hart, and was signed
 by him in the presence of this deponent.
 Given and subscribed this 1st
 day of October, A. D. 1881. John H. Chanler,
 deponent.
 A. WILSON, Master in Chancery, J. J.
 Recorded in full October 7, 1881.
 H. C. BELYINE, Clerk.

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 State of New Jersey, Mercer County.
 I, Robert C. Belyine, Clerk of the Court of Chancery
 in and for said county, do hereby certify that the fol-
 lowing is a true copy of the records of the above mortgage,
 as the same remains in my office, in book 1, of Mortgages,
 page 426 &c.
 In testimony whereof I have hereunto set my hand and
 official seal at Trenton this 25th day of May, A.
 D. 1882.
 H. C. BELYINE, Clerk.
 (Seal of the Court of Chancery)