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COURT OF ERRORS AND APPEALS

Between
C. EDWARD MURRAY et als.,
Complainants and Respondents,
and
WILLIAM H. SKIRM, JR.,
Defendant and Appellant.

On Bill and Cross Bill.

BRIEF OF EDWIN ROBERT WALKER, OF COUNSEL FOR COMPLAINANTS AND RESPONDENTS.

There are no disputed facts in this case. The only dispute is as to the inferences to be drawn from those facts. The facts are these:

On February 24th, 1903, William H. Skirm, Jr., the defendant, procured the endorsement of C. Edward Murray, one of the complainants, to a note for $3,600, for his (Skirm's) use and accommodation. It was what is known in banking circles as a collateral note. See *Exhibit D 1.* (*Case, p. 92.*) The defendant, Mr. Skirm, in his answer, admitted that on February 24th, 1903, he borrowed from the Mechanics National Bank of Trenton the sum of $3,600 on the note just mentioned, on the endorsement of Mr. Murray, for his accommodation. (*Case, p. 9.*) That note fell due four months after its date, namely, on June 24th, 1903, and remained unpaid

for nearly two months, and until August 20th, 1903. As collateral security, Mr. Skirm pledged with the bank fifty shares of the capital stock of the Empire Rubber Manufacturing Company, an industrial corporation of Trenton. More than the usual notice of the sale of the collateral was given to the public. See the testimony of President Stokes, of the Mechanics National Bank. (*Case, pp. 76, 77.*) See, also, *Exhibit C 5,* being the letter of President Stokes, of the bank, to Mr. Skirm, on August 7th, 1903, giving him personal notice that the sale of the collateral would take place. Mr. Skirm admitted the receipt of more than one such notice. (*Case, p. 65.*) See, also, *Exhibits C 1* and *C 2,* being advertisements of the sale of the stock in two daily newspapers of Trenton. (*Case, p. 90.*) The sale appears to have been adjourned for one week from the advertised day; that is, from August 13th to August 20th, 1903. Mr. Patterson, the auctioneer, testified that he advertised the sale by one hundred postal cards, besides the newspaper advertisements. (*Case, p. 40.*) They were sent to prominent people in Trenton, whose names were taken from the City Directory. (*Case, p. 41.*) Mr. Baker, Mr. Murray and Mr. Cornell were at the sale. Mr. Cornell purchased the stock, a fact admitted in the cross-bill (*Case, p. 10*), but the defendant claims he (Mr. Cornell) purchased it in trust for Mr. Murray. The transaction was absolutely straight upon its face. The proceeds of the stock were applied to the payment of the $3,600 note. See the testimony of the bank clerk, Mr. Slack. (*Case, p. 51.*) On the day of the sale there was a note discounted by the Mechanics National Bank made by Mr. Cornell and endorsed by Mr. Murray. (*Case, p. 52.*) Mr. Cornell gave his check for $350 and Mr. Murray his check for $3,297.07, and the note (of Mr. Skirm) was delivered to Mr. Murray. (*Case, p. 54.*) The transaction was this: The stock was sold to Mr. Cornell for $350; the balance due upon the note, and for which Mr. Murray was liable as endorser, was $3,297.07, which amount he paid in exoneration of his liability as en-

dorser. Mr. Cornell, at the same time, borrowed from the bank $3,000 on the strength of Mr. Murray's endorsement and the pledging of the same stock. This was Mr. Murray's assisting of Mr. Cornell to become a purchaser of stock in the Empire Rubber Manufacturing Company. The stock was issued to Mr. Cornell. See *Exhibit D 3.* (*Case, p. 94.*)

After the payment by Mr. Murray of the balance due upon Mr. Skirm's note, which he had endorsed, Mr. Murray commenced suit against Mr. Skirm in the Supreme Court and recovered judgment, on September 15th, 1903, for $3,341.74, damages and costs, and the next day caused an execution to be issued to the sheriff of Mercer, who thereunder levied upon all the right, title and interest of the defendant, William H. Skirm, Jr., in 241 shares of the capital stock of the same Empire Rubber Manufacturing Company, standing in the name of the execution debtor, Mr. Skirm. On October 15th, 1903, Mr. Skirm recovered a judgment in the Supreme Court against Messrs. Murray and Baker for $4,175.32, damages and costs. For the admitted purpose of compelling Mr. Skirm to pay the debt which he owed Mr. Murray, Mr. Murray, through the intervention of Mr. Lanning, put the title of his judgment in Mr. Baker and himself, and their bill to set off the judgments *pro tanto* was filed October 21st, 1903. Under that bill this controversy arises in this way:

The defendant answered the bill and admitted its allegations, and exhibited therewith, by way of cross-bill against the complainants, Messrs. Murray and Baker, and also against Mr. Cornell and the Mechanics National Bank, a charge of fraud and conspiracy on the part of those three gentlemen and the bank to cheat and defraud the defendant out of his stock. There was a wide variance between the *allegata* and *probanda* on this head.

In the cross-bill the defendant avers that Messrs. Murray and Baker caused and procured Mr. Cornell for and on their behalf to borrow from the Mechanics National Bank the sum of $3,600, and caused Mr. Cornell to give

his note for the amount, endorsed by Messrs. Murray and Baker. (*Case, p. 10.*) Surely the defendant was required to prove this affirmative allegation of fraud. He assumed that burden, and his counsel opened the case and put in all the evidence, except some of the exhibits which were brought out upon the examination of the witnesses and which were offered by the complainants. See the transcript of the testimony. (*Case, p. 39 et seq.*) When he rested he had proved a purchase of the stock made by Mr. Cornell, his check given for the purchase price, and $3,000 borrowed from the bank upon the endorsement of Mr. Murray, and the same stock, then standing in his, Mr. Cornell's, name, pledged to the bank as collateral security in conjunction with Mr. Murray's endorsement—a transaction perfectly valid, and free from any patent fraud, and in which inherent or latent fraud would be presumed only by the proof of some facts which would justify the inference. None were proved. Mr. Baker had nothing to do with the transaction at all.

However, as an allegation of fraudulent conduct, it was averred in the cross-bill that the sale of the defendant's collateral by the bank was had without publicly advertising the same; that the sale was conducted privately in the bank in the presence only of the bank officials and of Messrs. Murray, Baker and Cornell; that the price brought was grossly and unconscionably low. The proofs show the widest sort of publicity given to the advertisement of sale, and if the defendant did not receive a notice of it, as he alleges, it was because he himself ran away to Atlantic City and left no directions at his house to have his mail forwarded to him. (*Case, p. 64.*) No proof was offered to show what was the market value of the stock sold, or that it had any market value whatever. Another conspicuous instance of variance between charge and proof.

It was shown that the company had, prior to 1902, paid dividends. On the question of the value of the stock (not market value) the defendant offered the balance sheet and profit and loss account of the company for the

twelve months ending June 30th, 1902, made by the Audit Company, of New York. See *Exhibit D 6.* (*Case, p. 109.*) The Audit Company says that, as to one item of credit, viz., shares of stock of the Penn Rubber Company ($3,398.46), that the shares were not submitted for their inspection; and in figuring out net profits for the six months ending June 30th, 1902, at $48,820.07, it is distinctly stated in the Audit Company's report that this is done before—that is, *without*—charging off depreciation on buildings and machinery carried. (*Case, p. 111.*)

Mr. Skirm, the defendant, was a director of the Empire Rubber Manufacturing Company on August 4th, 1902, and was present at a meeting of the board of directors on that date when a resolution was passed recalling the last dividend declared by the company owing to no account having been taken of depreciation in machinery and the necessity for certain improvements, and because an old claim of William F. O'Brien had not been paid. Mr. Skirm was secretary of the meeting and made a short entry of the resolution. He identified a paper handed to him as the real resolution adopted on the occasion. (*Case, pp. 63, 68.*) Mr. Skirm himself voted for this rescinding resolution, at least that is the conclusive legal presumption. It is a rule of parliamentary law that all motions and resolutions are presumed to be unanimously carried unless there be a recorded vote containing a record of the votes cast in the negative. The resolution itself was offered in evidence by both sides; by the defendant because he couldn't help himself, and by the complainants because it conclusively showed that the surplus certified by the auditing company at the close of the six months ending June 30th, 1902, had no real existence. See the *Exhibit D 5* and *C 6.* (*Case, p. 107.*)

The defendant, Mr. Skirm, commenced a suit against the Empire Rubber Company in July, 1903, in the United States Circuit Court, in which he claimed $3,420.07 as the dividend due him upon the stock of the

company, and admitted that the company set up as a defense that the dividend had been rescinded and annulled by the board of directors because it had not been earned, and because its payment would have been an invasion of the capital stock of the company, and he was asked if the jury did not find against him on that suit, but his counsel objected on the ground that a judgment could not be proved except by the record, and the objection was sustained. (*Case, p. 64.*)

Thus it appears that Mr. Skirm was unwilling to testify about the result of that suit, which directly involved the value of the stock he so much vaunts, and the strongest sort of inference is to be drawn against him.

We contend that the learned Vice Chancellor made an error prejudicial to the complainants by sustaining this objection. True it is, you cannot prove a judgment except by a record when your object is to make it substantive evidence for yourself, but you can ask a witness on cross-examination whether or not he was involved in a certain lawsuit and what the outcome of that suit was.

Another thing: The defendant in his cross-bill alleges that the complainants, although they well knew that they had no lawful defense to the defendant's suit at law against them, filed a plea thereto denying their liability therein, for the purpose of thwarting and delaying the defendant from the recovery of the moneys due him and to prevent him from paying to the bank the moneys due by him to that institution. (*Case, p. 13.*) The complainants in their replication and answer to the cross-bill averred that Messrs. Murray and Baker were advised by counsel that they had a lawful defense to the action of Mr. Skirm against them in the form in which the action was brought, namely, an action charging them as joint debtors to him, when said debt was several and individual as to the one-half part or moiety, each, of the amount demanded of them by Mr. Skirm, and therefore they filed their plea denying their liability therein; that when the trial of the issue was about to take place

in the Mercer Circuit Court they relinquished their defense, because, as they were then advised by counsel, they had not filed any notice of misjoinder of defendants, according to the statute, and could not prevent the plaintiff from recovering judgment against them in such manner and form as the proofs would show them to be liable; and therefore, instead of attending the Circuit Court to await the trial of the issue when called in its order, they allowed Mr. Skirm to recover judgment against them in the manner and form in which he had complained in his action. No proof was attempted to be offered on the trial to the effect that the plea was interposed in bad faith, or that they, Messrs. Murray and Baker, had not been advised by counsel that they had a defense to the action in the form in which it was brought, or that their counsel (whose inadvertence it was not to have filed a notice of misjoinder) afterwards advised them that they might as well relinquish their plea. (*Case, p. 35.*) To say that an affidavit of merits may not be filed in a case in which the defendants conceive that they are improperly sued, and sued in a manner in which they are not liable, is absurd—foolishly absurd.

The complainants in their replication and answer aver as to the 231 shares of the stock of the Empire Rubber Manufacturing Company which were sold under Mr. Murray's judgment for $50; that the same had been hypothecated, but to secure what amounts the complainants had no knowledge, but that the defendant, Mr. Skirm, having knowledge of the time and place of sale failed to attend or give notice of the situation of the shares. He adduced no proofs to negative this statement on the trial. (*Case, p. 37.*) The sheriff apparently set him off two shares at their par value, at $100 each. Of course he, the sheriff, had no knowledge of the value of the stock, and was not required to hold an inquisition to find out. It was the defendant's duty to be active in his own behalf.

These allegations, and others contained in the defendant's answer and cross-bill, and the averments of true

facts in the replication and answer of the complainants, read in conjunction with the proofs in the cause, show the absurdity and desperation of the defendant, and in some way, perhaps, account for the vehemence of the denunciation of the complainants by counsel for the defendant in his brief in this cause in this court, for he seems to have lashed himself into a perfect fury in his endeavor to overthrow the sound and justifiable conclusions reached by the learned Vice Chancellor on the final hearing of the cause, and that, too, by denouncing as frauds and conspirators, and even as perjurers, gentlemen of the highest standing. What other possible meaning has his declaration, on page 7 of his brief, that they (Messrs. Murray and Baker) "interposed a false plea and verified it under oath," except a charge of perjury? A gratuitous insult!

The charge of fraud falls flat and the defendant's only hope is the doctrine of inadequacy of price.

LAW OF SALES AND PRICE OBTAINED.

All authorities that I have seen where a sale has been set aside on the ground of gross inadequacy are cases where the complainant or pledgee bought at the sale, or where the rights of creditors intervened, and not where the property was bought by a third party, unless coupled with some ground of equitable relief, such as fraud, accident or mistake.

The bank, the pledgee, was not the purchaser, neither was Mr. Murray, the endorser, who might have been subrogated to the rights of the bank as pledgee had he taken up the note before the sale; but the stock was purchased by Mr. Cornell, to whom a certificate for it was issued, and who still holds and owns the stock. What Mr. Murray did was to pay the balance due upon the note after the sale in exoneration of this liability as endorser.

The note pledging the stock contained the following stipulation:

> "In case of non-payment * * * I hereby authorize said bank to sell said securities or properties and apply the net proceeds of such sale * * * to the payment of this note and interest thereon; *such sale to be made* at the bank's option, *without notice,* at any broker's board or public exchange, or *at public or private sale.*"

Such a contract—that is, one for private sale—is perfectly legal.

> *Am. & Eng. Encycl. L. (2d ed.) 884, 889.*
> *Dimock* v. *United States National Bank, 26 Vr. 296.*

Had the sale been made privately for the price obtained, the complainant could not avoid it; much less can he do so when the sale was public and superabundantly advertised, in order that the *highest and best price the stock would bring in cash at the time of the sale be had.*

Another thing: The note contained this provision also:

> *"Said bank may become the purchaser* of the securities or property so sold, *and hold the same thereafter in its own right absolutely;* and any amount which may then remain due hereon I promise to pay to said bank immediately after such sale, with legal interest."

Now, if the bank had bought under the circumstances, it could hold the stock, and if it could, then Mr. Murray could, even if he stood in the shoes of the bank, which he did not; if Mr. Murray could, Mr. Cornell could, even if he represented Mr. Murray, which he did not, and it will be remembered that the defendant's *theory* is that the sale was Mr. Murray's, and that Mr. Cornell bought for him and holds for him as a mere cover for a fraud.

The fraud question having fallen flat at the hearing,

the defendant's only refuge is to argue avoidability on the ground of gross inadequacy. In this he bears the burden, and is neither sustained by the law nor the facts.

In *Morrisse* v. *Inglis, 1 Dick. 306, 308,* the objection against the sale was that the price obtained was less than a resale would produce.

It was settled by the Court of Errors and Appeals in that case:

1. That judicial sales, made without irregularity or fraud, and not affected by accident or mistake, will not be set aside for mere inadequacy of price. Citing:

President, &c., of Hassert, Sax. 1.
Eberhardt v. *Gilchrist, 3 Stock. 167.*
Marlatt v. *Warwick, 3 C. E. Gr. 108.*
Kloepping v. *Stellmacher, 6 C. E. Gr. 328.*
White v. *Zust, 1 Stew. Eq. 107.*

2. That official sales will not be opened on the mere representation that more may be obtained for the property. Citing:

Campbell v. *Garden, 3 Stock. 423.*
Conover v. *Walling, 2 McCart. 173.*
Cline v. *Prall, 1 C. E. Gr. 415.*

It was observed that whether gross inadequacy will of itself be considered proof of fraud or justify interference has elicited somewhat variant views from the Court of Chancery. Citing:

Kloepping v. *Stellmacher, 6 C. E. Gr. 328.*
Smith v. *Duncan, 1 C. E. Gr. 240.*
Marlatt v. *Warwick, 3 C. E. Gr. 108.*

An examination of each one of these cases will show that some element of equity jurisprudence was present besides inadequacy of price, as follows:

In *Kloepping* v. *Stellmacher, 6 C. E. Gr. (at p. 329)*:

> "But when such gross inadequacy is combined with fraud or mistake, or any other ground of relief in equity, it will incline the court strongly to afford such relief."

In *Smith* v. *Duncan, 1 C. E. Gr. 240:*

> "Gross inadequacy of price, in the absence of fraud, mistake, illegality or surprise, is not sufficient to set aside a sheriff's sale and conveyance under an execution at law."

In *Marlatt* v. *Warwick, 3 C. E. Gr. (at p. 111)*:

> "As to the personal property, no evidence is offered of its actual value, but it is shown that it was sold under circumstances that induced the persons present at the sale to suppose that it was being bid in for the benefit of Marlatt, and made them refrain from bidding, and that it was sold below its value—perhaps at half its value—but this inadequacy on a sale of goods of such nature will not, standing by itself, be sufficient to declare the purchase fraudulent, or in trust for the debtor."

The next case to *Morrisse* v. *Inglis* was *Bethlehem Iron Co.* v. *Philadelphia and Seashore Railway Co., 4 Dick. 356.* In it Chancellor McGill observed that since *Morrisse* v. *Inglis* the Legislature had extended the act of 1880 requiring the report and confirmation of foreclosure sales to all sales of land made by order or decree of the Court of Chancery. The language of the act is:

> "That no sale * * * shall be confirmed * * * until the court * * * is satisfied, by evidence, that the property has been sold at the *highest and best price the same would then bring in cash.*"
>
> *Gen. Stat., p. 403, § 164.*

But this did not put the burden of proof on the party purchasing at the sale. The language is like that of a rule to show cause, seemingly putting the burden on the respondent, but really not so, the substantive rule of evidence requiring the objecting party to make a *prima facie* case before the other party is called upon to answer. That this is so with reference to these cases of judicial

sales, appears from the subsequent remarks of Chancellor McGill, in *Bethlehem Iron Co.* v. *Philadelphia and Seashore Railway Co.* (*at pp. 362, 363*), quoting from Chancellor Runyon, construing the act in the same phraseology, when it alone applied to foreclosure, &c., as follows:

> "The design of the Legislature in requiring judicial action on every such sale was not that, through the setting aside of sales, mortgaged property might be saved from effectual sale until an adequate price for it should have been obtained, but that those interested in having the property well sold might have opportunity to object to the sale; and if it should appear that the property had not brought the highest price it would bring at sheriff's sale in cash, the sale might be set aside."

So we see that, even in the face of a statute requiring that a sale of land be not confirmed until the court is satisfied by evidence that the property has been sold at the highest and best price the same would then bring in cash, the sale will be confirmed, unless the objectors show what?—*that the property would then have sold for a better price in cash.*

Now, there is no statute governing sales of the character under discussion, but if the court adopted a rule analogous to the statute, still the sale in the case at bar could not be disturbed, because the defendant has not shown that the stock would have brought a better price in cash at public vendue at the time of the sale, which was so abundantly advertised.

The complainants offered no proofs on the hearing because on the defendant's resting he had shown nothing in the way of fraud, collusion, accident or mistake, or inadequacy of price.

The evidence which he offered to show the value of the stock was that the company had paid dividends up to January, 1902; had declared another in August of that year; had, in October following, rescinded it, be-

cause not earned and because of the necessity for repairs, &c., and had not declared any since, a period then (at the time of hearing) of nearly two years.

Six years after the Morrisse *v.* Inglis case, the Court of Errors and Appeals, which rendered that decision, set aside a sale in *Rowan* v. *Congdon, 8 Dick. 385,* but only because gross inadequacy was coupled with proof that, owing to a misapprehension as to the time of sale, a purchaser who was willing to give a greatly enhanced price could have been had, and at the same time ordered that the sale be confirmed unless the prospective purchaser entered into bond to bid the enhanced price in the event of a resale. The case of Morrisse *v.* Inglis was not cited in this last case, which was no departure from it, because one of the grounds stated in the earlier case for setting aside a sale, namely, mistake, was present.

The defendant, Skirm, is not entitled to have the sale declared void, unless, *among other things,* he can show that the stock was sold for a price grossly below its *market value. Zimmerman* v. *Place, 16 Dick. 273,* is in point. In that case, said Chancellor Magie:

> "Complainant resists the confirmation of a sale of mortgaged premises by the sheriff under decree of foreclosure, on the ground that he had given instructions to his solicitor who attended the sale for him, which instructions, if followed, would have resulted in the purchase of the premises for complainant and benefited him.—*Held* (1) that no sufficient evidence appears of any neglect or violation of any instructions given the solicitor; (2) that if instructions were given and not followed, a purchaser at the sale will not be deprived of the benefit of his purchase unless he knew of the instructions and of their violation, or had information putting him on inquiry, *and the price at which he purchased was grossly below the fair market value.*"

In *Durant* v. *Einstein, 5 Robt. 423; S. C., 35 How. Pr. 223*, it was said:

> "Sales of stock below the market price, when duly authorized, would not make the brokers liable for the difference, unless made with an intent to injure the principal, beyond the mere regulation of the amount due the brokers, as in other cases of abuse of lawful authority. But something besides a mere sale below the market price is necessary to show such intent. * * *
>
> "There must, at least, be such recklessness shown in the mode or time of selling as to establish an intent to injure the pawnors before the pawnees can be made liable for any loss. * * *
>
> "The plaintiff is bound to make out his case affirmatively."

In *Manning* v. *Shriver, 79 Md. 41,* the court said, on page 48:

> "The plaintiff was authorized to sell without notice at any brokers' board or at public or private sale. He did, however, sell the stock at the stock board, and after notice to the defendant. The sale was, it seems to us, fairly conducted, and if the stock did not bring more than a dollar a share, it was because it had not in fact any market value."

In that case it appeared that the company was embarrassed at the time of the sale and afterwards disposed of its assets for enough to pay its debts without leaving anything for its stockholders, but the court did not hold that if the company had been solvent and had assets on its books which apparently made its stock worth par that the decision would have been different. The parties appear to have directed their proofs to the point, but the court seems to have decided the question on *market value.*

The mere fact that the price obtained is less than the

market price does not make pledgee liable. It must appear that there was an intent to injure the pledgor, &c.

Jones on Pledges, &c., p. 735.

Public sales should be supported unless in particular cases there be ground for impeaching their fairness.

Jones on Pledges, &c., p. 737, and *note 1.*

In *Raynolds* v. *Diamond Mills Paper Co., 60 Atl. Rep. 14, pp. 941, 945,* Vice Chancellor Stevenson said:

> "The situation would be very different, as counsel for the complainant very forcibly brought out in his argument and in his brief, if Mr. Raynolds' stock could be readily sold in the market and the market price of it increased as its book value increases and these undistributed profits accumulate. If Mr. Raynolds held 600 shares of stock in some of the banks or trust companies which have been established during the last ten years, it might make no difference to him whether dividends were paid from year to year or not. His share of these undistributed profits might be rendered to him completely, from year to year, in the shape of a steady increment of the market value of his stock. He might be able, at any time and from time to time, to realize such part of his share of the annual accumulation of profits as he might desire to have in the form of cash by selling a few shares of his stock. *But in fact, in this case, the complainant's stock is that of a private manufacturing corporation, a close corporation, whose stock does not appear to have any market value.* There is nothing to suggest that Mr. Raynolds could have sold his stock, or any part of it, for any more money in 1904 than it would have brought in 1900. In the case of corporations of this class, sales of stock outside of the small coterie of officers and managers are generally hard to make, excepting upon disadvantageous terms. I think the distinction drawn by counsel for complain-

ant between private manufacturing corporations, like this paper-mill company, and banks and trust companies, and even railroad companies, the shares of which are readily salable at all times on the market, and the market price of which is directly affected by the prosperity of the corporation, ought not to be overlooked in determining whether or not a dividend is being unreasonably and improperly withheld from expectant stockholders."

DEDUCTION.

From the authorities above cited, the following is clearly to be deduced as the law of the case at bar:

1. The sale to Mr. Cornell could have been privately made under the terms of the agreement of hypothecation and for the price obtained, and the pledgor could not avoid it; *ergo,* he can't complain of a public sale, as that method of offering the stock was more favorable to him.

2. Judicial sales, made without irregularity or fraud, and not affected by accident or mistake, will not be set aside for mere inadequacy of price or even gross inadequacy; therefore, certainly, non-judicial sales in the same posture will not be set aside, because, while anyone buying at a judicial sale has notice that his bid is subject to confirmation, a person buying at any other sale knows that his purchase can only be set aside for gross fraud or fraud to which he is himself a party.

3. The burden is upon him who attacks a sale to show that the property did not realize the highest and best price the same would bring in cash at the time of sale.

4. Showing that a concern had certain book assets before the time of a sale of some of its shares of stock, has no tendency even to show that the stock would have brought a higher price in cash at the time of sale.

5. That market value is the test, and no sale will be set aside unless it is made to appear that much less than the market value was realized.

6. Sales of the character in question are to be supported unless it is made affirmatively to appear that gross inadequacy, coupled with some ground of equitable relief, is present.

The defendant having adduced no proof of gross inadequacy, irregularity, fraud, accident, mistake or market value, has not discharged the burden cast upon him by the law and admittedly assumed by him, and therefore his cross-bill was properly dismissed.

DEFENDANT'S CITATIONS.

With the law exploited in defendant's brief and the authorities cited to support it to the effect that a pledgee cannot purchase at his own sale, I am in entire accord with counsel for the defendant. The law is well settled upon the subject, and if Mr. Murray had been the purchaser at the sale, the defendant would have been entitled to redeem, and his request for a reconveyance of the stock, upon his tender, would have been complied with. Mr. Murray, however, was powerless to turn over to the defendant Mr. Cornell's stock upon the defendant's offer to pay the judgment.

What will be noticed are the two authorities cited by counsel for the defendant on page 9 of his brief, to the effect that the burden of proving that the stock was worth less than its face value was upon the complainants, viz., *Harris' Appeal (Pa.), 12 Atl. Rep. 743,* and *Paulin* v. *Kaighn, 5 Dutch. 480.*

Harris' Appeal was this: A Mr. Wells entered into a contract to sell and deliver, among other things, two hundred and fifteen shares of certain canal stock, which was part of the consideration for which he was to receive $1,050,000. Now, it will be observed that when a man enters into a contract to sell shares of stock for money it must be presumed that the stock was to be sold at par, in the absence of anything to the contrary in the agreement of the parties, and, while the court in *Harris' Appeal* first determined to charge the Wells estate with

the stock at par, it afterwards, upon the suggestion that it was worth less than par, ordered the price to be reduced from par to market value—that is, from $100 to $30 per share. The pertinent parts of the opinion in *Harris' Appeal, 12 Atl. Rep. 743, 753,* are as follows:

> "The matter complained of is two hundred and fifteen shares of the North Branch Canal stock, which Colonel Wells failed to deliver. Both the master and the court below charged him with this stock at par, amounting to $21,500. * * *
>
> "It was part of the contract entered into by Colonel Wells that he was to deliver these shares, a portion of the consideration for which he was to receive $1,050,000. Having failed to deliver them, they must necessarily be charged to his account. The only remaining question is, at what price? *Prima facie,* they must be charged at par—$100 per share. The appellants contend, however, as before stated, that, if charged at all, it should only be at their market value. The burden of proof upon this point is upon the appellants. It is alleged, in a note to their paper book, upon the reargument, that the market value of this stock was only $30 per share. No evidence has been pointed out to us bearing upon this point. * * * Desiring, however, that no injustice may be done, if, before the record goes down, the learned counsel will call my attention to any facts which would justify us to do so, I will gladly, with the assent of my colleagues, amend the decree to conform to such facts."

In a memorandum appended to the opinion, labeled "Modification of Decree," the learned justice (Paxson) says:

> "In the decree of the court below the appellants are charged with the two hundred and fifteen shares of North Branch Canal stock at par, viz., $100—$21,500. This stock Colonel Wells failed to deliver under his contract, and for this failure to do so the

> appellees were entitled to damages. We do not think, however, the appellants should be charged with it at its par value. * * * We have but little evidence of the value of this stock. It was conceded by the appellants, however, that it was worth $30 per share, and in the amendment of the decree which is now made it is placed at that figure, with a proper allowance of interest."

Paulin v. *Kaighn, 5 Dutch. 480,* was also a contract case. That was a case in which two of three sureties on a bond took security to indemnify themselves, and afterwards surrendered the securities to the principal without the consent of their co-sureties. Mr. Justice Haines, in his opinion (on *p. 484*), says:

> "The implied contract between the co-sureties was that each would bear an equal part of the liability, and each have an equal benefit in all of the securities for indemnity that either of them held or should afterwards acquire. The surrender of the securities without consent was a breach of that contract."

Again (on *p. 487*), the learned justice observes that it was objected upon the trial below that certain testimony offered was incompetent because it was not accompanied by an offer to show that the securities were of some value, remarking:

> "The securities are presumed to be of the value expressed on their face and for which they were taken. The holders, who surrendered them, assume the burden of showing that they were of less value, and in his reply the plaintiff would have been at liberty to show that they were of less value than the face, or of no value at all, and have limited the discharge to the amount of such value."

Certainly, the securities in *Paulin* v. *Kaighn* were presumed to be of the value expressed on their face. There was no sale of the securities, and, consequently, no

fact from which their value could have been inferred. That was a case of value, pure and simple; the case at bar is one of sale for the highest and best price obtainable.

Mr. Justice Van Dike, in his opinion in the case (on *p. 493*), said:

> "The nature and usual idea connected with bonds and mortgages is that they possess value the same as any other securities that might be named, and in the absence of all evidence, or even allegations, to the contrary, the first presumption is that they are worth what they purport to be worth."

The securities obtained by Kaighn and Cooper, and which they surrendered without the consent of Paulin, were the mortgage bonds of the South Camden Ferry Company. On what a different footing stands the capital stock of a private, industrial corporation—a close corporation, so called—such as is the one (Empire Rubber Manufacturing Company) whose stock was sold at public auction at a broker's board after the defendant's default in the payment of his note for which he hypothecated the shares as security. Concerning such a corporation and its capital stock, we have the apposite and pertinent words of Vice Chancellor Stevenson, in *Raynolds* v. *Diamond Mills Paper Co., ubi supra.*

CONCLUSION.

It is submitted that the undisputed evidence in the case at bar shows: (1) That the stock was purchased by Mr. Cornell at a *bona fide* public sale, superabundantly advertised; (2) that Messrs. Murray, Baker and Cornell did not conspire to defraud the defendant out of his stock; (3) that the stock was sold at the highest and best price it would bring in cash at the time of the sale; (4) that the defendant took no steps to protect his interests: and that the following presumptions of law arise upon the

facts: (1) That the par value of the stock will not be presumed to be its market value; (2) that the burden of proving that the market value of the stock was greater than the purchase price was upon the defendant, who alleges that it was sacrificed; (3) that, anyhow, Mr. Cornell is the owner of the stock; (4) that therefore Mr. Murray had no power to assign it to the defendant. For these reasons, the complainants, or any or either of them, are not bound to answer to the defendant in respect of the matters alleged in his cross-bill, and the decree of the court below should be affirmed.

Respectfully,

EDWIN ROBERT WALKER,

Of Counsel with C. Edward Murray, C. Harry Baker and A. Boyd Cornell, Complainants and Appellees.

TRUE AMERICAN PUBLISHING CO., Printers, Trenton. N. J.

NEW JERSEY

Court of Errors and Appeals

Between

C. EDWARD MURRAY, et als.,
(Complainants)
Appellees,

and

WILLIAM H. SKIRM, Jr.
(Defendant)
Appellant.

On Bill, &c.

On Appeal to Chancery.

Bergen, V. C.

ARGUMENT OF APPELLANT.

The appellees, C. Edward Murray and C. Harry Baker, filed their bill, to offset a judgment, recovered by the former, in the Supreme Court, against the appellant, and held by them by assignment, against a judgment recovered by the appellant, against them, in the same court.

The appellant, in his answer by way of cross bill, to which are added as defendants A. Boyd Cornell and the Mechanics National Bank of Trenton, prays that in decreeing the said offset, securities which were pledged by the appellant as collateral for the payment of the debt, upon which the recovery against him was had, and which securities are now owned by or held for the appellee, C. Edward Murray, be restored to him, as redeemed, by the decree of offset. The substantive relief sought by the cross bill is from C. Edward Murray, to obtain from him the collaterals. C. Harry Baker is

joined, because of his relations to the judgment sought to be set off. A. Boyd Cornell is made a party, because it is claimed that he holds the pledged property in trust for C. Edward Murray; and the Mechanics National Bank of Trenton is brought in as a necessary party, because it holds the collaterals by way of a re-pledge. The latter is brought in incidentally only, as a medium through, and in connection with, which, the relief sought as against the complainants may be accomplished, at the same time protecting its equities. As against it, no iniquity is charged, nor direct relief asked.

By the pleadings it is admitted—

That on July 9th, 1902, the appellant loaned to Messrs. Murray and Baker, $3,837; on August 14th, 1903, he brought suit in the Supreme Court, to which pleas were filed, which were relinquished on October 15th following, and on the same day judgment final was entered for $4,175.32; on February 24th, 1903, the appellant borrowed from the Mechanics National Bank of Trenton $3,600, on his note, payable in four months, to the order of C. Edward Murray, and endorsed by the latter, to secure which note the appellant pledged a certificate of fifty shares of the capital stock of the Empire Rubber Manufacturing Company, of the par value of $5,000; on August 20th following, the bank sold the pledge at public auction to A. Boyd Cornell for $350 (in trust for Murray, the appellant claims); Cornell immediately re-pledged the stock to the bank for a loan of $3,000, then made to him upon his note, upon which C. Edward Murray became endorser; $350 of the money so borrowed was applied to the purchase price, and the remaining $2,650 was paid by Murray to the bank, in part liquidation of the appellant's debt; the balance of $600, and interest, Murray paid to the bank, and took up the appellant's note, upon which he forthwith brought suit in the Supreme Court, and recovered judgment on September 15th following for $3,341.74; on October 12th, 1903, he assigned the judgment to one Lanning, who in turn re-assigned it to Messrs. Murray and Baker, who, on October 21st following, filed their bill to offset it as against that of the appellant.

The appellant's claim to equitable relief is, that it is unconscionable for the appellee, Murray, to retain the pledged

property (obtained, as it was, at a grossly inadequate price, and at a time when he and his co-complainant were the appellant's debtors to an amount in excess of the pledge-debt), and also the debt, and to offset the latter against their co-existing obligation to the appellant, and that equity will compel him to restore the pledge.

THE PLEDGEE CANNOT PURCHASE AT HIS OWN SALE.

If the pledge had been made direct to Murray (the surety), without more, there could be no doubt as to the appellant's right to equitable relief, by compelling the pledgee first to do equity before receiving it.

> A purchase by a pledgee is forbidden. It is said that such a purchase is contrary to the principle that forbids a party to purchase property when he has a duty to perform in reference to such property, which is inconsistent with the character of a purchaser, * * * if he (the pledgor) repudiates it, the sale is void, and the pledgee has the collaterals under the original pledge, with the same rights and subject to the same liabilities, as if no sale had been attempted. * * * Until then, he holds it under the original contract of pledge, and is liable to deliver it, on payment of the debt.
>
> *22 Am. & Eng. Ency. of Law, pp. 891-892*

Colebrook on Coll. Sec., p. 442, says:

> "A pledgor may treat a sale by a pledgee to himself or some one acting for him, as a nullity, and upon payment or tender of the principal debt, is entitled to redeem such collateral securities."

Jones on Pledges, section 740, says:

> "To redeem, the debtor need only show that the creditor became the purchaser. * * * The creditor in selling the collaterals is in the position of a trustee for the debtor, and the law will not allow of the temptation to fraud, or the possibility of it, through the trustee becoming purchaser at his own sale."

Wholesome as this principle is, in administering justice

between the direct parties to the pledge, is there any reason at all why it should not, with equal potency, be applied to those beneficially interested in the pledge who likewise are trustees?

The property pledged, is a fund, created by the principal debtor, in the hands of the creditor, and a trust to be administered for the benefit of all of the parties to the contract.

Jones on Pledges, p. 614.

Such securities are regarded in equity as given as much for the benefit of the surety as for the creditor * * in which the surety has a beneficial interest. The principal stands in the relation, as to such collaterals, of a quasi trustee.

Colebrook on Coll. Sec., pp. 268-269, says:

> "The rights of a creditor and a person occupying the position of a surety, whether technically surety, endorser or guarantor, in respect to property pledged by a debtor for the payment of debts are reciprocal; the creditor may claim the benefit of the collaterals held by the surety, and the surety may likewise claim the benefit of the collaterals held by the creditor. The obvious design of the law, in both cases, is to satisfy the debt out of such property of the actual debtor as he may have pledged at any point in the transaction, as security for the debt, and thus relieve from loss those who may have become bound for the debt as a mere favor to the debtor.
>
> *Price v. Trusdell, 1 Stewart, p. 200.*
>
> *Decree reversed, 2 Stewart, p. 620.*
>
> *Irick v. Black, 2 C. E. Gr., p. 189.*
>
> "The foundation of this equity is that any fund placed by the principal debtor in the hands of the creditor, or of any surety, is a trust to be administered for the benefit of all the parties to the contract."
>
> *Jones on Pledges, section 514.*

The pledgee (the bank) and the surety (Murray) stood in relation to the pledged fund, equally as trustees, and the pretended sale by the main trustee to the surety trustee was, in effect, a mere shifting of the possession of the pledge from the former to the latter, who still holds the same, as

a trust fund, as unaffected by the formality of the sale, as though the main pledgee had been the purchaser. In this posture, will he be permitted to venture into a court of equity seeking its aid to be discharged from his obligation to the debtor, by setting off his counter claim, for the payment of which the debtor's property is pledged, without being first required to restore the property? It must be borne in mind, that he is the moving party in this cause. Does not that beneficient rule of equity fittingly apply to him, that "one who invokes the equitable powers of a court, must do equity before he obtains it?"

Yard v. Insurance Co., 2 Stock., p. 480.

Reeves v. Cooper, 1 Beasley, p. 223.

Colebrook on Coll. Sec., p. 292, says:

> "A surety may apply to equity to restrain the principal debtor from enforcing his debt at law until payment of the debt upon which he is surety. * * * and that a court of equity upon application by a surety will restrain the principal debtor from proceeding at law to enforce the collection of a debt owing by such surety, where the latter is obligated for the principal by his contract to an amount in excess of the debt, unless upon full indemnification * * * and that a surety indebted to his principal may, upon equitable grounds, require him to pay the debt as soon as it matures and may file a bill to compel an appropriation of the amount he owes to the principal to discharge his obligation to the creditor."
>
> See also *Irick v. Black, supra.*

This fairly states the attitude of the appellees in the present case. Surely a court of equity will not compel such an appropriation without a surrender of the fund held by the surety as collateral to his debt.

The pretended sale was simply a redemption of the securities by the surety.

Baylies on Sur. & Guar., p. 362, says:

> "The rights of subrogation resting on principles of pure equity will not be allowed to a party, indebted to the judgment debtor, against whom he asks to be substituted, until he has first satisfied the debt."

If the surety is indebted to his principal in an amount equal to his principal's debt he is not entitled to subrogation.

Colebrook on Coll. Sec., p. 272.
Heff v. Miller, 8 Pa. St., p. 347.
Coats App., 7 W. & S., p. 99.
Bailey v. Bloomfield, 20 Pa. St., p. 41.

These manifestly just doctrines exemplify our contention that Murray and Baker, being debtors of the appellant, at the time of the enforced substitution, under the color of a sale, the former took nothing by it, which equity will not oblige him to return upon decreeing a set-off of the respective debts.

The foregoing argument is predicated upon the assumption that the charges in the bill—that Cornell purchased and holds the pledge in trust for Murray—is sustained by the proofs. In this we think we have not erred. The stock was held to secure Murray, as surety. On August 14th, 1903, the appellant commenced his suit against the appellees, Murray and Baker. Six days thereafter the bank offered the stock for sale. Murray, Baker and Cornell were the only attendants at the sale. Murray was the only bidder, and the stock was presumably struck off to him in the name of Cornell. The bank was indifferent as to the price this valuable property brought. Immediately after the sale, Cornell and Murray repaired to the bank; there Cornell's note, with Murray's endorsement thereon, secured by the same fifty shares of stock just purchased for $350, was discounted. The full amount of the note was applied by Murray to the payment of the appellant's debt to the bank ($3,600). So the bank clerk testified and so the answer of the appellees admits—$350 was applied to the purchase money and $2,650, the balance, was appropriated by Murray to the matured note of the appellant, upon which he was surety. Loaned by Cornell to Murray! the answer says.

The learned Vice-Chancellor as to these circumstances says that they "may justify the suspicion of a conspiracy to defraud," but "that there is no proof of fraud." We say that they point unerringly to a combination to defraud. The appellees offered no testimony in explanation; which

justifies every intendment and deduction against them. Murray and Baker were the objects of the appellant's attack, in a suit at law, for a debt, they afterwards confessed they owed. To delay judgment they interposed a false plea and verified it under oath. Pending the suit, conscious that they owed the money, but hoping to retrieve, they flanked the appellant by inviting a sale of his property, by the pledgee, in which Murray was interested as surety, and purchased it at a price grossly inadequate, as we shall hereafter show.

Who were the sole participants in the sale? Murray, Baker and Cornell! Who was the bidder? Murray! Who engineered the negotiation of the securities so sold to realize an amount almost sufficient to pay the appellant's debt to the bank? Murray! He transferred his endorsement from the note of the appellant, to that of the pretended new purchaser, Cornell, and with the same property as security, obtained from the same principal creditor, an amount nearly equal to the pledge-debt; applying these moneys to the credit of the appellant's note, he secured its possession for what purpose? To countervail the appellant's suit to recover, that which the appellees knew, was justly due to him. "Suspicious circumstances," opines the learned Vice-Chancellor, but not proof of fraud. How with greater certainty could guilt be brought home to these parties, who refrained from explanation, when every honest impulse demanded, and a clear conscience would have vouchsafed, it? Coupling with these circumstances and their silence, the fact that the appellees were the debtors of the appellant, to an amount in excess of the pledge-debt, and that they refused to apply it to its extinguishment, and to the release of the pledged property, the irresistible deduction must be that the appellees, in securing the property, conspired in a scheme to cheat the appellant, and that Cornell was their willing creature, who now holds the appellant's property in trust for Murray. No other reasonable inference can be drawn. The learned Vice-Chancellor reasons that if there was fraud, the bank, of necessity, must have been a party. This is not a logical sequence. The fraud which we charged, and insist we have proved, is on the part of and by the complainants; Cornell

being the make-shift. They had the appellant's money and should have appropriated it to the liquidation of the pledge-debt, instead of withholding it, and participating in a sacrifice of the pledged property, to their gain and advantage. We repeat that no fraud is charged to the bank, and none is necessary to our relief against the complainants and Cornell.

THE SECURITIES WERE NOT SOLD AS A SEPARATE LOT.

The Mechanics National Bank held twenty additional shares of the capital stock of the Empire Rubber Manufacturing Company. In advertising and making the sale, the seventy shares were offered and struck off as a whole, at seven dollars per share. This was irregular (Jones on Pledges, section 739), and whether it had the effect of depressing the price obtained for the appellant's fifty shares is a matter as to which a court of equity will not stop to speculate upon when relief is sought because of gross inadequacy.

THE PURCHASE PRICE WAS GROSSLY INADEQUATE.

The value of the property sold was at least five thousand dollars; fifty shares of the capital stock of the Empire Rubber Manufacturing Company, of the par value of one hundred dollars each. The price at which it was sold was three hundred and fifty dollars. This was less than one-fourteenth of its value.

Proofs of the market value of the stock as offered by the appellant were not controverted by the appellees, and must, therefore, control the case on that issue.

The value of the stock is established by—

1st. Admission in the answer to the cross bill that the company was solvent and a going concern; that it was prosperous.

2nd. Like admissions, that, a year before, the complainants purchased a controlling interest of the company's capital stock at one hundred and ten dollars per share.

3rd. Face value of the stock.

4th. Book values of the company's property produced and adopted by the complainants, as its officers, showing a surplus, over its liabilities, of fifty-two thousand dollars.

5th. That the company annually, for ten years past, declared dividends averaging fourteen per cent., or a total of three hundred and fifty-two thousand dollars, on a capital of two hundred and fifty thousand dollars.

Prima facie market value is par value.

Paxton, C.J. *Harris' Appeal, Penna. 12 Atl. Rep. 74.*

Value of stock may be shown, by showing the value of the property and business of the corporation, and by its dividend earning capacity.

Cook's Stock & Stockholders, sec. 581.

Murray v. Stanton, 99 Mass., p. 345.

Trust Co. v. Lumber Co., 118 Mo., p. 461.

The burden of proving that the stock was worth less than its face value was upon the complainants. As officers of the company and having full knowledge of its assets and liabilities, they were in a position to avail themselves of this defence, if it existed—refusal to offer proof on this question strengthens the presumption that the market value of the stock is its par value.

Harris' Appeal, supra.

Paulin v. Kaighn, 5 Dutch, 480.

Gross inadequacy of price in itself is strong evidence of fraud; when taken in connection with the other circumstances in this case—that the complainants, Murray and Baker, owed to the appellant at the time of the sale of the pledged property, moneys equal to the debt for which the stock was pledged—that they withheld payment on a false claim offered in defence of the action against them by the appellant until after the sale—that they participated in the pretended sale by the Mechanics' Bank to Cornell, the brother-in-law of the complainant, Murray, knowing that the appellant was unable to protect his interest if they refrained from paying what was justly due to him—that the fifty shares of stock was sold with twenty other shares as one lot—that the appellant had no actual notice of the sale—such a state of facts is presented, we submit, as will strongly appeal to a court of equity for relief.

Phillips v. Pullen, 18 Stew., p. 830.
Lundy v. Seymour, 10 Dick., p. 1 and cases cited.
Morrisse v. Inglis, 1 Dick., p. 306.
Rowan v. Congdon, 8 Dick., p. 385.
Zimmerman v. Place, 16 Dick., p. 273.

When gross inadequacy is combined with fraud or mistake or any other ground of relief in equity, it will incline the court strongly to afford relief.

Kloepping v. Stellmacher, 6 C. E. Gr., p. 328.

Where there are other ingredients in the case of a suspicious nature, or peculiar relations between the parties, gross inadequacy of price must necessarily furnish the most vehement presumption of fraud.

Winternuth v. Snyder, 2 Gr. Ch., pp. 489, 497.

We submit that Cornell and Murray, ought to be, so far as the purchase of the appellant's stock is concerned, regarded as one person, having common knowledge of all of the circumstances. The conduct of the appellees and Cornell was oppressive and iniquitous, and of which they should not be permitted to reap a benefit.

Brinkerhoff v. Ranson, 12 Dick., p. 312.

The argument of the learned Vice-Chancellor that the sale by the Sheriff of Mercer county to the complainants of two hundred and thirty-nine shares of the same capital stock on September 15th, 1902, for $50 under an execution issued upon the appellant's judgment, is some indication of the value, is hardly sound. By the pleadings it appears plainly that they were hypothecated for large sums of money, and it also appears that the appellant did not attend because he had no knowledge of the sale. The advertisement, presumably, was according to statutory requirements—three posters set up for five days in the county.

The strictures of the learned Vice-Chancellor upon the appellant's pleadings that he was "of the opinion that the affirmative relief sought by the defendant cannot be allowed under these pleadings," and that in his "judgment the relief sought should have been the subject of an original bill," are due to a misconception of the aim of the cross-bill. The prayer is that appellees and Cornell first restore the pledge—that they redeem it from the bank, which now holds

it as security—or upon failure or refusal, that the appellant be permitted to redeem it from the bank, and in that event, that the amount be credited upon the judgment against the appellant and that that judgment upon full payment be cancelled or its execution restrained. Nothing is sought against the bank. It is a necessary party to the relief against the complainants and Cornell. Nothing can be plainer than that, if the complainants are the holders of the pledged property, they must surrender it if they desire to set off the pledge-debt against the one they owe the pledgor, and that the latter may, in his cross-relief, compel them to redeem it, if they have caused it to be re-pledged, and to that end, may bring in the new pledgee (the bank) or any one holding a lien upon or a trust estate in the property, as a party defendant so that the court may do full justice to all concerned.

We ask that the decree below be reversed and that the prayer of the cross-bill be granted.

JOHN H. BACKES,
Counsel with Appellant.

True American Publishing Co., Printers, Trenton. N. J.

NEW JERSEY

Court of Errors and Appeals

Between

C. EDWARD MURRAY, et als,
Complainants,

and

WILLIAM H. SKIRM, Jr.,
Defendant.

In Chancery of New Jersey.

BILL FOR RELIEF.

[Filed October 21, 1903.]

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

Humbly complaining, show unto your Honor, your orators, C. Edward Murray, and C. Harry Baker, of the City of Trenton, in the County of Mercer, and State of New Jersey:

That on September fifteenth, nineteen hundred and three, your orator, C. Edward Murray, recovered a judgment in the Supreme Court of judicature, of the State of New Jersey, against William H. Skirm, Jr., of the city, county and State aforesaid, for the sum of three thousand three hundred and forty-one dollars and seventy-four cents ($3,341.74), damages and costs, and on September sixteenth, nineteen hundred and three, caused an execution thereon to be thereupon issued to the Sheriff of the aforesaid County of Mercer, who there-

upon levied on all of the right, title and interest of the said defendant, William H. Skirm, Jr., in said execution named, of, in and to two hundred and forty-one (241) shares of the capital stock of the Empire Rubber Manufacturing Company, a corporation existing under and by virtue of the laws of the State of New Jersey;

And your orators further show that the said defendant in execution, the said William H. Skirm, Jr., being a debtor, having a family residing in this state, and being entitled, by virtue of the statute in such case made and provided, to have reserved to him goods and chattels, shares of stock and interest in any corporation, and personal property of every kind not exceeding in value (exclusive of wearing apparel) the sum of two hundred dollars, and all wearing apparel, the said Sheriff did thereupon make a just and true inventory and appraisement of the aforesaid stock so levied upon, with the aid and assistance of three discreet and judicious persons of his county, appointed in writing and indifferent between the parties in said execution, and that such proceedings were had thereupon by said Sheriff and said appraisers, that the said capital stock so levied upon was inventoried at the par value thereof, to wit: One hundred dollars per share, and two shares thereof, of the value of two hundred dollars were set-off to the said defendant, and thereafter, and on October seventh, nineteen hundred and three, the said Sheriff, having first duly advertised same for sale according to law, by due advertisement, exposed all the right, title and interest of the said William H. Skirm, Jr., of, in and to the remaining two hundred and thirty-nine (239) shares of said stock to sale at public vendue, and the same was cried off and sold to the plaintiff in said execution, your orator, C. Edward Murray, for the sum of fifty dollars, he being the only and the highest bidder therefor; and that said execution was thereafter returned into said Supreme Court by said Sheriff with his statement annexed, from which it appears, among other things, that he could find no real estate and no other goods or chattels by said defendant whereon to levy, save by interest in said stock, so sold as aforesaid;

And your orators further show, that on the day of said sale there was due upon the said execution of your orator, C.

Edward Murray, for principal, interest and costs, the sum of three thousand three hundred and fifty-three dollars and ninety-nine cents ($3,353.99), which, after deducting the purchase price of the right, title and interest of the said defendant in execution at said sale, left a balance due the said plaintiff in execution of the sum of three thousand three hundred and three dollars and ninety-nine cents ($3,303.99).

And your orators further show that on October twelfth, nineteen hundred and three, your orator, C. Edward Murray, for valuable considerations, assigned, transferred and set over the said judgment, and the said balance due thereon, to Henry D. Lanning, of the city, county and State aforesaid, who thereupon, and on the same day, for valuable consideration, assigned, transferred and set over the said judgment, and balance due thereon, to your orators, which said assignments of judgment aforesaid, were duly acknowledged according to law, and recorded in the office of the Clerk of the Supreme Court, on the said October twelfth, nineteen hundred and three.

And your orators further show that on October fifteenth, nineteen hundred and three, the said William H. Skirm, Jr., recovered a judgment in the said Supreme Court of New Jersey, against your orators, for the sum of four thousand one hundred and seventy-five dollars and thirty-two cents ($4,175.32), damages and costs, which judgment is uncancelled and unsatisfied, and the whole amount thereof is still due and owing from your orators to the said William H. Skirm, Jr., who owes your orators the said sum of three thousand three hundred and three dollars and ninety-nine cents, for the balance due on said judgment as aforesaid recovered by your orator, C. Edward Murray, against William H. Skirm, Jr., and by assignments, as aforesaid, duly assigned to your orators.

And your orators further show, that they have applied to the said William H. Skirm, Jr., and requested him to set-off his said judgment against the judgment of your orators, so far as the said judgment of your orators will extend, and your orators thereupon offered to set-off their said judgment against his said judgment, so far as the same would extend, with which reasonable request of your orators, the said Wil-

liam H. Skirm, Jr., has wholly neglected and refused to comply.

To the end, therefore, that the said William H. Skirm, Jr., may answer this bill, but without oath, and that by the consideration and decree of this Honorable Court, the said judgment of your orators may be set-off against said judgment of the said William H. Skirm, Jr., so far as the judgment of your orators will extend, so that your orators will be obliged to pay only the balance due the said William H. Skirm, Jr., after off-setting their said judgment against his said judgment, according to law and the course and practice of this Court; and that the said William H. Skirm, Jr., may be enjoined and restrained from proceeding to collect or attempting to collect his said judgment against your orators until he shall have answered this bill of complaint, and until your Honor shall have made an order or decree to the contrary; and that your orators may have such other and further relief, in the premises, as the nature and circumstances of the case may require, and it shall be agreeable to equity.

May it please your Honor, the premises, considered, to grant unto your orators, not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said William H. Skirm, Jr., therein and thereby commanding him to desist and refrain from proceeding to collect or attempting to collect from your orators his said judgment, until he shall have answered this bill of complaint, and until your Honor shall have made an order or decree to the contrary; but 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 William H. Skirm, Jr., therein and thereby commanding him on a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor, in this Honorable Court, then and there to answer the premises, and to stand to, abide by, and perform such order or decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

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

E. R. WALKER,

Solicitor and of Counsel with Complainants.

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

C. Edward Murray being duly sworn according to law, on his oath, says that he is one of the complainants in the above bill of complaint named; that he has read over the said bill and knows the contents thereof, and that the same are true to the best of his knowledge, information and belief; and deponent further says that it is true that he recovered a judgment in the Supreme Court of New Jersey against William H. Skirm, Jr., for three thousand three hundred and forty-one dollars and seventy-four cents, damages and costs, on September sixteenth, nineteen hundred and three, and caused an execution thereon to be issued to the Sheriff of the County of Mercer, who, having levied upon all the right, title and interest of the said defendant, William H. Skirm, Jr., of, in and to two hundred and forty-one (241) shares of the capital stock of the Empire Rubber Manufacturing Company, being all the estate, real and personal, of the defendant, which the said Sheriff could find whereon to levy, and having sold the defendant's right, title and interest in two hundred and thirty-nine shares (239) to deponent for fifty dollars ($50.00), there remained due on said execution on the day of said sale the sum of three thousand three hundred and three dollars and ninety-nine cents, after deducting from the amount due on said execution the purchase price of the right, title and interest of, in and to said stock so sold; that on October twelfth, nineteen hundred and three, and after the return of said execution, deponent assigned the said judgment and the balance due thereon, to Henry D. Lanning, who thereupon assigned the same to deponent and to the other complainant, Charles H. Baker, who, deponent and said Baker, now hold and own said judgment, upon which there is due from the said William H. Skirm, Jr., the sum of three thousand three hundred and three dollars and ninety-nine cents, together with interest from said October twelfth, nineteen hundred and three; that the consideration for the assignment of said judgment from deponent to said Lanning, and from said Lanning to deponent and said Baker, is the sum of sixteen hundred and fifty-one dollars and ninety-nine cents, money loaned and advanced by said Baker to deponent before

the commencement of deponent's suit against said Skirm, wherein said judgment was recovered, and before the suit of said Skirm against deponent and said Baker, wherein said Skirm recovered a judgment in said Supreme Court against deponent and said Baker for the sum of four thousand one hundred and seventy-five dollars and thirty-two cents, on October fifteenth, nineteen hundred and three, which said judgment is due and owing from deponent and said Baker, to said Skirm, with interest from said last mentioned date.

C. EDWARD MURRAY.

Sworn and subscribed before me, this 19th day of October, 1903.

HARRY C. VALENTINE,
M. C. C. of N. J.

IN CHANCERY OF NEW JERSEY.

Between

C. EDWARD MURRAY, ET ALS,
Complainants,
and
WILLIAM H. SKIRM, JR.,
Defendant.
} On Bill, &c.

ANSWER AND CROSS BILL.

[Filed December 11, 1903.]

The answer of William H. Skirm, Jr., defendant, to the bill of complaint of C. Edward Murray and C. Harry Baker.

This defendant answering the said bill of complaint admits the recovery of a judgment by the complainant, C. Edward Murray, against this defendant, in the court, for the amount and upon the date as set forth in the said bill of complaint, and also admits the issuing of an execution thereon and the levy thereunder upon the right, title and interest of this defendant of, in and to two hundred and forty-one shares of the capital stock of the Empire Rubber Manufacturing Company, a corporation of this State, as in the said bill of complaint set forth.

And this defendant, further answering, admits the sale of the right, title and interest of this defendant, of, in and to two hundred and thirty-nine shares of the said capital stock to the complainant, C. Edward Murray, for the sum of fifty dollars, under and by virtue of the said execution and levy, as set forth in the said bill of complaint.

And this defendant, further answering, admits that there was due upon the said judgment and execution, on the date of the said sale, and after the said sale, the sum of three thousand three hundred and three dollars and ninety-nine cents, but this defendant denies that, on the said day, he owed to the said complainant, C. Edward Murray, the said moneys mentioned in the said judgment and execution, or any part thereof.

And this defendant, further answering, admits that the said complainant, C. Edward Murray, assigned the said judgment to Henry D. Lanning, and that the said Henry D. Lanning assigned the same to the complainants, as set forth in the said bill of complaint, but this defendant denies that the same was assigned and transferred to the said Henry D. Lanning, on the day mentioned in the said bill of complaint, and for valuable consideration paid by him to the complainant, C. Edward Murray, or that the same was assigned by the said Henry D. Lanning to the said complainants, on the day mentioned in the said bill of complaint, and for valuable consideration, but shows and charges the truth to be, that the said judgment was assigned to the said Henry D. Lanning by the complainant, C. Edward Murray, without consideration, for the sole purpose of having the said Henry D. Lanning re-assign the same to the complainants, so that the complainants could off-set the said judgment, against a judgment recovered by this defendant against the complainants, which judgment of this defendant is mentioned in the bill of complaint; that the said assignments of the said judgment, although they bear date on the twelfth day of October, nineteen hundred and three, were in fact executed long after that date, and after the recovery of the said judgment by this defendant against the complainants.

And this defendant, further answering, admits that on the fifteenth day of October, nineteen hundred and three, he re-

covered a judgment in the Supreme Court of the State of New Jersey, against the complainants, for the sum of four thousand one hundred and seventy-five dollars and thirty-two cents, damages and costs, which judgment is uncancelled and unsatisfied, and the whole amount thereof is still due and owing by the complainants to this defendant, as set forth in the said bill of complaint.

And this defendant, further answering, denies that the complainants applied to him, the said defendant, to set-off his said judgment against the judgment of the complainants, so far as the said judgment of the complainants would extend, and that they, the complainants, thereupon offered to set-off their said judgment against the judgment of this defendant, so far as the same would extend.

And this defendant, by way of cross-bill, exhibited against the said complainants, C. Edward Murray and C. Harry Baker, and also against A. Boyd Cornell and the Mechanics National Bank of Trenton, shows:

That on the ninth day of July, nineteen hundred and two, this defendant, at the especial instance and request of the complainants, C. Edward Murray and C. Harry Baker, lent to and paid to and for the use of the said complainants, C. Edward Murray and C. Harry Baker, the sum of three thousand eight hundred and thirty-seven dollars; that in consideration thereof, the said complainants undertook and promised to pay the said moneys to this defendant upon request; that this defendant frequently and repeatedly requested of the said complainants that they pay to him the said moneys, which they refused to do; that for the purpose of recovering the said moneys, this defendant, on the fourteenth day of August, nineteen hundred and three, began his action in the Supreme Court of this State, against the said complainants, C. Edward Murray and C. Harry Baker; that to the declaration filed in the said cause the said complainants filed a plea of general issue, which plea was relinquished by the said complainants at the opening of the Mercer County Circuit Court, at the October Term, 1903, at which term the said cause was noticed for trial, and that upon the said relicta entered in the said cause, this defendant entered judgment against the said complainants for the said moneys so lent by

the said defendant to the said complainants as aforementioned, together with interest thereon, which judgment is the same judgment mentioned and set forth in the said bill of complaint.

And this defendant further shows, that on the twenty-fourth day of February, nineteen hundred and three, this defendant was the owner of fifty shares of the capital stock of the Empire Rubber Manufacturing Company, a corporation existing under and by virtue of the laws of the State of New Jersey, and engaged in the manufacture of rubber goods in the City of Trenton; that the ownership of this defendant of the said capital stock was evidenced by a certificate of the said corporation under its corporate seal, and signed by its duly authorized officers; that the said fifty shares were at that time, and are now and always have been of the value of five thousand dollars and upwards; that on the said twenty-fourth day of February, nineteen hundred and three, this defendant borrowed from the Mechanics National Bank of Trenton, defendant above named, the sum of three thousand and six hundred dollars, and as evidence thereof executed to the said Mechanics National Bank of Trenton, a certain note of hand, bearing date on the day and year last aforesaid, wherein and whereby this defendant promised to pay, in four months from the date thereof, to the order of the complainant, C. Edward Murray, the said sum of three thousand and six hundred dollars; that the said complainant, C. Edward Murray, endorsed the said note for the accommodation of this defendant; that to further secure the payment of the said note this defendant pledged and delivered to the said Mechanics National Bank of Trenton, as collateral security, the said certificate of fifty shares of the capital stock of the said Empire Rubber Manufacturing Company; that when the said note became due and payable this defendant was unable to pay the same, and that the same remained unpaid until the twentieth day of August then next.

And this defendant further shows, that on the said twentieth day of August, nineteen hundred and three, the said complainants, C. Edward Murray and C. Harry Baker, well knowing that they were then, and for a long time prior thereto, had been indebted to this defendant in the sum of

money lent to them by this defendant as aforementioned, and well knowing that this defendant was unable to pay his indebtedness to the said Mechanics National Bank of Trenton, and redeem and recover the said fifty shares of the capital stock of the said Empire Rubber Manufacturing Company, so pledged as aforesaid, and well knowing that in the event of a sale by the said Mechanics National Bank of Trenton of the said capital stock so pledged to it as aforementioned, this defendant would be unable to protect his interest in the premises, unless they, the said complainants, C. Edward Murray and C. Harry Baker, should pay to this defendant the moneys so due to him, and contriving to cheat, defraud and wholly deprive this defendant of the said capital stock, and corruptly combining and conspiring with each other, induced, procured and caused the said Mechanics National Bank of Trenton, on the day and year last aforesaid, to expose for sale at public auction, at its banking house, corner of State and Warren streets, Trenton, and to then and there sell and strike off the same to A. Boyd Cornell, defendant above named, for the sum of three hundred and fifty dollars, and did then and there cause and procure the said A. Boyd Cornell, brother-in-law of the said complainant, C. Edward Murray, to purchase the same in his name, but in truth and in fact in trust for the said complainants, C. Edward Murray and C. Harry Baker.

And this defendant further shows, that in furtherance of said scheme to cheat, defraud and oppress this defendant, in the premises, the said complainants, C. Edward Murray and C. Harry Baker, on the day and year last aforesaid, caused and procured the said A. Boyd Cornell, for and on their behalf to borrow from the said Mechanics National Bank of Trenton, the sum of three thousand six hundred dollars, or some other large sum of money, and as evidence of the said debt, caused the said A. Boyd Cornell to execute and deliver to the said Mechanics National Bank of Trenton, his promissory note, wherein he, the said A. Boyd Cornell, promised to pay at a time therein fixed, the money so borrowed from the said bank, which note before delivery was endorsed by the said complainants, C. Edward Murray and C. Harry Baker, or one of them, and that to secure the payment of the same,

the said complainants, C. Edward Murray and C. Harry Baker, caused and procured the said A. Boyd Cornell to pledge and deliver to the said Mechanics National Bank of Trenton, as collateral security for the moneys so borrowed on the said promissory note, the said fifty shares of the capital stock of this defendant, by delivering to the said Mechanics National Bank of Trenton, the certificate of the said shares standing in the name of this defendant, or a new certificate of the said shares of capital stock issued by the said Empire Rubber Manufacturing Company to the said A. Boyd Cornell, in the place of the certificate made out to this defendant; that with the moneys so borrowed from the said bank, the said complainants, C. Edward Murray and C. Harry Baker, paid to the said bank the moneys due to it, on the said note of this defendant, so held by the said bank, and then and there caused the said bank to deliver the said note to the said complainant, C. Edward Murray.

And this defendant further shows, that to further cheat, defraud and oppress this defendant, the said complainants, C. Edward Murray and C. Harry Baker, although well knowing that they were indebted to this defendant in the large sum of money as hereinbefore mentioned, corruptly conspiring as aforementioned, did, on the fourth day of September, in the year aforesaid, in the name of the said C. Edward Murray, commence an action in the Supreme Court of this State, against this defendant, to recover the moneys due upon the said note, and such proceedings were thereupon had, that on the fifteenth day of September, in the year aforesaid, a judgment was entered in the said Court, in the said cause, in favor of the said C. Edward Murray, and against this defendant, for the sum of three thousand four hundred and forty-one dollars and seventy-four cents, which is the same judgment of the said complainant, C. Edward Murray, against this defendant, mentioned in the said bill of complaint.

And this defendant further shows, that at the time of the recovery of the judgment, in the name of the complainant, C. Edward Murray, last above mentioned, this defendant was the owner of two hundred and forty-one shares of the capital stock of the Empire Rubber Manufacturing Company afore-

mentioned, in addition to the fifty shares hereinbefore mentioned, which said shares were of the value of twenty-four thousand and one hundred dollars and upwards; that in the prosecution of the scheme to cheat, defraud and oppress this defendant as aforementioned, the said complainants, C. Edward Murray and C. Harry Baker, caused an execution to be issued upon the judgment last aforementioned, to the Sheriff of the County of Mercer, who, by virtue thereof, levied upon the interest of this defendant in and to the said two hundred and forty-one shares, and at public sale, under the said execution and levy, sold the same to the complainant, C. Edward Murray, for the sum of fifty dollars, which execution, levy and sale is the same execution, levy and sale mentioned and set forth in the bill of complaint.

And this defendant further shows, that in the further prosecution of the scheme to cheat, defraud and oppress this defendant, the said complainants, C. Edward Murray and C. Harry Baker, after the recovery of the judgment against them as aforementioned, by a deed of assignment, bearing date the twelfth day of February, nineteen hundred and three, and executed by the said complainant, C. Edward Murray, assigned the said judgment, recovered by the said complainant, C. Edward Murray, against this defendant, to one Henry D. Lanning, who, at the instance of the said complainants, by his deed of assignment, bearing date on the same day, assigned the said judgment to the said complainants, C. Edward Murray and C. Harry Baker; that the said judgment was so assigned, for the purpose of setting off the same against the judgment recovered by this defendant against the said complainants, and to enable them to pray for the relief asked for in and by their bill of complaint.

And this defendant further shows, that the said scheme of the said complainants to cheat, defraud and oppress this defendant, and to deprive him of the said shares of the capital stock of the Empire Rubber Manufacturing Company, as aforementioned, and to recover the said judgment against this defendant, and to off-set the same against the debt due from them to this defendant, was conceived, inaugurated and put into execution by the said complainants, only after this defendant had repeatedly demanded of the said complainants

the moneys justly due to him, and only after this defendant commenced his suit in the Supreme Court to recover the same as aforementioned; that the said complainants, although they well knew that they had no lawful defense to the said action, filed their plea thereto denying their liability therein, for the purpose of thwarting and delaying this defendant in the recovery of the moneys so due to him, and so prevent this defendant from paying to the Mechanics National Bank of Trenton the moneys then due to it by this defendant, and redeem the said shares of stock so pledged to the said bank, and to enable the said complainants, C. Edward Murray and C. Harry Baker, to execute their fraudulent and corrupt scheme to deprive this defendant of his said shares of capital stock aforementioned, and to recover the judgment against this defendant, which, in and by their bill of complaint, they seek to off-set against the judgment recovered against them by this defendant.

And this defendant further shows, that the sale of the said fifty shares of the capital stock of the Empire Rubber Manufacturing Company, by the said Mechanics National Bank of Trenton, was had without first publicly advertising the same, as the circumstances and the value of the said shares of stock demanded, as this defendant is informed and believes to be true; that this defendant never saw nor heard of any published notice of the said sale; that the said sale was conducted privately at the said bank, in the presence only of the officials of the said bank having charge of the same, and of the said complainant, C. Edward Murray, and the defendant, A. Boyd Cornell; that the price at which the said shares of stock were sold was grossly and unconscionably low, to the knowledge of the said complainants, C. Edward Murray and C. Harry Baker, and the said A. Boyd Cornell, and the said Mechanics National Bank of Trenton; that the said C. Edward Murray and C. Harry Baker, were at the time of the said sale, and now are, the owners of more than one-half of the capital stock of the said Empire Rubber Manufacturing Company, and then were, and now are, the active managers of the same, the said C. Edward Murray then being and now is the Secretary and Treasurer thereof, and the said C. Harry Baker then being and now is the Vice-President thereof; that they,

the said complainants, C. Edward Murray and C. Harry Baker, just previous to the said sale, that is to say, on the first day of July, nineteen hundred and two, and with the aid of the moneys lent to them by this defendant, as hereinbefore set forth, purchased a majority of the capital stock of the said Empire Rubber Manufacturing Company, at one hundred and ten dollars per share; that the said Empire Rubber Manufacturing Company is capitalized at two hundred and twenty-five thousand dollars; that at the time of the said sale the said corporation was under the management of the said C. Edward Murray and C. Harry Baker, actively and prosperously engaged in the manufacturing of rubber goods, and carrying on its business in the City of Trenton.

And this defendant further shows, that at the time of the sale by the Sheriff of the County of Mercer by virtue of the execution issued upon the judgment recovered by the complainant, C. Edward Murray, against this defendant, of the two hundred and thirty-nine shares of the capital stock of the Empire Rubber Manufacturing Company belonging to this defendant, the said shares were hypothecated by this defendant to various banking institutions, to secure loans made by said banks of amounts less than one-half of the face value of the said shares of stock; that the price of fifty dollars for the right, title and interest of this defendant therein, at which the same were sold to the said complainant, C. Edward Murray, was grossly and unconscionably low, and to the knowledge of the said complainant, C. Edward Murray.

And this defendant further shows, that on the sixteenth day of October, nineteen hundred and three, the indebtedness of this defendant, for moneys borrowed by him from the said Mechanics National Bank of Trenton, as aforementioned, and which at the time aforementioned had been transferred to the said complainant, C. Edward Murray, for principal, interest, notarial fees and disbursements incident to the sale of the capital stock aforementioned, amounted to the sum of three thousand six hundred and eighty-one dollars and twenty-one cents; that on the day last aforementioned, this defendant tendered to the said C. Edward Murray, in money, legal tender of the United States of America, the said sum of three thousand six hundred and eighty-one dollars and

twenty-one cents, and then and there demanded of the said complainant, C. Edward Murray, the said fifty shares of the capital stock of the Empire Rubber Manufacturing Company so pledged by this defendant to the said Mechanics National Bank of Trenton, as aforementioned, and the certificate of the same; that the said complainant, C. Edward Murray, then and there refused to accept the said money, and refused and declined to deliver to this defendant the said fifty shares of the said capital stock, and the certificate of the same.

And this defendant further shows, that he has offered and tendered himself to the said complainants, C. Edward Murray and C. Harry Baker, as ready and willing to off-set his said judgment as against the judgment of the said complainants, C. Edward Murray and C. Harry Baker, to the extent of the latter, and also to pay to them, the said complainants, C. Edward Murray and C. Harry Baker, such sums of money in addition to their said judgment as will equal the amount of the indebtedness incurred by this defendant with the Mechanics National Bank of Trenton, together with all accrued interest, notarial fees, costs and disbursements of whatsoever description, provided the said complainants, C. Edward Murray and C. Harry Baker, delivered to this defendant the said fifty shares of the said capital stock pledged with the said Mechanics National Bank of Trenton by this defendant (which offer and tender this defendant now makes in this Court, in and by this answer), which offer and tender the said complainants refused and declined.

In tender consideration whereof, and inasmuch as this defendant is remediless in and by the strict rules of courts of common law, and can only have relief in this Honorable Court, where matters of this nature are properly cognizable and relievable.

To the end, that the said C. Edward Murray and C. Harry Baker, A. Boyd Cornell, and the Mechanics National Bank of Trenton, may, without oath, full, true and perfect answer make to all and singular the matters and things aforementioned.

That the sale of the fifty shares of the capital stock of the Empire Rubber Manufacturing Company, pledged by this defendant to the Mechanics National Bank of Trenton, as

hereinbefore set forth, and the sale of the right, title and interest of this defendant in and to the two hundred and thirty-nine shares of the capital stock of the said company, made by the Sheriff of the County of Mercer to the said complainant, C. Edward Murray, may be declared and decreed to have been fraudulently made, and that the same may be set aside and declared to be null and void; that as to the fifty shares aforementioned, it may be decreed that the said A. Boyd Cornell holds the same in trust for this defendant, subject to the lien thereon of the Mechanics National Bank of Trenton, and as to the two hundred and thirty-nine shares of the said capital stock, that the said complainant, C. Edward Murray, holds the same in trust for this defendant.

That it may be decreed that the complainants, C. Edward Murray and C. Harry Baker, and the defendant, A. Boyd Cornell, or some of them, pay to the said Mechanics National Bank of Trenton the moneys due to the said bank for which the said fifty shares are pledged as collateral security, and thence to assign the same in writing and deliver the certificate of the said stock to this defendant; that upon said payment being made, the amount of the indebtedness of this defendant due to said bank, and transferred to the said complainants, be credited upon the judgment recovered by this defendant against the said complainants, and that upon failure to comply with the decree of this Honorable Court in this respect, this defendant be permitted to pay to the said Mechanics National Bank of Trenton the amount of money due to it, for which the said capital stock is pledged as collateral security, and that the said Mechanics National Bank of Trenton be thence decreed to deliver the said certificate of stock now held by it to this defendant, and that the said A. Boyd Cornell be decreed to in writing assign the same to this defendant, upon this defendant paying to the said complainants, C. Edward Murray and C. Harry Baker, such moneys in excess of the amount due to the said bank, to which the said shares of stock are pledged, as may equal the indebtedness of this defendant to the said bank, and now belonging to the complainants, C. Edward Murray and C. Harry Baker, including therein the accrued interest, notarial fees and all other

necessary charges, and that upon payment by this defendant to the said bank, and to the said complainants, C. Edward Murray and C. Harry Baker, of the said moneys, that the same may be set-off or credited upon the said judgment recovered by the said complainant, C. Edward Murray, against this defendant, and now held by the said complainants, C. Edward Murray and C. Harry Baker, and that thereupon the said complainants, C. Edward Murray and C. Harry Baker, be ordered and decreed to cancel their said judgment of record.

That, upon the payment of the said moneys to the Mechanics National Bank of Trenton, and to the said complainants, C. Edward Murray and C. Harry Baker, they be restrained perpetually from prosecuting their said judgment, now held by them against this defendant, and that their bill of complaint to off-set their judgment against the judgment recovered by this defendant against them be dismissed.

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

May it please your Honor, the premises considered, to grant unto this defendant, not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, perpetually enjoining and restraining the complainants, C. Edward Murray and C. Harry Baker, from prosecuting their said judgment mentioned and set forth in the bill of complaint, and in this answer by way of cross bill, but also the State's writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said A. Boyd Cornell and the Mechanics National Bank of Trenton, commanding them, and each of them, by a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the matters aforesaid, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And this defendant, as in duty bound, will ever pray, &c.

JOHN H. BACKES,
Solicitor for Defendant.

In Chancery of New Jersey.

Between

C. EDWARD MURRAY, et als,
Complainants,

and

WILLIAM H. SKIRM, Jr.,
Defendant.

On Bill and Cross Bill.

ANSWER TO CROSS BILL.

[Filed January 23, 1904.]

The Answer of The Mechanics National Bank of Trenton to the Cross Bill of William H. Skirm, Jr.

This defendant, the Mechanics National Bank of Trenton, in answer to the cross bill exhibited in this cause by William H. Skirm, Jr., against C. Edward Murray and C. Harry Baker, and A. Boyd Cornell, and this defendant, says:

1. This defendant, the Mechanics National Bank of Trenton, has no knowledge, information or belief, other than that conveyed to it in and by said cross bill, concerning the allegation therein to the effect that, at the especial instance and request of C. Edward Murray and C. Harry Baker, the complainants in this cause, the defendant, William H. Skirm, Jr., lent to, and paid to and for the use of said complainants, the sum of three thousand eight hundred and thirty-seven dollars, or any other sum, or that in consideration thereof the said complainants undertook and promised to pay the said moneys to said defendant, William H. Skirm, Jr., upon request, or that any suit was instituted in the Supreme Court of this State by the said William H. Skirm, Jr., against the said complainants, for the recovery of said moneys, or as to the nature of the pleas in said suit, if any such suit were instituted, or as to the giving of a relicta in said suit, or the entry of judgment therein, or as to whether the said judgment, if any, so entered in said suit, if any such suit there were, was the same judgment mentioned and set forth in the bill of complaint filed herein by said C. Edward Murray and C.

Harry Baker, and this defendant, the Mechanics National Bank of Trenton, can neither admit nor deny the allegations in said cross bill in such behalf made, and leaves the said defendant, William H. Skirm, Jr., to make such proof thereof as he may be advised is necessary or proper.

2. And this defendant, the Mechanics National Bank of Trenton, admits that on the twenty-fourth day of February, in the year nineteen hundred and three, the said defendant, William H. Skirm, Jr., borrowed from this defendant, the Mechanics National Bank of Trenton, the sum of thirty-six hundred dollars, and secured the repayment thereof by a certain promissory note bearing date the day and year last aforesaid, and this defendant says that the facts in connection with the borrowing of said sum of money and the giving of said promissory note, so far as this defendant knows them, are as follows: The said William H. Skirm, Jr., applied to this defendant for the loan of said sum of thirty-six hundred dollars, and offered as security therefor his promissory note dated the twenty-fourth day of February, in the year nineteen hundred and three, for the sum of thirty-six hundred dollars, payable in four months after the date thereof, to the order of C. Edward Murray, and by said C. Edward Murray endorsed, and that he further offered, as collateral security to said note, a certificate for fifty shares of the stock of the Empire Rubber Manufacturing Company, being Certificate Number Thirty-seven, issued in the name of William H. Skirm, Jr.; that in and by said promissory note said William H. Skirm, Jr., did promise to pledge and deliver, on demand, such additional security as might be required by this defendant, the Mechanics National Bank of Trenton, acting by its proper officers, and until such further deposit should be made that this defendant should have the right, until said debt should be paid, to detain and apply any moneys, securities or property of any kind belonging to him, the said William H. Skirm, Jr., that this defendant might then have or thereafter acquire to make good the deficiency; and in case of non-payment of said note according to its terms, he, the said William H. Skirm, Jr., did by said promissory note authorize this defendant, the Mechanics National Bank of Trenton, to sell said fifty shares of the capital stock of the Empire Rubber

Manufacturing Company, and apply the net proceeds of such sale, and any money in the possession of this defendant belonging to said William H. Skirm, Jr., to the payment of the aforesaid promissory note, and of the interest thereon; and that said William H. Skirm, Jr., did further, in and by said promissory note, agree that said sale should be made at the option of this defendant, the Mechanics National Bank of Trenton, without notice, at any brokers' board or public exchange, or at public or private sale; and that the said William H. Skirm, Jr., did, in and by said promissory note, further agree that should said fifty shares of the capital stock of the Empire Rubber Manufacturing Company, or any part thereof, depreciate in value before such sale or sales, this defendant, the Mechanics National Bank of Trenton, should in nowise be answerable therefor, and that this defendant might become the purchaser of said shares of stock and hold the same thereafter in its own right absolutely, and that any amount which might then remain due on said promissory note he, the said William H. Skirm, Jr., did, in and by said promissory note, further promise to pay to this defendant, the Mechanics National Bank of Trenton, immediately after such sale, with legal interest.

3. And this defendant, the Mechanics National Bank of Trenton, has no knowledge, information or belief, concerning the allegation in said cross bill of said William H. Skirm, Jr., to the effect that the said C. Edward Murray and C. Harry Baker corruptly combined and conspired to induce, procure and cause this defendant, the Mechanics National Bank of Trenton, to expose for sale at public auction the aforesaid fifty shares of the capital stock of the Empire Rubber Manufacturing Company, and therefore can neither admit nor deny said allegation in said behalf made, and leaves the said defendant, William H. Skirm, Jr., to make such proof thereof as he may be advised is necessary; but this defendant, the Mechanics National Bank of Trenton, declares that the sale of said capital stock by this defendant was not made at the request or solicitation of either the said C. Edward Murray or C. Harry Baker, nor were they conferred with concerning said sale, nor did they, or either of them, in anywise give any

advice, suggestion or aid to this defendant in connection with said sale.

4. And this defendant, the Mechanics National Bank of Trenton, admits that it caused the said fifty shares of stock of the Empire Rubber Manufacturing Company to be sold at public auction, but denies that such sale took place at its banking house, and further denies that the sale thereof was had without first publicly advertising the same, as the circumstances and value of the said shares of stock demanded, or that said sale was conducted privately at its banking house, in the presence only of the officials of the bank and of the complainant, C. Edward Murray, and the defendant, A. Boyd Cornell, or that the price at which said shares of stock were sold was grossly and unconscionably low, or that this defendant, the Mechanics National Bank of Trenton, did any act whatsoever in connection with the sale of said stock not warranted by the contract between this defendant and the said William H. Skirm, Jr., and fully authorized by law, or that the course pursued by this defendant in relation to said sale was not in every respect fair, just and equitable to the said William H. Skirm, Jr., and to all other parties concerned in said stock and in said promissory note.

5. This defendant, the Mechanics National Bank of Trenton, further answering said cross bill, says that the facts and circumstances connected with the sale of said fifty shares of the capital stock of said Empire Rubber Manufacturing Company were as follows, to wit: That the said promissory note to which such stock was attached as collateral became due on the twenty-fourth day of June, in the year nineteen hundred and three; that, although duly presented for payment, it was dishonored, and in consequence thereof was duly protested according to law on said last mentioned day; that notice of said protest was forthwith mailed not only to the said C. Edward Murray, the endorser thereon, but also to said William H. Skirm, Jr., the maker thereof, at their respective post-office addresses, to wit, Trenton, New Jersey; that no payment having been made or tendered either by the said William H. Skirm, Jr., or the said C. Edward Murray, of said promissory note, this defendant, the Mechanics National Bank of Trenton, New Jersey, by Edward C. Stokes,

its President, did, on the seventeenth day of July, in the year nineteen hundred and three, address and mail to the said William H. Skirm, Jr., with full postage prepaid thereon, a letter directed to the said Skirm, wherein this defendant did say: "Your note of $3,600, dated Feb. 24th, due June 24th, secured by endorsement of C. Edward Murray and 50 shares of the stock of the Empire Rubber M'f'g. Co., lies here under protest. Unless this note is settled by Monday, the 20th inst., we shall advertise the stock of the Empire Rubber M'f'g. Co. for sale according to the terms of the note"; that this defendant, by said Edward C. Stokes, its president, did also, on the said seventeenth day of July, in the year nineteen hundred and three, address and mail, with full postage prepaid thereon, to the said C. Edward Murray, a letter as follows, to wit: "Note of $3,600, dated Feb. 24th, due June 24th, endorsed by you, made by W. H. Skirm, Jr., lies here under protest. Unless this note is settled by Monday, the 20th inst., the 50 shares of the Empire Rubber M'f'g. Co. stock pledged as security for the same, in addition to your endorsement, will be advertised for sale under the terms of the note"; that on the thirtieth day of July, in the year nineteen hundred and three, this defendant, by its said president, Edward C. Stokes, did address and mail, with full postage prepaid thereon, to the said William H. Skirm, Jr., another letter, as follows: "I beg leave to inform you that our Bank is now about to advertise the fifty (50) shares of stock of the Empire Rubber M'f'g. Co., held as part security for note of $3,600 made by you, endorsed by C. Edward Murray, dated Feb. 24, 1903, due June 24th, 1903, in accordance with the terms of the note"; that this defendant further, on said thirtieth day of July, in the year nineteen hundred and three, did, by its said president, Edward C. Stokes, address and mail, with full postage prepaid thereon, a letter to the said C. Edward Murray, being as follows: "I beg leave to inform you that our Bank is now about to advertise the fifty (50) shares of the stock of the Empire Rubber M'f'g. Co., held as part security for note of $3,600, made by W. H. Skirm, Jr., endorsed by you, dated February 24, 1903, due June 24, 1903, in accordance with the terms of the note"; that this defendant did further, by said Edward C. Stokes,

its president, address and mail, with full postage prepaid thereon, a certain other letter to said William H. Skirm, Jr., dated the seventh day of August, in the year nineteen hundred and three, being as follows: "Fifty and twenty shares of the stock of the Empire Rubber M'f'g. Co., held as collateral and part security for the payment of two notes made by you of $3,600 and $5,000 respectively, will be sold by Charles L. Patterson on Thursday next, the 13th inst."; and that this defendant, on said seventh day of August, in the year nineteen hundred and three, by said Edward C. Stokes, its president, did address and mail, with full postage prepaid thereon, a certain other letter to the said C. Edward Murray, being as follows: "The 50 shares of the stock of the Empire Rubber M'f'g. Co., held as part security on note of $3,600, made by W. H. Skirm, Jr., on which you are endorser, will be sold by Charles L. Patterson next Thursday, the 13th inst. The stock will be advertised in the newspapers beginning with Monday next." And this defendant further says, that the sale of said stock was had, not at the banking house of this defendant, as in said cross bill alleged, but at the public auction rooms of Charles L. Patterson Esq., at Number Fourteen West State Street, Trenton, New Jersey, on Thursday, the thirteenth day of August, in the year nineteen hundred and three, at two o'clock P. M., pursuant to a public advertisement of said sale advertised for three days previous thereto, and being in the following words, to wit: "Public Sale of Stocks, Thursday, August 13th, 1903, at 2 o'clock P. M., at my office, No. 14 West State Street, Trenton, N. J. At the above time I will offer without reserve 70 shares of the stock of the Empire Rubber Mfg. Co. Conditions on day of sale by Chas. L. Patterson." This defendant further says, that the said advertisement was printed on August eleventh, twelfth and thirteenth, nineteen hundred and three, in the *Daily True American* and in the *State Gazette*, two daily newspapers published in the City of Trenton, and also by a hundred postal cards distributed through the mails and otherwise about the City of Trenton.

6. And this defendant, the Mechanics National Bank of Trenton, further answering said cross bill, says that it has no knowledge, information or belief, other than that con-

veyed to it in and by said cross bill, as to the circumstances which induced the said A. Boyd Cornell to purchase the said stock so offered at said public sale, and therefore can neither admit nor deny the allegations in this behalf made, and leaves the defendant, William H. Skirm, Jr., to make such proof thereof as he may be advised is necessary.

7. And this defendant, the Mechanics National Bank of Trenton, further answering said cross bill, says that it has no knowledge, other than that conveyed to it in and by the said cross bill, as to whether the said C. Edward Murray or C. Harry Baker, or either of them, caused or procured the said A. Boyd Cornell, for or on their behalf, to borrow from this defendant the said sum of thirty-six hundred dollars, or any other sum, as in said cross bill is alleged, and therefore leaves the said defendant, William H. Skirm, Jr., to make such proof thereof as he may be advised is necessary or proper; but this defendant says that the facts concerning said loan to said A. Boyd Cornell, so far as this defendant knows them and understands them to be, are as follows, to wit: That on the twentieth day of August, in the year nineteen hundred and three, the said A. Boyd Cornell applied to this defendant for a loan of three thousand dollars, and offered this defendant as security for said loan the endorsement of C. Edward Murray and collateral consisting of fifty shares of the capital stock of the Empire Rubber Manufacturing Company; that this defendant agreed to accept such security, and to make said loan of three thousand dollars to said A. Boyd Cornell, and thereupon received and accepted from said A. Boyd Cornell a promissory note bearing date the twentieth day of August, in the year nineteen hundred and three, whereby he did promise to pay on demand, to the order of C. Edward Murray, at the banking house of this defendant, three thousand dollars, with interest, and did pledge as collateral security to said note Certificate Number one hundred and thirty-three for fifty shares of the capital stock of the Empire Rubber Manufacturing Company, being stock issued to the said A. Boyd Cornell, which promissory note was duly endorsed by C. Edward Murray to said A. Boyd Cornell, and by said A. Boyd Cornell was endorsed and delivered to this defendant, together with the certificate for said fifty shares

of said capital stock; whereupon this defendant loaned and paid to said A. Boyd Cornell the aforesaid sum of three thousand dollars, upon the terms and conditions in said promissory note set forth, and that in and by said promissory note said A. Boyd Cornell did promise to pledge and deliver, on demand, such additional security as might be required by this defendant, and until such further deposit should be made, did confer upon this defendant the right, until said promissory note should be paid, to retain and apply any moneys, securities or property of any kind belonging to the said A. Boyd Cornell, that this defendant might then have or thereafter acquire to make good the deficiency; and that said A. Boyd Cornell did further, in and by said promissory note, agree that in case of non-payment of said note according to its terms, he, the said A. Boyd Cornell, thereby authorized this defendant to sell said fifty shares of capital stock of the Empire Rubber Manufacturing Company, so issued to him as aforesaid, and apply the net proceeds thereof to the payment of said last mentioned note and interest thereon; and did further, in and by said promissory note, authorize such sale to be made at this defendant's option, without notice, at any brokers' board or public exchange, or at public or private sale; and did further, in and by said promissory note, agree that should said fifty shares of capital stock of the Empire Rubber Manufacturing Company, issued to him, the said A. Boyd Cornell, as aforesaid, or any part thereof, depreciate in value before such sale or sales, then this defendant should in nowise be answerable therefor, and that this defendant might become the purchaser thereof when sold pursuant to the authority hereinabove mentioned, and might hold the same thereafter in its own right absolutely; and that he, the said A. Boyd Cornell, did, in and by said last mentioned promissory note, further promise to pay any amount which might remain due on said last mentioned promissory note after such sale, together with legal interest thereon.

8. And this defendant, the Mechanics National Bank of Trenton, further answering said cross bill, says that it has no knowledge, information or belief, other than that conveyed to it in and by said cross bill, concerning any combination, conspiracy, scheme to cheat, defraud or oppress the defend-

ant, William H. Skirm, Jr., or in anywise to do him wrong or impair his rights, or in anywise to act unjustly, unfairly or inequitably toward him on the part of said C. Edward Murray, C. Harry Baker, A. Boyd Cornell, or any or either of them, and therefore can neither admit nor deny the allegations in said cross bill in this behalf made, and leaves the defendant, William H. Skirm, Jr., to make such proof thereof as he may be advised is necessary.

9. And this defendant, the Mechanics National Bank of Trenton, further answering said cross bill, says and avers the fact to be that it has in all respects acted fairly, justly and equitably toward the said William H. Skirm, Jr., and in strict accordance with the rights conferred upon it by the contract contained in the aforesaid promissory note made by said William H. Skirm, Jr., to this defendant, and bearing date the twenty-fourth day of February, in the year nineteen hundred and three; that the said sale of the said capital stock of the Empire Rubber Manufacturing Company, pledged by said William H. Skirm, Jr., as collateral security for the payment of said last mentioned note, was had in due form of law, and with due regard to the rights and equities of said William H. Skirm, Jr.; that it was sold for the best price that could be secured therefor; that this defendant came justly, fairly and honorably into possession of the certificate for the fifty shares of stock of the Empire Rubber Manufacturing Company, issued to said A. Boyd Cornell, and fairly, justly and properly holds it at the present time, and ever since the delivery of said certificate to this defendant has held it, as collateral to secure the payment of the aforesaid promissory note of A. Boyd Cornell, dated the twentieth day of August, in the year nineteen hundred and three, to secure the payment of the sum of three thousand dollars, by said promissory note promised to be paid.

10. And this defendant, the Mechanics National Bank of Trenton, further answering said cross bill, says that it has no knowledge, information or belief, concerning the allegation in said cross bill, to the effect that said defendant, William H. Skirm, Jr., tendered to said C. Edward Murray, in money, legal tender of the United States of America, or otherwise, the sum of three thousand six hundred and eighty-

one dollars and twenty-one cents, or any other sum, and demanded that the said C. Edward Murray return to him, the said William H. Skirm, Jr., the said fifty shares of the capital stock of the Empire Rubber Manufacturing Company, pledged to this defendant, the Mechanics National Bank of Trenton, to secure the aforesaid promissory note of thirty-six hundred dollars, given by said William H. Skirm, Jr., and therefore this defendant can neither admit nor deny the said allegation, and leaves the defendant, William H. Skirm, Jr., to make such proof thereof as he may be advised is necessary.

11. And this defendant, the Mechanics National Bank of Trenton, further answering said cross bill, avers that the said defendant, William H. Skirm, Jr., has not, in and by his said cross bill, made or stated such a case against this defendant, the Mechanics National Bank of Trenton, as entitles him, the said William H. Skirm, Jr., in a court of equity, to any relief against this defendant as to the matters contained in such cross bill, or any of said matters, and this defendant, the Mechanics National Bank of Trenton, prays that it may have the same benefit of this defense as though it had demurred to the said cross bill.

All which matters and things, this defendant, the Mechanics National Bank of Trenton, stands ready to maintain, aver and prove, as this Honorable Court shall direct, and therefore prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

THE MECHANICS NATIONAL BANK
[L. S.] OF TRENTON.
By E. C. STOKES, President.

Jurat annexed as in Dick. Chan. Proc., p. 115, taken January 23, 1904, before SCOTT SCAMMELL, *M. C. C.*

In Chancery of New Jersey.

Between

C. EDWARD MURRAY, et als., *Complainants,*

and

WILLIAM H. SKIRM, Jr., *Defendant.*

On Bill, &c.

REPLICATION AND ANSWER TO CROSS BILL.

[Filed March 7, 1904.]

The complainants, C. Edward Murray and C. Harry Baker, join issue on so much of the answer of the defendant, William H. Skirm, Jr., as is not in the nature of a cross bill; and the complainants, C. Edward Murray and C. Harry Baker, and also A. Boyd Cornell, who is joined with them as defendant, to that part of the answer of the defendant, William H. Skirm, Jr., which is in the nature of a cross bill, answering say:

That it is true, as stated in the said cross bill, that the said William H. Skirm, Jr., lent to and paid for the use of the said C. Edward Murray and C. Harry Baker, the sum of three thousand eight hundred and thirty-seven dollars, and that the said William H. Skirm, Jr., on or about the fourteenth day of August, nineteen hundred and three, began an action in the Supreme Court of this State against the said C. Edward Murray and C. Harry Baker, and that judgment was recovered in said action, as stated and set out in said cross bill.

That it is true, as stated in said cross bill, that on or about the twenty-fourth day of February, nineteen hundred and three, the said William H. Skirm, Jr., was the owner of fifty shares of the capital stock of the Empire Rubber Manufacturing Company; that it is not true that the said fifty shares were, or are, or always have been, of the value of five thousand dollars and upwards, and leaves the said William H. Skirm, Jr., to make such proof of their value as he may be able; that it is true that on or about the twenty-fourth day of Feb-

ruary, nineteen hundred and three, the said William H. Skirm, Jr., borrowed from the Mechanics National Bank of Trenton the sum of three thousand and six hundred dollars, or some other sum, and as evidence thereof, executed to the said Mechanics National Bank of Trenton a certain note of hand bearing date on the day and year last aforesaid, wherein and whereby he promised to pay in four months from the date thereof to the order of the said C. Edward Murray the said sum of three thousand and six hundred dollars; that the said C. Edward Murray endorsed the said note for the accommodation of the said William H. Skirm, Jr.; that to further secure the payment of the said note, the said William H. Skirm, Jr., pledged and delivered to the said Mechanics National Bank of Trenton, as collateral security, his certificate for the said fifty shares of the capital stock of the said Empire Rubber Manufacturing Company; that when the said note became due and payable, the said William H. Skirm, Jr., defaulted in the payment thereof; and that the same remained unpaid until the twentieth day of August then next ensuing.

That it is not true, that on or about said twentieth day of August, nineteen hundred and three, the said C. Edward Murray and C. Harry Baker contrived to cheat, defraud or deprive the said William H. Skirm, Jr., of the said capital stock, or corruptly combined or conspired with each other, or procured or caused the said Mechanics National Bank of Trenton, on the day and year last aforesaid, or at any other time, to expose for sale at public auction, or otherwise, at its banking house, or elsewhere, and to sell and strike off the same to the said A. Boyd Cornell, for the sum of three hundred and fifty dollars, or any other sum, and did then and there cause and procure the said A. Boyd Cornell to purchase the same in his name, but in trust for the said C. Edward Murray and C. Harry Baker; but on the contrary thereof, the said C. Edward Murray and C. Harry Baker and A. Boyd Cornell aver the fact to be that the said A. Boyd Cornell purchased the said stock at the public sale thereof in his own name and for his own benefit, and as his own property, and that he now holds and owns the same severally and individually, and not in trust for the said C. Edward Murray and C. Harry Baker, or any other person whomsoever.

That it is not true, as stated in said cross bill, that the said C. Edward Murray and C. Harry Baker, on the day and year aforesaid, or at any other time, caused or procured the said A. Boyd Cornell, for or on their behalf, to borrow from the said Mechanics National Bank the sum of three thousand and six hundred dollars, or any other sum, or caused the said A. Boyd Cornell to execute and deliver to the said Mechanics National Bank of Trenton his promissory note, wherein he promised to pay, at a time therein fixed, the money so borrowed from the said bank, which note before delivery was endorsed by C. Edward Murray and C. Harry Baker, or either of them, or that to secure the payment of the same the said C. Edward Murray and C. Harry Baker caused or procured the said A. Boyd Cornell to pledge and deliver to the said Mechanics National Bank of Trenton, as collateral security for the moneys so alleged to have been borrowed on said promissory note, the said fifty shares of the capital stock of the said William H. Skirm, Jr., by delivering to the said Mechanics National Bank the certificate of the said shares standing in the name of the said William H. Skirm, Jr., or any new certificate of the said shares of the capital stock issued by the said Empire Rubber Manufacturing Company to the said A. Boyd Cornell in the place of the certificate of the said William H. Skirm, Jr.; or that with the moneys so borrowed from the said bank the said C. Edward Murray and C. Harry Baker paid to the said bank the moneys due to it on the said note of the said defendant, so held by the said bank, or then and there caused the said bank to deliver the said note to the said C. Edward Murray; but on the contrary thereof, the said C. Edward Murray and C. Harry Baker and A. Boyd Cornell allege the truth to be, that the said A. Boyd Cornell, having shortly before that time been elected secretary of the said Empire Rubber Manufacturing Company, to succeed the said William H. Skirm, Jr., resigned, and being then and there the owner of only two shares of the capital stock of said company, and being desirous of acquiring a further interest in said company, he, the said A. Boyd Cornell, attended said sale of said capital stock at auction rooms of Charles L. Patterson, an auctioneer in the City of Trenton,

and then and there bid in for himself, and bought for himself, the said fifty shares of capital stock so sold as aforesaid; that this defendant, C. Edward Murray, severally and individually, did borrow from the said A. Boyd Cornell the sum of two thousand six hundred and fifty dollars, on or about said twentieth day of August, nineteen hundred and three, for which the said A. Boyd Cornell gave his certain promissory note to the Mechanics National Bank of Trenton, for the sum of three thousand dollars (the balance, namely, three hundred and fifty dollars, being for himself), and the said note was endorsed by the said C. Edward Murray, and for the payment of which the said A. Boyd Cornell pledged to the said bank the fifty shares of capital stock of the said Empire Rubber Manufacturing Company, so purchased by him as aforesaid, and for which a new certificate was issued to him in lieu and instead of the certificate for the same theretofore standing in the name of the said William H. Skirm, Jr.; and the said C. Edward Murray, with said money so borrowed, paid the balance due by him to said bank on said note of said William H. Skirm, Jr.

That it is not true, as stated in said cross bill, that the said C. Edward Murray and C. Harry Baker, corruptly and conspiringly, did, on the fourth day of September, in the year last aforesaid, in the name of the said C. Edward Murray, commence an action in the Supreme Court of this State against the said William H. Skirm, Jr., to recover the moneys due on the said note; but on the contrary thereof, the said C. Edward Murray and C. Harry Baker and A. Boyd Cornell allege the truth to be, that the said C. Harry Baker had no interest whatever in the said note so made by the said William H. Skirm, Jr., to the order of C. Edward Murray, and by him endorsed to the said Mechanics National Bank of Trenton, where the same was discounted for the use, benefit and accommodation of the said William H. Skirm, Jr.; but on the contrary thereof, allege the truth to be, that the said C. Edward Murray, having paid the balance due on said note, being liable therefore as endorser thereon, after the application thereto of the net proceeds of the sale of the said stock of the said William H. Skirm, Jr., so as aforesaid pledged as collateral security for the payment of the said

note, the said C. Edward Murray, in his own name, and for his sole benefit, commenced the said suit in the said Supreme Court against the said William H. Skirm, Jr., and that such proceedings were thereupon had, that on the fifteenth day of September, in the year last aforesaid, a judgment was recovered in said Court in said cause, in favor of the said C. Edward Murray, and against the said William H. Skirm, Jr., for the sum of three thousand four hundred and forty-one dollars and seventy-four cents.

That it is true, as stated in said cross bill, that at the time of the recovery of the last aforesaid judgment by the said C. Edward Murray, the said William H. Skirm, Jr., was the owner of two hundred and forty-one shares of the capital stock of the said Empire Rubber Manufacturing Company, in addition to the said fifty shares thereof theretofore owned by him, and theretofore sold away from him, at public auction as aforesaid; but it is not true that said shares were of the value of twenty-four thousand and one hundred dollars and upwards, and they leave the said William H. Skirm, Jr., to make such proof of their value as he may be able; that it is not true, that in the prosecution of any scheme to cheat, defraud or oppress the said William H. Skirm, Jr., the said C. Edward Murray and C. Harry Baker caused an execution to be issued upon the judgment last aforesaid, to the Sheriff of the County of Mercer, who, by virtue thereof, levied upon the interest of the said William H. Skirm, Jr., in and to the said two hundred and forty-one shares, and at public sale sold the same to the said C. Edward Murray for the sum of fifty dollars; but on the contrary thereof, allege the truth to be, that at the time of the recovery of the judgment last aforesaid, the said William H. Skirm, Jr., was the owner of two hundred and forty-one shares of the capital stock of the Empire Rubber Manufacturing Company, in addition to the fifty shares thereof theretofore owned by him and theretofore sold away from him at public auction as aforesaid, and under an execution issued on said judgment to the Sheriff of the County of Mercer, he, the said Sheriff, levied upon the right, title and interest of the said William H. Skirm, Jr., of, in and to, two hundred and forty-one shares of the said capital stock (said Sheriff having appraised and set aside two shares

thereof to and for the use of the said William H. Skirm, Jr., under the exemption law of this State), and thereafter, upon due advertisement according to law, sold the right, title and interest of the said William H. Skirm, Jr., of, in and to the two hundred and thirty-nine shares of the capital stock of the said William H. Skirm, Jr., to the said C. Edward Murray, at public vendue (all of which said two hundred and thirty-nine shares were held by sundry persons as collateral security for debts due and owing to them from the said William H. Skirm, Jr., as the said C. Edward Murray was at time of said sale, and before that time, advised and believed), and that the said C. Edward Murray has not been able to recover the possession of any of the said shares, the right, title and interest of the said William H. Skirm, Jr., in which were sold to him as aforesaid, and he, the said C. Edward Murray, is advised and believes that some or all of said shares were, before said sale, sold by the pledgee or pledgees thereof in satisfaction of some debt of the said William H. Skirm, Jr., although the said shares were not then and have not since been transferred on the books of the Empire Rubber Manufacturing Company to any person or persons other than the said William H. Skirm, Jr.

That it is not true, as stated in said cross bill, that in the prosecution of any scheme to cheat, defraud or oppress the said William H. Skirm, Jr., the said C. Edward Murray and C. Harry Baker, after the recovery of the judgment against them before mentioned, by deed of assignment, bearing date of the twelfth day of October, nineteen hundred and three, and executed by the said C. Edward Murray, assigned the said judgment recovered by the said C. Edward Murray, against the said William H. Skirm, Jr., to Henry D. Lanning, who, at the instance of said C. Edward Murray and C. Harry Baker, by his deed of assignment, bearing date on the same day, assigned the said judgment to them; but on the contrary thereof, allege the truth to be, that the said C. Edward Murray, being then and there indebted to the said C. Harry Baker in the sum of three thousand three hundred and three dollars and ninety-nine cents, assigned, transferred and set over to the said C. Harry Baker an undivided one-half interest in and to the said judgment, so as aforesaid re-

covered by him, the said C. Edward Murray, against the said William H. Skirm, Jr., through the medium and intervention of the said Henry D. Lanning, as nominal assignee, for the purpose of setting off the last aforesaid judgment against the judgment recovered by the said William H. Skirm, Jr., against them, the said C. Edward Murray and C. Harry Baker, and to enable them to pray for the relief sought for by them in and by their bill of complaint, as they lawfully might.

That it is not true, as stated in said cross bill, that the said C. Edward Murray and C. Harry Baker, in the prosecution of any scheme to cheat, defraud or oppress the said William H. Skirm, Jr., or to deprive him of his said shares of the capital stock of the Empire Rubber Manufacturing Company, or to recover the said judgment against the said William H. Skirm, Jr., and to offset the same against any debt due from them, the said C. Edward Murray and C. Harry Baker, to the said William H. Skirm, Jr., or that said alleged scheme was conceived, inaugurated or put into execution by them only after the said William H. Skirm, Jr., had demanded of them the moneys alleged to be justly due to him, or only after he had commenced his suit in the said Supreme Court to recover the same as aforesaid; and it is not true, that the said C. Edward Murray and C. Harry Baker well knew that they had no lawful defense to the action of the said William H. Skirm, Jr., against them, but filed their plea thereto, denying their liability therein, for the purpose of thwarting or delaying the said William H. Skirm, Jr., in the recovery of the moneys so alleged to be due him, or to prevent him from paying to the Mechanics National Bank of Trenton, the moneys then due to it by him, or to prevent him from redeeming the said shares of stock so pledged by him to the said bank, or to enable the said C. Edward Murray and C. Harry Baker to execute any fraudulent or corrupt scheme to deprive the said William H. Skirm, Jr., of his said shares of capital stock of said bank aforesaid, or to recover the judgment against the said William H. Skirm, Jr., which, in and by the bill of complaint herein, they seek to off-set against the judgment recovered by him against them; but on the contrary thereof, allege the truth to be, that they, the said C. Edward Murray

and C. Harry Baker, were advised by counsel that they had a lawful defense to the said action of the said William H. Skirm, Jr., against them, in the form in which said action was brought, namely, an action charging them as joint debtors to the said William H. Skirm, Jr., when said debt was several and individual as to the half part or moiety each, of the said amount demanded of them by the said William H. Skirm, Jr., and therefore they filed their plea in said action, denying their liability therein; that when the trial of said issue was about to take place in the Mercer County Circuit Court, at the term of October, nineteen hundred and three, the said C. Edward Murray and C. Harry Baker relinquished their defense to said action, because, as they were then advised by counsel, as they had not filed any notice of misjoinder of defendants in said action within five days after the filing of their plea thereto, according to the statute in such case made and provided, they could not prevent the plaintiff from recovering judgment aginst them in manner and form as the proofs would show them to be liable, and therefore instead of attending said Circuit Court to await the trial of said issue when called in its order in the list of causes, the said C. Edward Murray and C. Harry Baker relinquished their aforesaid plea pleaded and allowed the said William H. Skirm, Jr., to recover judgment against them in the manner and form in which he had complained against them in his said action.

That it is not true, as stated in said cross bill, that the sale of the said fifty shares of the capital stock of the said Empire Rubber Manufacturing Company, by the said Mechanics National Bank of Trenton, was had without first publicly advertising the same; that it is not true that the said William H. Skirm, Jr., never saw nor heard of any published notice of the said sale, or that said sale was conducted privately at said bank in the presence only of the officials of the said bank having charge of the same, and of the said C. Edward Murray and C. Harry Baker and A. Boyd Cornell, or that the price at which the said shares were sold was grossly and unconscionably low, to the knowledge of any of the said parties; but on the contrary thereof, allege the truth to be, that the said sale of the said fifty shares of the capital stock

of the said Empire Rubber Manufacturing Company, by said Mechanics National Bank of Trenton, was had upon due and public notice, widely advertised throughout the City of Trenton, and upon personal notice in writing given to the said William H. Skirm, Jr., who did not choose to attend the sale of his said shares of stock; that said sale was conducted at the public auction rooms of Charles L. Patterson, an auctioneer of the City of Trenton, in the presence *of all who chose to be then and there attending*; that while the price at which the said shares were sold was lower than the price at which any such shares had within a considerable time before that time been sold, yet, the said shares of stock represent a small minority holding of stock in an industrial corporation, and were at that time, as they always are, of extremely problematical value, and that said shares were then and there bid in and bought by the said A. Boyd Cornell at the highest and best price the same would bring in cash at the time of said sale; that it is true, that the said C. Edward Murray and C. Harry Baker, at the time of said sale, and at the time of the filing of said cross bill, were the owners of more than half of the capital stock of the Empire Rubber Manufacturing Company, and the said C. Edward Murray was an active manager of the same and was the treasurer thereof, and the said C. Harry Baker was the vice-president thereof, and that they, the said C. Edward Murray and C. Harry Baker, upwards of one year previous to the said sale of the said stock of the said William H. Skirm, Jr., and on or about the first day of July, nineteen hundred and two, purchased the majority of the capital stock of the said Empire Rubber Manufacturing Company (each making purchases of the said stock on his sole and individual account), at one hundred and ten dollars per share, which price, however, has proven to be far beyond the real and actual value of said stock at the time of said purchases and since, as the said C. Edward Murray and C. Harry Baker, since coming into control of the corporation, have learned through its books, by its inventory and by its business, and the value thereof; that while the said C. Edward Murray was actively managing said corporation at the time of said sale, the said company was engaged in the business of manufacturing rubber goods, and its business was

prosperous to the extent only of meeting its obligations by close application to the business, and to business methods.

That it is true, as stated in said cross bill, that at the time of the sale by the Sheriff of the County of Mercer, by virtue of the execution issued upon the judgment recovered by the said C. Edward Murray against the said William H. Skirm, Jr., of the said two hundred and thirty-nine shares of the capital stock of the Empire Rubber Manufacturing Company then belonging to the said William H. Skirm, Jr., that the said shares were hypothecated, but to secure what amounts the said C. Edward Murray and C. Harry Baker and A. Boyd Cornell have no knowledge, and they aver the truth to be, that the said William H. Skirm, Jr., having knowledge of the time and place of the sale of his right, title and interest of, in and to said two hundred and thirty-nine shares of said capital stock of the said Empire Rubber Manufacturing Company, under said execution, as aforesaid, failed to attend said sale and give notice of the situation of said shares, as to hypothecate or otherwise, and that because of the fact that the said shares were known to be hypothecated, said price of fifty dollars for the right, title and interest therein of the said William H. Skirm, Jr., was neither grossly nor unconscionably low, but was the highest and best price the same would bring in cash at the time of said sale, having regard to the problematical title and value, if any, of the said stock, to the purchaser thereof.

That it is true, as stated in said cross bill, that on or about the sixteenth day of October, nineteen hundred and three, the said William H. Skirm, Jr., made a tender of some sum of money to the said C. Edward Murray, and then and there demanded of him the fifty shares of the capital stock of the Empire Rubber Manufacturing Company, so as aforesaid pledged by the said William H. Skirm, Jr., to the said Mechanics National Bank of Trenton, and theretofore sold away from the said William H. Skirm, Jr., to the said A. Boyd Cornell, but as to whether the sum so tendered was the amount then and there due and owing from the said William H. Skirm, Jr., to the said C. Edward Murray, the said C. Edward Murray and C. Harry Baker and A. Boyd Cornell leave the said William H. Skirm, Jr., to make such proof as

he may be able; but they allege the truth to be, that the said C. Edward Murray declined and refused to accept said money so tendered, because he had no power or authority to deliver to the said William H. Skirm, Jr., the said fifty shares of capital stock, because they were then, and still are, owned by the said A. Boyd Cornell.

All which matters and things the said C. Edward Murray, C. Harry Baker and A. Boyd Cornell are ready to aver, maintain and prove, as this Honorable Court may direct; and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

E. R. WALKER,
Solicitor and of Counsel With Defendants.

IN CHANCERY OF NEW JERSEY.

Between

C. EDWARD MURRAY, ET ALS.,
Complainants,
and
WILLIAM H. SKIRM, JR.,
Defendant,
} On Bill, &c.

NOTE.

[Filed March 10, 1904,]

The defendant, William H. Skirm, Jr., joins issue on the special replication of the complainants, C. Edward Murray and C. Harry Baker, and on the answer of the Mechanics National Bank and A. Boyd Cornell, defendants, to his answer in the nature of a cross bill.

JOHN H. BACKES,
Solicitor for Defendant, William H. Skirm, Jr.

IN CHANCERY OF NEW JERSEY.

Between

C. EDWARD MURRAY, ET ALS,
Complainants,

and

WILLIAM H. SKIRM, JR.,
Defendant,

Transcript of Stenographer's notes of evidence, taken in the above entitled cause, before his Honor, JAMES J. BERGEN, Vice-Chancellor, at the Chancery Chambers, Trenton, N. J., December 21st, 1904, at 10 A. M.

APPEARANCES—MR. EDWIN ROBERT WALKER, for the Complainants.
MR. JOHN H. BACKES, for the Defendant.
MR. JOHN M. DICKINSON, for the Mechanics National Bank of Trenton, Defendant in the Cross Bill.

Mr. Backes—I call upon the complainant to produce a letter written by myself to C. Edward Murray, dated July 30th, 1903.

Produced.

I call upon the complainants to produce a similar demand made upon C. Harry Baker, dated July 30th, 1903.

Produced.

I call upon the complainants to produce a letter written by myself to the Empire Rubber Co., dated July 30th, 1903, notifying them of a claim of William H. Skirm, Jr.

Mr. Walker—We have the letter here, but we claim that it is entirely irrelevant.

Mr. Backes—I also call upon the complainants for the original letter written by William H. Skirm, Jr., to C. Edward Murray, dated October 16th, 1903, in which Mr. Skirm tenders to Mr. Murray, in cash, the

full amount of the indebtedness upon the note of the Mechanics National Bank of Trenton.

Mr. Walker—Mr. Murray has not got it, and does not remember ever having received it.

Charles L. Patterson, being duly sworn according to law, on his oath saith:

Examined by Mr. Backes—

Q. Your business is what?

A. I am in the real estate business and follow auctioneering.

Q. Where?

A. Fourteen West State Street, Trenton, N. J.

Q. Had you anything to do with the sale of shares of stock of the Empire Rubber Co. on or about August, 1903?

A. Yes, sir.

Q. That sale concerned how many shares of stock?

A. I think there were seventy shares of stock advertised at that time.

Q. Do you remember in what certificates they appeared to be?

A. I did not see the certificates at all.

Q. Where was the auction to be held?

A. In my office.

Q. At what time of day?

A. Between two and three o'clock in the afternoon.

Q. Was it advertised?

A. Yes, sir.

Q. How was it advertised?

A. By one hundred postal cards, or very nearly that number, being sent out. I had one hundred postal cards printed, and there might have been one hundred sent out; and it was also advertised in two of the morning newspapers for three days previous to the sale.

Q. When were the postal cards sent out?

A. About a week before the sale.

Q. They were printed, were they?

A. Yes, sir.

Q. And they were sent to whom?

A. I took the names from the City Directory, and they were sent to prominent people in the city here, in town here. I have no list of the persons that I sent them to.

Q. On the day of the sale, and at the time of the sale, what took place?

A. Well, I read the conditions of sale, same as heretofore, and I then offered them for sale and they were purchased.

Q. What took place at the sale?

A. I merely offered them at public sale, in the usual form, in the usual way, and nothing particularly took place that I remember.

Q. Who was present at the sale?

A. Mr. Baker, Mr. Murray and Mr. Cornell were the only three outsiders there, I believe, that I noticed.

Q. When you speak of outsiders, what do you mean?

A. Well, my clerks were there, and Mr. Bullock, a gentleman who has desk room in the office; he was there.

Q. And they were the only ones there at the time of the sale?

A. Yes, sir.

Q. Do you know of anyone else attending the sale?

A. No, sir.

Q. How many bids were offered or made for the stock?

A. I am not perfectly clear on that.

Q. Give your best recollection.

A. I tried to think of that matter before I came up here, and I don't remember whether it was sold on the first bid or whether there were two or three bids made on it; I am not clear on it.

Q. Well, do you know who bid?

A. My impression is that Mr. Murray was the last bidder, but I cannot say positively as to that even.

Q. You don't recollect whether you ever received a bid for less than $350, do you?

A. No, sir; I cannot say positively about that.

Q. Was there anyone there from the Mechanics National Bank?

A. No, sir.

Q. Did you have the stock while the sale was going on?

A. No, sir; I did not have the certificates of stock.

Q. Did you ever have the certificates of stock in your possession?

A. No, sir; I never saw them even.

Q. Did you obtain any instructions from the Mechanics National Bank prior to the sale?

A. I did.

Q. What was that?

A. To sell the stock.

Q. How did it come to you?

A. They sent for me to come over to the bank and I went, and they told me what they wanted me to do; they told me that they wanted me to advertise it for sale at public sale, and I asked them how they wanted me to advertise it, and I told them how I usually advertised such things for sale, and then they instructed me how they wanted it advertised, and I advertised it according to their instructions, and on the day of the sale, or the day before the sale, I would not say which now, I went over to the bank and I asked Mr. Stokes if there was any instructions for me in regard to the sale, and he said, "None at all, only to sell the stock to the highest bidder."

Q. Do you know whether that was the morning of the sale or not?

A. I am not positive, but I think it was the morning of the sale; it was either the day before the day of sale or on the morning of the day of sale.

Q. Did you hold the sale before delivering the stock?

A. After the sale I went with Mr. Cornell and Mr. Murray over to the Mechanics National Bank, and there they made a settlement; they made the settlement there in the bank—the settlement did not go through my hands at all, they made the settlement in the bank.

Q. How soon after the sale did you go with them, that is after the property was struck off; how soon did you go with them to the bank?

A. Immediately. I put on my hat as soon as the matter was attended to. I did not even ask them to stay there and sign the conditions of sale; I took the whole matter over to the Mechanics National Bank, and it was all settled up there.

Q. Were any conditions of sale signed?

A. Not at my office. I took the conditions over to the

Mechanics National Bank; I turned the matter over to the Mechanics National Bank.

Q. Who to?

A. To Mr. Stell, I think it was; he was the cashier of the bank.

Q. And what transpired after that you have no knowledge?

A. No, sir; I merely stated to Mr. Stell the price that they were to pay, and that was agreeable to them and to me, and I left them in the bank at that time, to make the settlement with the bank people.

Q. Did you, at the time of striking off this stock, demand any compliance with your conditions of sale?

Mr. Walker—I object to that as immaterial.

The Court—I will take it.

A. The conditions of sale were that ten per cent. of the purchase money was to be paid at the close of the sale, and that the conditions were to be signed, and these conditions of sale were taken over, and they went with me over there in person to the bank—

Q. After you struck off the property, did you demand that they should comply with the conditions of sale?

A. I told them that we would go over to the bank and that they could comply with the conditions of sale over there and make the settlements over there.

Q. And it was you that invited them to go over to the bank?

A. Yes, sir; that was the understanding I had with the cashier of the bank, that whatever settlement was made it should be made in his office.

Q. Do you remember any conversation between the three gentlemen, Mr. Murray, Mr. Baker and Mr. Cornell?

A. No, sir; I did not hear what they said; they came in my office and they were sitting in the office talking. I did not pay any attention to what they were saying; I was busy on some other matters, and I did not pay any attention to what they were talking about.

Cross-examination by Mr. Walker.

Q. You say that you received instructions from Mr. Stokes of the bank to sell the stock—what Mr. Stokes do you refer to?

A. Mr. E. C. Stokes, the president of the bank.

Q. Did Mr. E. C. Stokes, the president of the bank, give you any detailed instructions as to how you were to advertise this stock?

A. I asked him how much of an advertisement he wanted done.

Q. And what did he say?

A. He told me to advertise it by sending out postal cards —sending out postal cards and advertise it in two daily newspapers, and I asked him how many times I should advertise it in the newspapers, and he asked me how often we usually did it, and I told him we generally advertised such things for three or four days, and he said that three days would be ample. I don't know that that was the exact wording of the conversation, but—

Q. As a matter of fact, you sent out the notices a week ahead of the sale, didn't you?

A. Yes, sir; I think about a week ahead.

Q. And you say you sent out notices to nearly one hundred prominent men in the City of Trenton?

A. Yes, sir.

Q. What character of men?

A. Well, I sent them out to Mr. Skirm, who was personally interested, that I know—

Q. Mr. William H. Skirm, Jr.?

A. I think one went to him or to his father, and then I sent one to Mr. Baker and to Mr. Murray, and I don't remember sending one to Mr. Cornell. I guess I was not acquainted with him at that time. I also sent postal cards to the officers of the banks in the city. I took the names out of the Directory. I sent to the directors of the banks, and such men as they that I knew of, who were interested in the rubber mills, to Mr. Stokes, and others of that kind.

Q. Did you send any to the other directors in this company, Mr. Barker Gummere, and other directors?

A. I think I did. I think I sent one to Mr. Hancock and to Mr. Gummere, and to gentlemen such as them. I sent notices of that kind from my office to them.

Q. Did you send them to people who were in the habit of buying stocks of that kind at sales?

A. Yes, sir; I sent them to Mr. Gummere, and to Mr. Hancock, and to men who were usually or who would usually attend sales of that kind.

Q. At your brokerage office?

A. Yes, sir.

Q. I hand you what purports to be a proof of the advertisement in the *Daily True American*, a newspaper printed and circulating in the City of Trenton, of the sale of seventy shares of the stock of the Empire Rubber Co., by you on August 13th, 1903, and which notice was published August 11th, 12th and 13th of that year, and I ask you if you recognize that as the advertisement that you caused to be inserted, of that sale?

A. Yes, sir.

Q. And are the fifty shares of stock you refer to included in that seventy shares of stock advertised?

A. Yes, sir.

Q. The other twenty shares were also shares of stock of William H. Skirm, Jr., were they not?

A. I don't know about that; when I sold the stock I did not positively know whose stock it was.

Q. Did the twenty other shares of the stock of the Empire Rubber Co. bring the same price?

A. Yes, sir.

Q. $3.50 a share?

A. I don't know about the price; five dollars, was it not, or seven dollars—seven dollars, I think, it was—

Q. Well, they brought the same price each, did they?

A. Yes, sir.

The Court.

Q. Was all this block of stock sold by order of the bank?

A. Yes, sir.

Mr. Walker.

Q. I show you what purports to be a proof of publication in the *Daily State Gazette*, of the City of Trenton, of the notice of sale of seventy shares of the stock of the Empire Rubber Co., at your brokerage office, on August 13th, 1903, and which purport to be published on August 11th, 12th and

13th of that year; is that the advertisement of the same sale, of the same stock previously referred to?

A. Yes, sir.

Q. And included in the seventy shares of stock there advertised is this fifty shares of the stock to which you have spoken on your direct examination?

A. Yes, sir.

Mr. Walker—I ask that these proofs of publication be marked for identification.

Marked C. 1, and C. 2, for identification, respectively.

Q. Senator Stokes is the president of this bank, the Mechanics National Bank?

A. Yes, sir.

Q. And was at that time?

A. Yes, sir.

Q. And didn't he tell you to advertise that stock in such a way as would be likely to bring the highest and best price possible for it?

A. He said he wanted it to bring as much as I could get.

Q. What did he say about bringing the price of the stock, if anything?

A. I don't remember that he said anything except on the day of the sale, when I went to see him, and I asked him if he had any special price for this stock; if he wanted to put a limit on it, and he said no, he wanted me to sell it.

Q. Didn't he, in saying he wanted it advertised, say that he wanted it advertised in such a way as to give the stock the greatest publicity?

A. Yes, sir; I asked him about the postal cards, and I don't know but that he mentioned it, but at all events he approved of it.

Q. Did you not, besides advertising in the daily newspapers and in sending out these postal cards, that you have spoken of, did you not set out other notices?

A. Yes, sir; I set out notices in five public places in the City of Trenton.

Q. For how long a time before the sale?

A. I am under the impression that I did that either the Friday or the Saturday prior to the sale, but I am not positive.

Q. What day of the week did the sale take place?

A. I think it was Saturday. I haven't looked the matter up at all; you have the advertisements.

Q. It says Thursday.

A. Well, I think it was Thursday; either Friday or Saturday of the previous week that I sent and got the notices put up.

Q. Didn't the postal cards bear the same advertisement as these newspaper publications show?

A. Yes, sir; the same thing exactly.

Q. Have you any of the postal cards?

A. No, sir; I haven't.

Q. Don't you remember as a fact that Mr. Cornell made the lowest bid for that stock?

A. I don't remember.

Q. And don't you remember as a fact that Mr. Murray made no bid at all?

A. No, sir; I cannot say that I am clear on it.

Q. Was there not a sale of certain other shares of stock of the Empire Rubber Co. had at your brokerage office, since this sale?

A. Yes, sir.

Q. When was that?

A. I think it was in October.

Q. This last October?

A. Yes, sir; October, 1904.

Q. How many shares of stock were sold at that sale?

Mr. Backes—I object to that as irrelevant and immaterial.

The Court—You will have to make him your own witness to prove that fact.

Mr. Walker—I am willing to do that.

Charles L. Patterson, recalled in behalf of the complainant, saith:

Examined by Mr. Walker.

Q. How many shares of stock were sold this last time in October, 1904?

A. I forget now, but it seems to me that there were ninety-one shares. I am not certain about that.

Q. Was the sale public or private?

A. Public.

Q. After advertisement?

A. Yes, sir.

Q. By you?

A. Yes, sir.

Q. Whose shares of stock were they?

A. William H. Skirm's, Jr.; that is, they were in his name, I believe.

Q. Who was the purchaser of those shares of stock?

A. William H. Skirm, Sr.

Q. And did Mr. Murray attend that sale?

A. No, sir.

Q. What were the shares of stock sold for?

Mr. Backes—I object to the question. What those shares of stock may have sold for at some other time, and some other place, is no evidence of the value of the stock in question here.

The Court—They advertised that stock in a public manner, and sold it, and your claim is that they sold it for too low a price?

Mr. Backes—My point is, that whatever the stock may have sold for at any other time at a public sale, the price realized there is no evidence at all as to the value of the stock.

The Court—I think this last sale is too remote, and I shall over-rule the question.

Mr. Walker.

Q. You struck off this stock to the highest bidder?

A. I struck it off to Mr. Cornell.

Q. He was the highest bidder?

A. He did the bidding, but I asked—

The Court.

Q. You are an auctioneer—don't you know what the question is—did you strike it off to the highest bidder?

A. I struck it off to the highest bidder, but I didn't know what the man was bidding for—sometimes you strike—

Q. You struck it off to the highest bidder, did you not?

A. Yes, sir.

Mr. Walker.

Q. What is your recollection as to who was the highest bidder?

A. I think it was Mr. Murray—I cannot recollect now; I don't remember now whether it was Mr. Murray or Mr. Cornell, but I know that Mr. Cornell, Mr. Baker and Mr. Murray stood there altogether, right side by side, and I had my instructions from the bank to sell the stock for the best price that could be obtained for it, and I know that I did sell it for the best price I could obtain—

Mr. Dickinson.

Q. You say you did not have the certificates of stock in your possession, at the time you made the sale?

A. No, sir.

Q. When you sell stock at public auction, is it unusual not to have the actual certificates of stock in your possession?

A. Well, it is according to who I am selling for—sometimes I demand to have the stock in my possession, at other times I do not.

Jacob C. Slack, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath, saith:

Examined by Mr. Backes.

Mr. Backes—I call for the production of the notes and the fifty shares of the capital stock sold.

Notes produced.

Q. What is your business?

A. Banking.

Q. Where?

A. Mechanics National Bank.

Q. How long have you been in the banking business?

A. Nineteen years.

Q. In what capacity have you been for the last four or five years, and are now?

A. As discount clerk.

Q. Have you produced here the records of the Mechanics National Bank?

A. Yes, sir.

Q. In which are recorded the dealings between the bank and William H. Skirm, Jr., on a note of $3,600?

A. Yes, sir.

Q. And also in which are recorded the dealings with the bank of Mr. Cornell and Mr. C. Edward Murray concerning a note of $3,600?

A. Yes, sir.

Q. I show you a note dated February 24th, 1903, and ask you, was that note ever the property of the Mechanics National Bank, to your knowledge?

A. Yes, sir.

Q. Have you any record of it?

A. Yes, sir.

Mr. Backes—I offer in evidence that note which has been produced by the complainant.

Marked Exhibit D. 1.

Mr. Backes—I now call for the production of the fifty shares of the Empire Rubber Co., the stock in question in this suit.

Produced.

The Court—What do you want to prove?

Mr. Backes—I prefer, your Honor, to examine this witness, and let the examination disclose what occurred. I have had no opportunity to confer with this witness.

The Court—All right, you may proceed.

Mr. Backes.

Q. I show you a certificate of stock, No. 37, of the Empire Rubber Co., made to William H. Skirm, Jr. Is that the same certificate of stock referred to in the note of deposit or in the pledge to the note of February 24th, 1903?

A. Yes, sir.

Q. Has any disposition been made of that note and that stock by the bank?

A. Yes, sir.

Q. When was it paid?

A. On August 20th, 1903, the note was paid.

Q. What occurred on that day concerning this matter?

A. The stock was sold and the proceeds applied to the payment of the note of $3,600, due June 24th.

Q. Did you have any dealings on that day with Mr. Murray, Mr. Cornell and Mr. Baker?

A. Not personally.

Q. Did you know who had?

A. The cashier, Mr. Stell.

Q. Do the books of the bank disclose what occurred?

A. Yes, sir.

Q. With reference to this note and stock?

A. Yes, sir.

Q. Upon the 20th of August, 1903, did the Mechanics National Bank have an account with A. Boyd Cornell?

A. Yes, sir.

Q. And with C. Edward Murray?

A. Yes, sir.

Q. Do your books disclose the history of this note, and this stock—what disposition was made of it on that day?

A. Yes, sir.

Q. Will you state what that was?

Mr. Walker—I object to the question; what the records of the bank might have made about that transaction cannot affect them.

The Court—These are parties to the suit.

Mr. Walker—Yes, but I am speaking for the defendants, Mr. Murray, Mr. Cornell and Mr. Baker.

The Court—I will take the evidence.

A. Do you want me to state what that matter was?

The Court.

Q. You are talking about the notes and the stock you held as collateral; that is what the question is now directed to.

Mr. Backes.

Q. What was done with reference to that?

A. I was given a check for $350, the proceeds of the sale of the stock; another check for $3,297.07, the balance of the note, including interest and costs of sale.

Q. Do you know whose checks they were?

Mr. Walker—The checks ought to be produced.

A. The checks are in the possession, I presume, of the drawers of the checks.

Mr. Backes.

Q. You haven't got them?

A. No, sir.

Q. On that day, was there a note discounted by the Mechanics National Bank for $3,000, made by A. Boyd Cornell, and endorsed by C. Edward Murray?

A. Not discounted.

Q. What was done with such a note?

A. A call loan was made.

Q. To whom was that call loan made?

A. A. Boyd Cornell.

Q. And by whom was the negotiations in behalf of the bank made; which of the officers?

A. The president or cashier would be the proper officer; I cannot say which.

Q. Have you that note with you?

A. Yes, sir. (Produces.)

Q. Who handed to you the two checks that you have mentioned here?

A. I cannot say positively, but I am quite sure it was the cashier.

Q. And at that time did you see this note of the 20th of August, 1903, of $3,000, made by A. Boyd Cornell?

A. I am not sure as to that; that is not in my department, although I know of the transaction.

Q. You do know of the transaction?

A. I know of the transaction.

Q. Did this note come to your hands on that day, this note of $3,000?

A. Yes, sir; it did.

Q. Do you know when the stock was delivered to the bank—this certificate of stock annexed to this note, No. 133, of the Empire Rubber Co., to the order of A. Boyd Cornell?

A. I did not, but I have no doubt it was delivered on the day the note was made, as it is against the policy of the bank to make a loan without—

Note of $3,000 offered in evidence. Marked Exhibit D. 2.

Certificate of stock No. 37, of the Empire Rubber Co., for fifty shares, issued to A. Boyd Cornell, offered in evidence, and marked Exhibit D. 3.

Q. To whose account was that note credited?

A. To A. Boyd Cornell.

Q. Does that so appear upon your books?

A. Yes, sir.

Q. Will you refer to that account?

A. Yes, sir.

Q. What appears there?

A. On the 20th of August, 1903, there was a loan of $3,000 placed to his credit.

Q. And the record of that appears in what book?

A. In the record of demand loans.

Q. What is this book entitled?

A. "Personal Ledger PRA. to L. 1903."

Q. And you are reading from page three of that book?

A. Well, it runs in sections.

Q. What else appears there?

A. There is no other credit.

Q. Does it appear that that was taken out by Mr. Cornell at any time.

A. Yes, sir.

Q. When?

A. On that day.

Q. How does it appear?

A. There are two charges against the account, wiping out the credit, one for $350, and one for $2,650.

Q. That was a call loan, and there was no discount taken off or interest charged?

A. No, sir.

Q. Now, will you refer to Mr. Cornell's other accounts, if you have any on or about that date?

A. The only other account I have is the record of a demand loan as made.

Q. And that is this same loan?

A. Yes, sir.

Q. Did he have any other account?

A. No, sir.

Q. Will you refer to Mr. Murray's account of August 20th, 1903, and state what that discloses?

A. What do you want?

Q. What does the account disclose?

A. There appears a credit of $4,300, and two charges, one of $3,297.07, and one of $900.

Q. Have you any knowledge at all of these transactions?

A. Yes, sir.

Q. As to its occurrence on the 20th of August?

A. Yes, sir.

Q. What is that—what do you know of it?

A. The note was given to me to credit to bills discounted.

Q. By whom was it given to you?

A. The note is in my possession.

Q. By whom was it given to you?

A. All notes are in my possession—the discount clerk of the bank—I presume it was not necessary for anybody to give it to me.

Q. How did it get into your possession—you did not make it?

A. The note was in the bank as a discounted note on the 20th of August.

Q. I am speaking of the note of $3,000, made by A. Boyd Cornell.

A. That note I had nothing to do with.

Q. You did not know anything about it?

A. I did know something about it, but I had nothing to do with it on that day.

Q. What do you know about it?

A. I know it was placed to Mr. Cornell's credit on that date.

Q. What else do you know about it?

A. I know it is still in our possession.

Q. Now, tell me what you know about the Skirm note of $3,600, and that transaction?

A. That note I credited that day to bills discounted, and took Mr. Cornell's check for $350 in part payment, and Mr. Murray's check for $3,297.07 to pay the balance, and delivered the note to Mr. Murray.

Q. Now, at the time of the delivery of this note to Mr. Murray, did you have in your possession the $3,000 A. Boyd Cornell note, and the stock?

A. It was in the bank at the time.

Q. Who had it at that time?

A. The cashier.

Q. Did you receive instructions from the cashier before delivering the Skirm note to Mr. Murray?

A. I knew there was a credit to Mr. Cornell, otherwise I should not have taken his check to pay the other note.

Q. You knew there was a check of $3,000 to be put on the books?

A. Yes.

Q. To the credit of Mr. Cornell?

A. Yes.

Q. Before you delivered the Skirm note to Mr. Murray?

A. Yes, sir.

Q. Before you delivered the Skirm note to Mr. Murray, had Mr. Cornell given you a check?

A. Yes, sir.

Q. For how much?

A. Three hundred and fifty dollars.

Q. Had he also given a check for $2,600?

A. No, sir.

Q. Do you know at that time whether he had given any check to Mr. Murray at all?

A. Not positively.

Q. You have spoken of the record of a $2,650 check, or a disbursement, made to Mr. Murray on the 20th of August, 1903; do you know whether, when you surrendered the note to Mr. Murray, whether Mr. Cornell had executed a check to Mr. Murray for $2,650 or not?

A. I did not.

Q. Do you know to whom this disbursement of $2,650 went?

A. I do not.

The Court.

Q. Who was the maker of the note paid off on the 20th of August, 1903?

A. William H. Skirm, Jr.

Q. Were there any sureties or endorsers on the note?

A. C. Edward Murray.

Q. And is he the man who paid the difference between the $350 and the amount due on the note?

A. Yes, sir.

Mr. Walker.

Q. Mr. Murray paid it as endorser on the note, and took it out of the bank?

A. Yes, sir; he did.

Mr. Backes.

Q. Mr. Murray did not take the note out of the bank before you had in your possession, or before the bank had in its possession, a new note, made by Mr. A. Boyd Cornell, of $3,000, and a certificate of stock for fifty shares of the stock of the Empire Rubber Co.?

Mr. Walker—I object to the question as irrelevant and immaterial.

The Court—I will take it.

A. No, sir.

William H. Skirm, Jr., a witness produced in behalf of the defendants, being duly sworn according to law, on his oath saith:

Examined by Mr. Backes.

Q. You are the defendant in this cause?

A. Yes, sir; I am.

Q. Have you any connection with the Empire Rubber Co.?

A. I did have up to 1903.

Q. Until when in 1903?

A. About the first of May, 1903.

Q. And prior to that time did you hold any office?

A. I was secretary of the company, from 1892 to 1903.

Q. Who succeeded you?

A. Well, I don't know of my own knowledge; I only know from what I have heard.

Q. You were the owner of fifty shares of the capital stock of that company?

A. Yes, sir.

Q. And that was hypothecated with the Mechanics National Bank?

A. Yes, sir.

Q. On or about the 20th of August, 1903, what was your financial condition?

Mr. Walker—I object to that as immaterial.

Objection sustained.

Mr. Backes.

Q. Did Messrs. Baker and Murray owe you any money prior to the 20th of August, 1903?

Mr. Walker—I object to the question as irrelevant. It cannot affect the question of the bona fides of the sale of these securities, hypothecated in this bank.

The Court—I will take it.

A. They did.

Mr. Backes.

Q. And the amount is set out in the papers some $3,800?

A. Yes, sir.

Q. Did you make demand of Mr. Murray for the payment of that sum at any time prior to the 20th of August?

Mr. Walker—Same objection.

The Court—If a man agrees in writing to pay a debt you do not have to make demand. I will take it.

A. I asked him for it; yes, sir.

Mr. Backes.

Q. Where and when was it?

A. I cannot say when. I talked to Mr. Murray and to Mr. Baker together, in Mr. Baker's office, to the best of my knowledge and belief.

Q. When, with reference to the time suit was brought by you against Mr. Baker and Mr. Murray, for the amount due?

A. I asked them before that time.

Q. Did you have any notice of the sale of this stock from the Mechanics National Bank?

Mr. Walker—Same objection.

The Court—I will take it.

A. Yes, sir.

Mr. Backes.

Q. And in what way did that notice come to your attention?

A. By mail.

Q. From whom?

A. Why, Mr. Patterson, I believe, it was, on a postal card; I found it at the house.

Q. When, with reference to the day of sale?

Mr. Walker—I object to that.

The Court—I will take it.

A. After the sale.

Mr. Backes.

Q. Did you have any notice of that sale prior to the sale?

A. Well, not from Mr. Patterson; I was out of town at the time the sale took place.

Q. Did you know of the sale coming off prior to its happening?

A. Oh, I think I may have received a letter from the Mechanics National Bank that they were going to sell it.

Q. Do you know that it was to be sold on the 13th of August, 1903; did you have any notice to that effect prior to the day of the sale?

A. Not to my knowledge.

Q. I show you the minutes of the Empire Rubber Co., or a book purporting to be or contain the minutes of the Empire Rubber Co., and ask you whether you recognize it (handing witness book)?

A. Yes, sir.

Q. And that is the minutes of the proceedings of what?

A. The minutes of the Empire Rubber Company's proceedings.

Q. From what period of time—from its formation?

A. Yes, sir.

Q. Down to what time?

A. In reference to when I wrote them, or to the present time—they come down to January 19th, 1904.

Q. You say you left there in May, 1903?

A. Yes, sir; about that.

Q. Now, the records of this book, prior to May 10th, 1903, are in whose handwriting?

A. Mine.

Q. As secretary of the company?

A. Yes, sir.

Mr. Backes—I call for the report of the New York Audit Company. (Produces.)

Q. I show you a paper of the Audit Company of New York, and ask you if you can state whether you ever saw that before (handing witness paper)?

A. Yes, sir.

Q. Where did you first see that?

A. In the office of the company.

Q. When?

A. About the time or prior to when it is dated.

Q. It bears date August 8th, 1902?

A. Yes, sir.

Q. I find on the books, under date of July 16th, 1902, this resolution: "Regularly moved and seconded, that a dividend of ten per cent. be declared out of the—

Mr. Walker—I object to the question; the book has not been offered in evidence, and I submit it is improper to read from the book until it has been offered in evidence.

Objection sustained.

Mr. Backes.

Q. I call your attention to page 66 of this book—

Mr. Backes—Well, I offer the book in evidence, for the purpose of showing that this stock was worth, according to the reports of the company, and of which Mr. Murray was the treasurer, and of which Mr. Baker was the vice-president, was worth more than $110 a share, as per its records—that is, the capital stock was worth that much per share, and that it was worth it at the time this property was sold. I offer to disclose by these minutes, which came to the knowledge—

Mr. Walker—Counsel was about to have read here a resolution passed on the 16th of July, 1902, in which a dividend of ten per cent. was declared on this stock. As a matter of fact, counsel will perceive that the resolution was passed in August, 1902. Now, I call your Honor's attention to the fact that this sale of this stock was not until a year after, that is, in August, 1903.

Mr. Backes—It appears in the minutes that annally or semi-annually reports were made of the condition of the company, showing the assets and liabilities of the company, and this continued from the beginning of the corporation down to the 17th of July, 1901, in this manner (handing papers to the Court). These minutes are evidence against these men in the nature of an estoppel as to the value of this stock.

The Court—I will receive the minutes of the company, so far as the statements are contained in them as to the condition of the company.

Mr. Walker—I object, your Honor, to the offer, specifically to the resolution declaring the dividend in August, 1902, on the ground that it is too remote to throw any light on the value of the stock at the time it was sold.

The Court—I will admit the record.

Marked Exhibit D. 4.

Mr. Backes.

Q. I call your attention to a resolution on page 67, which has no caption, showing the date of the passage of the resolution; do you know when that resolution was in fact passed?

A. August 4th, 1902.

Q. At that time were there any statements or reports of the condition of the company before the Board of Directors of the company?

A. Yes, sir.

Q. And were you present at that meeting of the Board of Directors?

A. Yes, sir.

Q. And who else was present?

A. Mr. Murray, Mr. Baker, Mr. William H. Skirm, Sr., Mr. William P. Hayes and myself, were all that were present.

Q. I show you a report of the Audit Company of New York, which bears date August 8th, although it is scratched out, and replaced 1902, and ask you where it was that you first saw that report?

A. At the office of the Empire Rubber Co.

Q. When, with reference to the date of the declaration of the dividend, which appears on page 67 of the book, passed on August 4th, 1902?

A. Either on or before that date.

Q. Now, was this before the Board of Directors on the day that the dividend of August 4th was passed?

A. I think it was either that one or the report of Mr. Cook, the treasurer at that time.

Q. Do you know for what purport this report was gotten up; do you know who demanded it?

A. Mr. George R. Cook.

Q. What relation had G. R. Cook to the Empire Rubber Co. at that time?

A. He was treasurer up to June 20th, 1902, and then retired.

Q. And who succeeded him?

A. Mr. C. Edward Murray.

Q. And this is a report of the condition of the company as it appeared up to that time, that date?

A. Yes, sir.

Q. Was there any other report before the company showing its condition?

A. Oh, I saw the report of Mr. Cook, understand, which was not in as elaborate a form as this.

Q. Did he make a report?

A. Yes, sir.

Q. Who managed the Empire Rubber Company after the time Mr. Cook retired; who became its active manager?

A. Well, that would be a question—the question of management was divided between Mr. Murray and myself—Mr. Murray possibly was the deciding head.

Q. Do you know who continued the management of the company after May, 1903, after you left?

A. Mr. Murray.

Q. Now, was there any change in the business of the company between the time Mr. Murray took hold and the time you left?

Mr. Walker—I object to that as incompetent.

The Court—I will take it.

A. Well, I don't think there was. I would not be positive of that; my recollection does not serve me well on that at the present time.

Q. I observe by the minutes of the company that at various times the Board of Directors declared dividends out of the profits of the company; I ask you whether, as a fact, the dividends so declared were in fact paid by the company to the stockholders?

A. Yes, sir.

The Court.

Q. Every dividend declared was paid?

A. Yes, sir.

Q. While you were there?

A. Yes, sir.

Mr. Backes.

Q. Do you know Mr. A. Boyd Cornell's handwriting?

A. Yes, sir.

Q. I call your attention to a signature on page 74 of the minutes of a meeting held on the 14th of May, 1903, and ask you whose signature appears there as secretary pro tem?

A. "A. Boyd Cornell."

Q. I also show you the same signature appended to the minutes of a meeting held on January 19th, 1904, and ask you whose signature appears there?

A. A. Boyd Cornell's.

Q. As secretary of the company?

A. Yes, sir.

Cross-examination by Mr. Walker.

Q. I call your attention to page 68 of the minute book, and ask you to read there a resolution incorporated in the minutes of that company?

A. What part of the resolution?

Q. Read the entire meeting.

A. "Directors' meeting, August 4th, 1902. Meeting called to order by William H. Skirm, there being present C. H. Baker, C. E. Murray, W. P. Hayes, S. Walker, W. H. Skirm, Jr. On motion of Mr. C. E. Murray, regularly seconded, after some debate, that the dividend declared be recalled, owing to no account being taken of depreciation in machinery, in last statement, and that as certain improvements were necessary, and that an old claim of William F. O'Brien had to be paid, it was not wise. Carried. Regularly moved and seconded that we adjourn. (Signed) William H. Skirm, Secretary." Do I need to read the rest of it, something about the by-laws?

Q. No; now, as a fact, the resolution adopting that dividend was much more full than the one you read?

A. Yes, sir; because I did not have the resolution before me—

Q. You wrote up the minutes a year afterwards, didn't you?

A. Yes, sir.

Q. I ask you if that is not the resolution which was actually adopted at that meeting (showing witness a paper)?

A. Yes, to the best of my knowledge it is.

The Court.

Q. Why did you not enter the minute according to the resolution, the way it was adopted by the company?

A. Because I did not have it.

Mr. Walker.

Q. Did you not commence a suit in the United States Circuit Court for the District of New Jersey against the Empire Rubber Co., in the month of July last past, in which you claimed from that company $3,420.07 as the dividend due to you on the stock held by you, in that company, at the time of the declaration of the ten per cent. dividend on October 4th, 1902?

A. Yes, sir.

Q. And was not that cause tried before a jury?

A. Yes.

Q. And didn't that company set up as a defense that that dividend had been rescinded and annulled by the Board of Directors because it had not been earned?

Mr. Backes—I object to the question; the record will show.

The Court—You may ask the question.

A. Yes, sir.

Q. And didn't it set up and contend that the payment of that dividend would have been an invasion of the capital stock of the company?

A. Yes, sir.

Q. And did not the jury find against you on that issue?

Mr. Backes—You cannot prove a judgment except by the record.

Objection sustained.

Q. Do you mean to say that you had no notice of the sale of this stock at Mr. Patterson's brokerage office until after it was actually sold?

A. By Mr. Patterson?

Q. Yes.

A. I did not get the notice until after I came home.

Q. Where were you?

A. At Atlantic City.

Q. When had you gone to Atlantic City?

A. I think I went—I think I was down there ten days or two weeks. I did not get the notice until I returned home.

Q. Was there anyone in your house while you were away?

A. Yes, sir.

Q. Yet the notice was not forwarded to you?

A. No, sir.

Q. Was no mail forwarded to you?

A. No, sir.

Q. Did you leave no directions at the house to have it forwarded to Atlantic City, or to where you were?

A. No, sir.

Q. The reason the notice was not forwarded to you was because you had not left any directions—is that right?

A. Yes, sir.

Q. Didn't your father write a letter to you, informing you that that sale would take place?

A. No, sir.

Q. Didn't you and he have a communication or talk over the telephone prior to the sale taking place?

A. No, sir.

Q. Are you sure?

A. No, sir; we had no communication.

Q. Didn't you, on the streets of Trenton, have a talk with your father about that sale before it took place?

A. No, sir.

Q. You had, prior to this sale, knowledge of the fact that your note for $3,600, for which the fifty shares of stock were hypothecated, as collateral security, had been dishonored and protested?

A. Yes, sir.

Q. You had notice of that?

A. Yes, sir.

Q. And had you not direct notice from Senator Stokes, the president of this bank, that unless you paid that note your collateral would be exposed for sale?

The Court—He has said so.

Q. You had more than one notice from the bank, had you not?

A. Possibly I did; I don't just remember at this time.

Q. Did you not have two or three letters from Senator Stokes, the president of this bank, to that effect?

A. Yes, sir; I think possibly I did.

Q. Have you got those letters from the bank?

A. No, sir; I have not.

Q. I show you what purports to be a copy of a letter addressed to you, and signed "E. C. Stokes, President," and ask you to read it and say whether or not you received a letter of which that is a copy?

A. I think possibly it is; I don't remember it, but I think I got notice to that effect.

Q. You are quite sure, are you not?

A. Yes, sir.

Q. That that is a copy?

A. Yes, sir.

Q. You are quite sure that you received a letter, of which that is a copy?

A. Yes, sir.

Mr. Walker—I ask that the letter be marked for identification.

Marked C. 3, for identification.

Q. I show you what purports to be a copy of a letter from the bank to you, under date July 20th, 1903, and ask you to read that?

A. I think I received that letter.

Q. You believe you did?

A. Yes, sir; I believe I did.

Q. You are sure you received that letter?

A. Yes, sir; almost positive.

Mr. Walker—I offer that letter in evidence.

Marked Exhibit C. 4.

Q. I show you a letter dated August 7th, 1903, or what purports to be a copy of a letter from the bank to you. Did you receive that letter?

A. I think I got that after I returned home; I know I got the letter, but not until I returned home, I think.

Q. You got these letters, Exhibits C. 3, and C. 4, before you went away, did you not?

A. Yes, sir; possibly I did.

Q. Why do you say you think you saw this last one after you returned home; is it because you see in it the words "the property will be sold on the 13th of August"?

A. No, sir; I think I got both of them about the same time.

Letter marked C. 5, for identification.

Mr. Walker—I ask that the resolution rescinding the dividend be marked C. 6, for identification.

Q. You said that all the dividends were paid; you did not mean to include in that the dividend declared on the 4th of August, 1902, did you?

A. No, sir.

Q. That dividend, as a fact, has not been paid, has it?

A. No, sir.

Q. Now, don't you know that the Empire Rubber Company did not make any money in the year 1902, after July, up to the time you left?

A. I don't know of my own knowledge; no, sir.

Q. Don't you know that it lost money during that period?

A. No, sir; I do not positively.

Q. Didn't you go over the statement of the closing of the books as to January, 1903, with Mr. Murray; didn't you go over that statement?

A. No, sir.

Q. And don't you know that it showed a loss of about $10,000 that year?

A. No, sir.

Q. It is a fact, is it not, that when Mr. Murray and Mr. Baker acquired the majority of the Empire Rubber Company's stock, in July, or about July, 1902, that George R. Cook, and those associated with him, who had formerly owned a majority of this stock, commenced the organization of a new rubber mill; that is right, is it not?

A. Yes.

Q. And didn't they take away from the Empire Rubber Company numerous of its salesmen and employes?

A. Yes.

Q. And didn't they divert all of the principal customers of the Empire Rubber Company, that they could temporarily, to the Hamilton Rubber Manufacturing Co., in which they were also interested, the Cooks?

A. That I don't know, sir.

Q. They did divert largely its trade, to some other concern or concerns, didn't they?

A. That I cannot positively say; I don't remember.

Q. You don't know that numerous of their customers did not, after that time, patronize the Empire Rubber Company?

A. No, sir; not to my knowledge; I did not. I know some of them did not.

Q. Were you not one of the managers during all that time?

A. Yes, sir.

Q. And didn't you have a knowledge of who were the customers of the company?

A. Yes.

Q. And what business the company was doing?

A. Yes, sir.

Q. And don't you know that the company lost business, lost trade, during that period?

A. They did not do possibly as much business as they had done before.

Q. And they did not make any money, did they, either?

A. That I don't know, sir.

Q. Were you a director up to May, 1903?

A. Yes, sir.

Q. Did you know the condition of the company when you left it?

A. No, sir.

Q. Yet you were a manager up to the time you left?

A. There was not any manager.

Q. Were you not the manager of the company up to the time you left?

A. No, sir; there was not any.

Q. When did you cease to be a manager?

A. When Mr. Murray came in.

Q. I think you said on your direct examination that you and he divided the management, he being the head to which questions were ultimately submitted?

A. Well, he said there would be no manager when he came in; that the management would be divided between us.

Q. Didn't you take any part in the management?

A. Not as much as I had before.

Q. You did take part, didn't you?

A. To a small extent.

Q. Was it not your business to know what was going on, and what the company was doing?

A. In regard to the selling of goods; yes, sir.

Q. The sales had fallen off, hadn't they?

A. They had fallen off some.

Q. Yes, and considerable, too?

A. Well, I cannot say so now, of my own knowledge, how far they had fallen off.

Q. What percentage had they fallen off?

A. I cannot say.

Re-direct by Mr. Backes.

Q. The rescinding resolution which you had in your hands, by whom was that offered at the meeting?

A. Mr. C. E. Murray.

Q. And after that meeting, who had the resolution?

A. I believe Mr. Murray had it; I did not.

Q. When did you next see it?

A. Last week.

Q. Did you make any demand for it, in order to have it put in the books?

A. Yes, sir.

Q. Of Mr. Murray?

A. I made it through his agent.

Q. Now, didn't the Empire Rubber Company, in the suit which was tried out in the United States Court, contend also that the Audit Company of New York, in making up this statement of August 8th, 1902, in which the assets of $160,095.10 was stated to be the assets as of June 30th, 1902, and in so doing failed to take into consideration the $20,000 mortgage upon the property?

Mr. Walker—I object.

Question allowed.

A. Yes, sir.

Q. And did you not, as the plaintiff, further contend in that respect that the $16,095 stated to be the first asset in the report—

The Court—That report has not been put in evidence.

Mr. Backes—I offer it in evidence now.

Mr. Walker—I object to the question; it purports to be a statement of the condition of that company, as shown by its books of account, and is not an inventory of true valuation.

The Court—That Audit Company report is not competent evidence until it is proven. I am not at all convinced now that that report as it stands is evidence.

Mr. Backes—I offer in evidence the resolution heretofore marked C. 6, for identification.

No objection.

Marked Exhibit D. 5.

The Court—These minutes are offered in evidence as a part of the transaction of the Board of Directors, I understand?

Mr. Backes—Yes, sir.

The Court—And that the entry in the minutes

does not correctly represent what occurred at the meeting.

Mr. Backes—Yes, sir.

I also offer in evidence this Audit Company's report.

Mr. Walker—I object to the offer, upon the ground that it is not part of the minutes, and that it nowhere appears that it was adopted, and also that it nowhere appears that it is the duty of the secretary to record every paper that is placed before the Board of Directors.

Mr. Backes.

Q. I ask you whether this report of the Audit Company was shown to Mr. Murray or to Mr. Baker, at or before the meeting of August 4th, 1902?

A. Yes, sir.

Q. And the dividend which was declared on the 4th of August, 1902, which is shown upon page 67 of the Minute Book—what statement or report did the Board of Directors have before it at that time, to ascertain its profits?

A. The Audit Company's report.

Q. The one I show you now?

A. Yes, sir.

Q. And was it upon the profits, as they are disclosed by this Audit Company's report, that the dividend was declared?

Mr. Walker—I object to the question as being argumentative.

The Court—The minutes speak for that.

Mr. Backes—But, your Honor, the minutes do not speak.

The Court—Well, they should; you have the right to prove what action the Board of Directors took.

Mr. Backes.

Q. What action did the Board of Directors take with reference to this Audit Company's report, at the meeting of August 4th?

A. To be rescinded and spread upon the minutes as the report of George R. Cook, the treasurer.

Q. Under date of July 16th, 1902, on page 66, this resolution appears: "Regularly moved and seconded, that the report of the New York Audit Company be, and is hereby accepted as the final report of George R. Cook, treasurer." I ask you whether the Audit Company's report of the date of August 8th, 1902, is the same one referred to in and by this minute?

A. Yes, sir.

Q. Can you explain how this resolution is under the caption of July 16th, 1902?

A. Only that my notes were not properly dated.

Q. What date should this have appeared under, this resolution which I have just read?

A. The date when the meeting was held, when the dividend was declared.

Q. August 4th, 1902?

A. Yes, sir; I believe so.

Mr. Backes—Now I offer in evidence the report of the Audit Company.

Marked Exhibit D. 6.

Q. Didn't you, as plaintiff in the case in the United States Court, contend against the assertion that the $20,000 mortgage upon the property was not taken into consideration in the $160,095 item of assets; that the assets of real estate of the figure which I have just given was the equity in the property, subject to a mortgage of $20,000, as purchased by the Empire Rubber Company from Frank A. McGowan?

Mr. Walker—Objection.

The Court—I will allow the question.

A. Yes, sir.

Q. Didn't the defendant in that case also contend, that as to the assets of $160,095, as shown in and by this report, that an allowance for wear and tear was not made?

A. Yes, sir.

Q. Didn't the defendant, the Empire Rubber Company, contend in that case that they were not liable to you for the dividends, because you voted affirmatively upon this resolution rescinding the dividend of August 4th, 1902—did they not so contend?

Mr. Walker—Objection.

The Court—I will allow the question.

A. Yes, sir.

Mr. Backes.

Q. When, as a fact, was the resolution rescinding the dividend passed?

A. In October.

Q. By the Board of Directors of the Empire Rubber Company?

A. In October.

Q. It appears on page 68 as having been passed on August 4th, 1902; that is an error, is it?

A. That is an error.

Mr. Backes—We call for the deed by Frank A. McGowan to the Empire Rubber Company.

Produced.

Cross-examination by Mr. Walker.

Q. You said all of the prior dividends had been paid; were they not often paid by notes, given by the company, instead of cash?

A. Not to my knowledge; I always got mine in cash.

Q. Didn't your father get either all or a large part of his dividend of January, 1902, by a note of the company?

A. That I don't know.

Q. And didn't you endorse the note?

A. No, sir; not to my knowledge, I did not; I may have endorsed a company's note, but I did not endorse any note of his.

Q. A company's note to your order, and turned over to your father for dividends?

A. No, sir; I did not.

Mr. Backes—I offer in evidence a letter produced by the complainant in this cause, which I have called for, and which is dated Trenton, N. J., October 16th, 1903.

Letter read and marked Exhibit D. 7.

Next I offer in evidence a letter addressed to C. Edward Murray, Esq., Trenton, N. J., dated July 30th, 1903, and that corresponds with the date of the

letter of the Mechanics National Bank to Mr. William H. Skirm, Jr., stating that they will sell his stock.

Mr. Walker—I object to the offer of that letter as irrelevant.

The Court—I will take it.

Marked Exhibit D. 8.

Mr. Backes—Next I offer in evidence a letter directed to Mr. C. H. Baker, dated July 30th, 1903.

Mr. Walker—I object to the offer as irrelevant.

The Court—I will take it.

Letter read and marked Exhibit D. 9.

John H. Backes, being duly sworn according to law, on his oath saith:

On the 16th day of October, 1903, I went to Mr. Murray, in the Masonic Hall, at Trenton, and either read to him, or handed to him to read, the Exhibit D. 7. At the same time I tendered to Mr. Murray $3,681.21—a one thousand dollar gold certificate, a five hundred dollar gold certificate, and bundles of tens, one hundreds, and one thousands, and another bundle of one thousand dollars in tens and one dollar bills, nine twenty dollar bills, amounting to $180, two ten cent pieces, and one cent, making a total in all of $3,681.21.

Mr. Murray at that time was in attendance at the Republican Convention, at the Masonic Hall. The tender was made in the presence of Charles Hart Bird. I gave Mr. Murray the letter and cash, and counted the money out and tendered the sum to him, and he said he would see his counsel—he would not take it.

Cross-examination by Mr. Walker.

Q. Didn't Mr. Murray say to you that he would not accept that money, that he did not own the stock, that Mr. Cornell owned it, and he had no power over it?

A. No, sir; he did not.

Q. He did not?

A. No, sir.

Q. Or words to that effect?

A. No, sir.

Q. Are you sure of that?

A. Well, I am as sure as anyone can be.

Q. Tell us all that he said.

A. I will tell you all I recall. I told him that I had a letter, and handed it to him to read—either he read it or I read it to him. And I said, "I have got the money," and I counted it out to him. I held it in my hand while counting it. And Mr. Bird was there, and I think some remark was made by Mr. Murray or by Mr. Bird, that if they had that much money they would do a good deal of work in attending the convention. After I counted the money out, Mr. Murray said to me that he could not take it, or would not take it; either he could not take it, or he would not take it, and he said that he would have to see his counsel. And at the time I made a memorandum of what occurred—very likely I did not make a memorandum of everything that was said, and I do not say that I did.

Q. Did he not mention Mr. Cornell's name?

A. That I do not recollect, but I don't think he did.

Mr. Backes—I further offer in evidence the deed by Frank A. McGowan and wife, to the Empire Rubber Company, conveying to it the plant of the Empire Rubber Company, which discloses that there was a mortgage on the property of $20,000, and that corresponded with the first resolution passed by the Board of Directors, which shows that the plant was purchased for $97,000, subject to a $20,000 mortgage; and I offer that for the purpose of showing it to be the same $20,000 mortgage which was referred to in the rescinding resolution.

Mr. Walker—I object to the offer on the ground of remoteness as well as irrelevancy.

The Court—I will receive it.

Marked Exhibit D. 10.

Edward C. Stokes, a witness called in behalf of the Mechanics National Bank, being duly sworn according to law, on his oath saith:

Examined by Mr. Dickinson.

Q. You are the president of the Mechanics National Bank of this city?

A. Yes, sir.

Q. How long have you been president of that bank?

A. Since 1899.

Q. You were president on February 24th, 1903, were you?

A. Yes, sir.

Q. I show you a note dated February 24th, 1903, to the order of C. Edward Murray, made by William H. Skirm, Jr., and endorsed by C. Edward Murray, and William H. Skirm, Jr., for $3,600, and ask you if such a note was discounted by your bank (handing witness paper)?

A. Yes, sir; it was.

Q. And the money was paid to whom, do you know?

A. I suppose, of course, it was paid to the last endorser; that is our regular banking rule, I don't know anything to the contrary.

Q. Was there attached to that note, and taken by your bank, at the time it was discounted, any collateral?

A. Yes; fifty shares of the capital stock of the Empire Rubber Company.

Q. Was that note paid at its maturity; that is, when it became due?

A. This particular one?

Q. Yes.

A. I presume that this note was renewed several times. I don't know the date of the final maturity of the discounted note; I don't remember that date, but the note finally was protested, or else protest waived, and it lay there unpaid for some time.

Q. Can you state when the last note given in renewal of that note was paid; when the last renewal became due?

A. Was it paid at maturity, do you mean?

Q. Yes; paid by the maker of the note?

A. No, sir; there was a default.

Q. Was it protested for non-payment?

A. It was either protested or else the notice of protest was waived, one or the other; we tried to save protest expense—

Mr. Backes—I object to that.

Mr. Dickinson.

Q. When that note became due, what was done by your bank, looking to collecting the note?

A. Well, first I wrote letters to the parties in interest, calling their attention to the fact that the note was overdue, and stating that unless the matter was cleared up we would be compelled to proceed under the contract—

Mr. Backes—I object to that.

Mr. Dickinson.

Q. I show you a letter, or what purports to be a letter or copy of a letter, dated July 17th, 1903, and addressed to William H. Skirm, Jr., and signed by you as president, and ask you whether that is a copy of the letter you sent, notifying Mr. Skirm that this note was unpaid (handing witness paper)?

A. Well, so far as my memory serves me, it is, but you will find that in the copy book.

The Court—Mr. Skirm admits that it is, and he says he got these letters from the Senator as president of the bank.

Mr. Dickinson.

Q. State what else was done by you, besides notifying Mr. Skirm and Mr. Murray that this note was unpaid.

A. Well, the stock was sold by Mr. Patterson.

Q. The stock attached to that note as collateral?

A. Yes, sir; the fifty shares of the capital stock of the Empire Rubber Company was sold, and the proceeds used to pay the notes, as far as they went.

Q. What did you do by way of effecting the sale, or arranging about a sale of that stock held as collateral—you say Mr. Patterson sold the stock. Now, did you make any arrangements with Mr. Patterson for the sale of that stock?

A. Certainly.

Q. State what took place between you and Mr. Patterson in making those arrangements for the sale of the stock; did you have an interview with him?

A. Yes, sir; we made the usual arrangements—we made arrangements with regard to the advertising the sale, in the

usual manner, that he was to advertise it in the newspapers and send notices to the public—

Q. Did you instruct Mr. Patterson to advertise this stock?

A. Yes, sir; I did.

Q. Now, what specific directions did you give him in reference to that advertising; can you state them?

A. I gave him nothing more than the usual directions to advertise it in the paper and to follow out his usual course in such things, just by sending these postal cards in addition to the advertising in the newspapers, to those parties that he knows are interested in such sales.

Q. Did you notify Mr. Skirm and Mr. Murray that this stock would be sold?

A. I did, by letter.

Q. On or about the time this note became due, and before the sale of this stock attached as collateral to this note, did you have any arrangement with Mr. Murray or with Mr. Skirm in reference to the sale and purchase of this stock?

A. I did not.

Q. Was the Mechanics National Bank, or any officer of the bank, to your knowledge, induced by Mr. Murray or Mr. Baker or anyone to sell this stock?

A. It was not.

Q. Or by Mr. Cornell?

A. No, sir.

Q. Do you know what this stock sold for, Senator?

A. I think about $7 a share; I don't remember exactly.

Q. It has been proven here that this stock sold for $350—that is, fifty shares of stock of the Empire Rubber Company sold for $350—can you state whether or not, in your opinion, that was an unconscionably low price for that stock?

Mr. Backes—I object to the question; the Court is the one to decide as to that, not this witness.

Objection sustained.

Cross-examination by Mr. Backes.

Q. One of these letters bears date July 17th, 1903; on the same day did you write a similar letter to Mr. C. Edward Murray?

A. I presume so.

Q. Did he respond; did he come in to see you?

A. I don't know whether he did on that day or not.

Q. Did he come in later in response to this letter you sent him?

A. He came in in response to some of these letters.

Q. Did you tell him you were going to sell the stock?

A. Yes, unless the note was paid.

Q. And did he tell you to go ahead?

Mr. Walker—I object to that as immaterial.

Question allowed.

A. I presume he did; I don't remember the details of the conversation at all.

Mr. Backes.

Q. Another letter is dated July 30th, 1903, addressed to William H. Skirm, Jr.; you sent a similar letter to Mr. Murray, did you not?

A. I presume so. I wrote letters to all three of the parties at the time, so as to give them ample warning—

Q. I didn't ask you that—did Mr. Murray respond to that letter?

A. My memory does not serve me as to which one he responded to.

Q. Did Mr. Murray call shortly before the time you gave Mr. Patterson instructions as to the sale of this stock?

A. Mr. Murray came in to see about the note before the sale occurred.

Q. How often?

A. I don't know, sir.

Q. Did he come in again, after he responded to one of these letters, do you know?

A. I don't know, sir, but that he may have come in several times, because there were several letters written, and all bearing on the same subject matter, and all to the same men.

Q. After the time the stock was advertised for sale, and after the day was fixed, did Mr. Murray come in to see you concerning the stock?

A. That I don't know; I cannot say.

Q. After the time the stock was advertised for sale, and the day fixed for the sale, did Mr. Murray come in to see you on the day it was sold?

A. I don't know whether it was on that day or subsequently.

Q. Did he call upon you the day before, concerning the sale which was about to take place; that is, the sale of this stock?

A. The day before the sale?

Q. Yes.

A. I cannot fix the date.

Q. He did call to see you after the stock was advertised for a specific date, did he not?

A. Yes, he did certainly call to see me.

Q. And at that time, did he tell you that he was going to buy it?

Mr. Walker—I object to that as irrelevant and incompetent, and immaterial.

The Court—I will take it.

A. I don't remember that at all; I don't remember as to that, whether he said he was going to buy it or not.

Mr. Backes.

Q. And did he say to you, that whatever the stock sold for, he would protect the bank; did you have any such words as that with him, or to that effect?

A. I cannot say as to that; his endorsement was there, and that was the direction to us—

Q. I ask you as to whether there was any conversation to that effect?

A. I don't remember as to that.

Q. Would you say that he did not say anything of the kind?

A. No, sir.

Q. Did he not say something in substance, or to the effect, of what I have stated?

A. Not to my knowledge; I don't remember any such conversation.

Q. What was it he said in reference to the stock at the time he called, after the stock was advertised for sale?

A. I don't remember the details of the conversation. He probably told me—

Q. Tell us what he did say, or what your recollection serves you he said?

A. I have no recollection on the subject whatever.

Q. Didn't Mr. Murray at that time arrange for a loan, in case it was purchased by him, upon the security of the same stock?

Mr. Walker—I object to that as immaterial and incompetent.

Question allowed.

A. No, sir; he did not.

Mr. Backes.

Q. Was a future loan not discussed by you and Mr. Murray, upon the security of this stock, at the meeting after the stock was advertised for sale?

Mr. Walker—Same objection.

Question allowed.

A. Not to my knowledge.

Mr. Backes.

Q. Your recollection does not serve you at all, as to the nature of the conversation at this meeting between you and Mr. Murray, after the stock was advertised?

A. No, sir; I had no such conversation as that in regard to a future loan.

Q. He did call to see you concerning the stock after it was advertised, did he not?

A. Yes, he did.

Q. And what was said by you, or he, at that time, you do not recollect?

A. No, sir; I do not.

Q. You sent no representative to the auctioneer's office, or place of business, at the time of this sale, to represent the bank, did you?

A. No, sir; I did not. I don't know whether Mr. Stell did or not.

Q. You sent nobody there to protect the interests that the bank had in this stock, did you?

Mr. Walker—I object to the question as irrelevant and immaterial.

Question allowed.

A. I have no recollection of doing it; no, I sent no one to protect the interest of the bank in that matter.

Mr. Backes.

Q. Was not that because of some arrangement you, as president of the bank, had with Mr. Murray?

A. It was not.

Q. You don't recollect that Mr. Murray said to you that he was going to buy it in?

A. I do not.

Mr. Dickinson.

Q. Mr. Murray never did say to you that he was going to buy it in, Senator, did he?

A. I don't remember that he ever did at all.

Mr. Backes—I offer in evidence the certificate of stock, No. 37, of the Empire Rubber Company, for fifty shares, in favor of William H. Skirm, Jr.

Marked Exhibit D. 11.

I offer in evidence the Minute Book which has been referred to.

Marked Exhibit D. 12.

Mr. Walker—I offer in evidence the papers heretofore marked for identification.

Marked Exhibits C. 1, C. 2, C. 3, C. 4, C. 5, and C. 6, respectively.

The defendant to the cross bill rests, offering the documents heretofore marked for identification on their part.

Case closed.

Argued January 3d, 1905.

In Chancery of New Jersey.

Between

C. EDWARD MURRAY, et als,
Complainants,

and

WILLIAM H. SKIRM, Jr.,
Defendant,

ORDER REFERENCE TO VICE CHANCELLOR.

[Filed November 26, 1904.]

It is on this twenty-second day of November, nineteen hundred and four, on motion of John H. Backes, of counsel with the defendant, William H. Skirm, Jr., ordered that the above-stated cause be referred to James J. Bergen, Esquire, one of the Vice Chancellors of this Court, to hear the same for the Chancellor, and to report thereon to him, and advise what order or decree should be made therein.

W. J. MAGIE,
C.

In Chancery of New Jersey.

Between

C. EDWARD MURRAY, et als,
Complainants,

and

WILLIAM H. SKIRM, Jr.,
Defendant,

On Bill, &c.

CONCLUSIONS.

[Filed January 11, 1905.]

Mr. E. R. Walker, for Complainants.
Mr. John H. Backes, for Defendant.

BERGEN, V. C.

The complainants allege that, September 15th, 1903, the

complainant, Murray, recovered a judgment in the Supreme Court of this State against the defendant for $3,341.74, under which the Sheriff levied on 241 shares of the capital stock of the Empire Rubber Manufacturing Company, which was appraised by the Sheriff and persons selected for that purpose by him, at $100 per share, and after setting off to the defendant two shares to satisfy the exemption allowed him as a debtor having a family, the residue was, on October 11th, 1903, sold by the Sheriff at public auction for $50.00; that there yet remains due on said judgment $3,303.99; that October 12th, 1903, said judgment was assigned by Murray to a third person, and by him immediately reassigned to the complainants; that October 15th, 1903, the defendant recovered a judgment in the said Court against the complainants for $4,175.32. The prayer of the bill is that the judgment so assigned be set off against the judgment recovered by the defendant against the complainants' judgment, so far as it will extend.

The defendant answering the bill, admits all the material allegations contained therein, but in an answer by way of cross bill exhibited against the complainants, and also against A. Boyd Cornell, and the Mechanics National Bank of Trenton, charges, that on July 9th, 1902, the defendant loaned to the complainants the sum of money for which he afterwards recovered his judgment against them; that when he brought his suit for the recovery thereof, the complainants filed a plea of general issue, which they afterwards relinquished, and charges that the plea was filed for the sole purpose of preventing the recovery of the judgment, until the complainants had recovered their judgment, against the defendant, and sold under it the property of the defendant, as hereinafter set out; that the foundation of the complainants' judgment was a note made by the defendant and endorsed as an accommodation by Murray to the Mechanics National Bank in Trenton, and to secure the payment of which the defendant pledged as collateral with said bank, 50 shares of the capital stock of said Rubber Company; that when said note matured, Murray and Baker, having refused to pay their debt to the defendant, he was unable to provide for its payment, whereupon the bank caused said stock to be sold at public auction,

on August 20th, 1903, where it was struck off and sold to A. Boyd Cornell for $350, Cornell being the brother-in-law of Murray; that on the 16th day of October, 1903, the defendant tendered to Murray the principal and interest due upon the judgment against him, the defendant, demanding of Murray the 50 shares sold to Cornell, which tender Murray declined. The prayer of the cross bill is, that the sale of the 50 shares of stock may be decreed to have been fraudulently made, and that the same be set aside, and that a similar decree be made with reference to the sale of the 239 shares sold under the judgment against the defendant. No evidence was introduced with reference to the sale of the 239 shares, so that the further consideration of that question may be dismissed. With regard to the 50 shares, the evidence shows, that the defendant was unable to pay his loan to the Mechanics National Bank at the maturity of his note, upon which Murray was liable as endorser, and to secure which the 50 shares of stock had been deposited, and that this inability was caused by the neglect or refusal of the complainants to pay to him a much larger sum, for which he held their past due obligations, and it further appears that the defendant tendered to Murray all that he had been required to pay in satisfaction of his liability as endorser.

After reading the evidence, and giving this matter most careful consideration, I do not find myself able to justify the claim of the defendant. The bill of complaint is in the ordinary form, asking for an equitable set off, the material facts are all admitted, and the only defense offered is by way of cross bill, asking this Court to refuse the ordinary relief, in such cases, because the stock held by the bank, as collateral, was sold by it at public auction to Cornell. There is not a particle of evidence justifying the slightest criticism of the conduct of the bank, the defendant was notified by the officers of the bank more than once, that if he did not provide for his obligations, the stock would be offered for sale, he paid no attention to these notices, at least so far as the evidence discloses, and the bank, after fully advertising the sale, had it sold in a public manner at a place where such sales usually take place. The purchaser of this stock was a brother-in-law of Murray, and immediately upon the purchase and transfer

pledged it for a loan of $3,000 at the same bank. Of this money $350 was used to pay the purchase price, the balance, $2,650, was loaned to Murray, and by him used with other moneys to pay the balance due on the endorsed paper. Under this evidence I am asked to declare that Cornell is not the owner of this stock; that he bought it in trust for Murray, and that the whole proceedings was a scheme to cheat and defraud the defendant. If the proceedings complained of were corruptly instituted to deprive the defendant of his property, the bank must have been a party to it, and, as I have said, there is no evidence to sustain that allegation. Nor is there any evidence that Cornell is not the bona fide holder and owner of the stock, and while some of the circumstances may justify the suspicion of a conspiracy to defraud, there is no proof of any fraud. On the argument, it was earnestly insisted that this sale was for a price so grossly inadequate that a court of conscience ought to set it aside for that reason, but I am unable to say that the price for which this stock was sold was so grossly inadequate. It was the stock of an industrial company, and its market value was an uncertain quantity. This stock was sold on the 20th day of August, 1902, and on the 15th day of September following 239 shares of the stock of the company was sold at public auction for $50.00, the defendant apparently taking no interest in protecting it, or at least not enough to attend a public sale, and bid for it. In addition to what I have said, I am of the opinion that the affirmative relief sought by the defendant, cannot be allowed under these pleadings. The bill seeks to set off the two judgments, the cross bill does not deny the validity of the complainants' judgment, but seeks to have set aside, first, a sale made under the judgment, and, secondly, a sale of securities deposited as collateral to a loan made to the defendant, the deposit being with, and the sale made by a corporation in no way related to any of these parties, and in my judgment, the relief sought should have been the subject of an original bill. However, the determination of this case does not depend on the question of pleadings, as I shall advise a decree for the complainants upon the merits, and dismiss the cross bill.

In Chancery of New Jersey.

Between

C. EDWARD MURRAY, et als,
Complainants,

and

WILLIAM H. SKIRM, Jr.,
Defendant,

On Bill, &c.

FINAL DECREE.

[Filed February 28, 1905.]

This cause being opened to the Court by Edwin Robert Walker, of counsel with the complainants, C. Edward Murray and C. Harry Baker, and of John H. Backes, of counsel for the defendant, William H. Skirm, Jr., who is the complainant in the cross bill, and of Vroom, Dickinson and Scammell, of counsel for the defendant to the cross bill, the Mechanics National Bank of Trenton, and of said Edwin Robert Walker, of counsel for the defendants to the cross bill, C. Edward Murray, C. Harry Baker and A. Boyd Cornell; and the Court having heard the testimony of the witnesses and inspected the exhibits offered in the cause, and having heard the arguments of counsel for the respective parties, and taken time to advise thereon, and being now of opinion that the complainants are entitled to the relief sought and prayed for by them in their said bill of complaint, and that the said defendant, William H. Skirm, Jr., is not entitled to the relief sought and prayed for by him in his said cross bill;

It is thereupon, on this twenty-eighth day of February, nineteen hundred and five, on motion of Edwin Robert Walker, of counsel with the complainants and certain of the defendants to said cross bill, as aforesaid, ordered, adjudged and decreed, that the judgment of the complainants against the defendant, William H. Skirm, Jr., more particularly mentioned and set out in said bill of complaint, and upon which there was due to them from the said defendant, William H. Skirm, Jr., on October seventh, nineteen hundred and three, the sum of three thousand three hundred and three dollars and twenty-nine cents, be and the same is hereby set

off against the judgment of the defendant, William H. Skirm, Jr., against the complainants, more particularly mentioned and set out in said bill of complaint, and upon which there was due to him from the complainants, C. Edward Murray and C. Harry Baker, on October fifteenth, nineteen hundred and three, the sum of four thousand one hundred and seventy-five dollars and thirty-two cents, so far as said judgment of said complainants will extend; and that the cross bill of the said defendant, William H. Skirm, Jr., be and the same is hereby dismissed, with costs to be paid by him to the defendants therein, C. Edward Murray, C. Harry Baker and A. Boyd Cornell, and also with costs to be paid by him to the defendant therein, the Mechanics National Bank of Trenton.

W. J. MAGIE,
C.

Respectfully advised,
J. J. BERGEN,
V. C.

IN CHANCERY OF NEW JERSEY.

Between

C. EDWARD MURRAY, ET ALS,
Complainants,
and
WILLIAM H. SKIRM, JR.,
Defendant,
} On Bill, &c.

NOTICE OF APPEAL.

The defendant hereby appeals from the final decree made in this Court, in the above-stated cause, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes.

Dated March 3d, 1905.

JOHN H. BACKES,
Solicitor for Defendant.

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

JOHN H. BACKES,
Of Counsel With Defendant.

Service of a copy of the within notice of appeal acknowledged this 17th day of March, 1905.

VROOM, DICKINSON & SCAMMELL,
Solicitors for Mechanics National Bank of Trenton, Defendant.

E. R. WALKER,
Solicitor of Complainants and A. Boyd Cornell.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

C. EDWARD MURRAY, ET ALS,
(Complainants)
Respondents,

and

WILLIAM H. SKIRM, JR.,
(Defendant)
Appellant.

} On Appeal.

PETITION OF APPEAL.

[Filed March 17, 1905.]

To the Honorable, the Court of Errors and Appeals:

The petition of William H. Skirm, Jr., respectfully shows:

That your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, William J. Magie, Chancellor, bearing date the twenty-eighth day of February, nineteen hundred and five, in a certain cause therein pending, wherein C. Edward Murray, et als, are complainants, and your petitioner is defendant, in this respect: That the said decree adjudges that the judgment of the said complainants against your petitioner set out in the bill of complaint in said cause be set off against the judgment of your petitioner against the said complainants likewise set out in the said bill of complaint, so far as the said judgment of the said complainants will extend, and that the cross bill of your petitioner be dismissed with costs.

And your petitioner humbly appeals from the said decree

of the said Chancellor, and each and every part thereof, to this Honorable Court, upon the ground that the same is erroneous in that it should have been decreed:

First. That the complainants were not entitled to have their judgment set off against the judgment of your petitioner.

Second. That the judgment of the complainants, if it is entitled to be set off against the judgment of your petitioner, should have only been so set off, upon the terms as prayed by your petitioner in and by his answer by way of cross bill.

Third. That your petitioner is entitled to the relief, and each and every part thereof, prayed by him in and by his answer by way of cross bill, and the same should have accordingly been decreed to him.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may be adjudged and decreed the relief, and each and every part thereof, prayed by him in and by his answer by way of cross bill. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

JOHN H. BACKES,
Solicitor for and of Counsel with Appellant.

Service of a copy of the within acknowledged, March 17th, 1905.

E. R. WALKER,
Solicitor for Complainants and A. Boyd Cornell, Defendant.

VROOM, DICKINSON & SCAMMELL,
Solicitors for Mechanics National Bank, Defendants.

ANSWER.

NOTE.—Formal answers by the respondents.

EXHIBIT C. 1.

Advertisement in True American, August 11, 12, 13, 1903.

PUBLIC SALE OF STOCKS.

THURSDAY, AUGUST 13, 1903,

at 2 o'clock P. M., at my office, 14 West State street, Trenton, N. J.

At the above time I will offer, without reserve, 70 shares of the stock of the Empire Rubber Manufacturing Company.

Conditions on day of sale by

CHAS. L. PATTERSON.

EXHIBIT C. 2.

Advertisement in State Gazette, August 11, 12, 13, 1903.

PUBLIC SALE OF STOCKS.

THURSDAY, AUGUST 13, 1903,

at 2 o'clock P. M., at my office, 14 West State street, Trenton, N. J.

At the above time I will offer, without reserve, 70 shares of the stock of the Empire Rubber Manufacturing Company.

Conditions on day of sale by

CHAS. L. PATTERSON.

EXHIBIT C. 3.

(Copy.)

Edward C. Stokes, President.
Henry C. Kelsey, Vice President.
Wm. W. Stelle, Cashier.
Jos. R. Sweeny, Asst. Cashier.

Capital, $500,000; Surplus, $350,000.

Organized as a State Bank, 1834.

Organized as a National Bank, 1865.

1327

THE MECHANICS NATIONAL BANK,

OF TRENTON, NEW JERSEY.

July 17, 1903.

MR. W. H. SKIRM, JR., Trenton, N. J.

My Dear Mr. Skirm:

Your note of $3,600, dated Feb. 24th, due June 24th, se-

cured by endorsement of C. Edward Murray and 50 shares of the stock of the Empire Rubber M'f'g Co., lies here under protest. Unless this note is settled by Monday, the 20th inst., we shall advertise the stock of the Empire Rubber M'f'g Co. for sale according to the terms of the note.

Very sincerely yours,

E. C. STOKES,
President.

EXHIBIT C. 4.

(Copy.)

Edward C. Stokes, President.
Henry C. Kelsey, Vice President.
Wm. W. Stelle, Cashier.
Jos. R. Sweeny, Asst. Cashier.

Capital, $500,000; Surplus, $350,000.

Organized as a State Bank, 1834.

Organized as a National Bank, 1865.

1327

THE MECHANICS NATIONAL BANK,
OF TRENTON, NEW JERSEY.

July 30, 1903.

MR. W. H. SKIRM, JR., Trenton, N. J.

My Dear Mr. Skirm:

I beg leave to inform you that our Bank is now about to advertise the fifty (50) shares of stock of the Empire Rubber M'f'g Co., held as part security for note of $3,600 made by you, endorsed by C. Edward Murray, dated Feb. 24, 1903, due June 24th, 1903, in accordance with the terms of the note.

With best wishes, I remain,

Very sincerely yours,

E. C. STOKES,
President.

EXHIBIT C. 5.

(Copy.)

Edward C. Stokes, President.
Henry C. Kelsey, Vice President.
Wm. W. Stelle, Cashier.
Jos. R. Sweeny, Asst. Cashier.

Capital, $500,000; Surplus, $350,000.
Organized as a State Bank, 1834.
Organized as a National Bank, 1865.

1327

THE MECHANICS NATIONAL BANK,
OF TRENTON, NEW JERSEY.

August 7, 1903.

MR. W. H. SKIRM, JR., Trenton, N. J.

My Dear Mr. Skirm:

Fifty and twenty shares of the stock of the Empire Rubber M'f'g Co., held as collateral and part security for the payment of two notes made by you of $3,600 and $5,000 respectively, will be sold by Charles L. Patterson on Thursday next, the 13th inst.

Very sincerely yours,

E. C. STOKES,
President.

EXHIBIT D. 1.

$3,600.00.

TRENTON, N. J., Feb. 24, 1903.

Four months after date, for value received, I promise to pay to the order of C. Edward Murray, of Trenton, at The Mechanics Nat. Bank of Trenton, three thousand six hundred dollars ($3,600.00), and have pledged and delivered to said Bank as collateral security, Fifty shares of the capital stock of the Empire Rubber M'f'g Co. of a par value $100.00, and I promise to pledge and deliver, on demand, such additional security as may be required by the said, The Mechanics National Bank, acting by its proper officers, and until such further deposit be made, the said Bank shall have the right, until this note be paid, to retain and apply any money, securities or property of any kind belonging to me, that it may then have or thereafter acquire, to make good the deficiency.

In case of non-payment of this note according to its terms, I hereby authorize said Bank to sell said securities or property and apply the net proceeds of such sale, and any money in its possession belonging to me to the payment of this note, and interest thereon; such sale to be made, at the Bank's option, without notice, at any Broker's Board or Public Exchange, or at public or private sale. I agree that should said securities, or any part thereof, depreciate in value before such sale or sales, the said Bank shall in no wise be answerable therefor, and that said Bank may become the purchaser of the securities or property so sold, and hold the same thereafter in its own right absolutely; and any amount which may then remain due hereon I promise to pay to said Bank immediately after such sale, with legal interest.

It is further agreed that said securities, or any part of same, or any excess in the value thereof, or any surplus from the sale thereof beyond the amount due hereon, shall be applicable upon any other note or claim held by said Bank against me, and for that purpose said securities may be sold in the manner above stated. In case of any exchange of or addition to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals.

(B-506-D, June 24.) W. H. SKIRM, Jr.

Endorsed:

C. EDW. MURRAY.

W. H. SKIRM, Jr.

EXHIBIT D. 2.

$3,000.00.

Trenton, N. J., Aug. 20, 1903.

On demand, without grace, for value received, I promise to pay to the order of C. Edward Murray, at the Mechanics National Bank of Trenton, three thousand dollars ($3,000.00), with interest, and have pledged and delivered to said Bank as collateral security, Fifty (50) Shares of the Empire Rubber M'f'g Co.'s stock, Certificate No. 133, and .. promise to pledge and deliver, on demand, such additional security as may be required by the said, The Mechanics

National Bank, acting by its proper officers, and until such further deposit be made, the said Bank shall have the right, until this note be paid, to retain and apply any money, securities or property of any kind belonging to .., that it may then have or thereafter acquire, to make good the deficiency.

In case of non-payment of this note according to its terms, .. hereby authorize said Bank to sell said securities or property and apply the net proceeds of such sale, and any money in its possession belonging to .. to the payment of this note, and interest thereon; such sale to be made, at the Bank's option, without notice, at any Broker's Board or Public Exchange, or at public or private sale. .. agree that should said securities, or any part thereof, depreciate in value before such sale or sales, the said Bank shall in no wise be answerable therefor, and that said Bank may become the purchaser of the securities or property so sold, and hold the same thereafter in its own right absolutely; and any amount which may then remain due hereon .. promise to pay to said Bank immediately after such sale, with legal interest.

It is further agreed that said securities, or any part of same, or any excess in the value thereof, or any surplus from the sale thereof beyond the amount due hereon, shall be applicable upon any other note or claim held by said Bank against .., and for that purpose said securities may be sold in the manner above stated. In case of any exchange of or addition to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals.

(Sd) A. BOYD CORNELL.

(Sd) C. EDW. MURRAY.

(Sd) A. BOYD CORNELL.

EXHIBIT D. 3.

(*Copy.*)

CAPITAL—$250,000.

No. 133. SHARES—$100 EACH. 50 SHARES.

Incorporated Under the Laws of the State of New Jersey.

EMPIRE RUBBER MANUFACTURING CO.

THIS IS TO CERTIFY, that A. Boyd Cornell is entitled to

Fifty Shares of the Capital Stock of EMPIRE RUBBER MANUFACTURING Co. transferable only on the Books of the Company, personally or by Attorney, on surrender of this Certificate. Given under the seal of the Company,

TRENTON, N. J., Aug. 20th, 1903.

(L. S.) WM. H. SKIRM,
President.

C. EDW. MURRAY,
Treasurer.

Full Paid and Nonassessable.

EXHIBIT D. 4.

Extracts from the minutes of the Empire Rubber Manufacturing Company.

Certificate of Incorporation dated April 20th, 1892; filed in the office of the Secretary of State April 21st, 1892.

Total amount of authorized capital stock, $250,000; amount with which to commence business, $160,000.

Organized April 22d, 1892.

Meeting of the Board of Directors held April 22d, 1892.

On motion of George R. Cook, the following resolution was adopted, to wit:

"WHEREAS, Frank A. Magowan is now the owner of the large rubber mill and plant containing about 27 acres of land, with the machinery and tools, situated in the city of Trenton, New Jersey, which said plant, mills, machinery and tools recently was owned by the Star Rubber Co., and he, the said Frank A. Magowan, is also the owner of the fifteen looms for the manufacturing of cotton hose, with the fixtures and tools used therein, late the property of the Woven Hose Company, which said fifteen looms, and in the said Rubber Mills, on the said Rubber Mills and Plant there is a mortgage for $20,000, held and owned by the Trenton Savings Bank of Trenton, N. J.; all of which said Rubber Mills, Real Estate, Plant, Machinery (Machines) Looms, Tools and Fixtures, he, the said Frank A. Magowan, now proposes to sell and convey, by a good and sufficient deed, to the Empire Rubber

Mfg. Co. (subject to the said mortgage for $20,000) for the price a sum of $97,444, and in payment therefor, he proposes to take $52,444 of the capital stock of this company, and the assumption of the payment of $45,000 of the promissory notes of said Magowan as given by him, and now held and owned in part by the Mechanics National Bank of Trenton, N. J., and the other part by the Trenton Banking Company.

And Whereas, the Directors of the said the Empire Rubber Manufacturing Company, being well acquainted with the said Rubber Mills, Plant, Real Estate, Machinery, Fixtures and Tools, which he, the said Frank A. Magowan, proposes to sell and convey to this company, having carefully examined the same, and believing that the interest of this company will be promoted by the purchase of the same; Wherefore, on motion of William H. Skirm, seconded by George R. Cook,

Resolved, That we, on behalf of the company, do hereby agree to purchase of the said Frank A. Magowan, the said Rubber Mills, Real Estate, Plant, Machinery, Fixtures and Tools, together with the looms for the manufacture of Woven Hose, Fixtures, Tools, on the same terms and conditions proposed by him, and that we do hereby agree to purchase the said Rubber Mills, Real Estate, Plant, Looms, Machinery, Fixtures and Tools (upon a good suffic Deed of Conveyance made by him to this company therefor, subject, however, to the said mortgage of $20,000), to pay him therefor $97,444, in manner following, to wit: $52,444 in the capital stock of this company, and further to assume and pay $45,000 of the promissory notes of said Magowan discounted and owned in part by the Mechanics National Bank of Trenton, and in part by the Trenton Banking Company."

Meeting of the Board of Directors held January 28th, 1893.

"On motion of W. P. Hayes, seconded by W. H. Skirm, Jr., that the earnings of the last year, $52,500, be declared as a dividend of 21 per cent., payable in stock of the company."

Meeting of the Board of Directors held July 21st, 1893.

"On motion made by W. P. Hayes, seconded by W. H. Skirm, Jr., that a dividend of 17 per cent. be declared, payable on demand."

Meeting of the Board of Directors held July 25th, 1894.

Statement of Treasurer of the Resources and Liabilities, July 1, 1894:

RESOURCES.

Real Estate and Mchy., Mech. Dept	$98,823	00
" " " " Cloth Dept	24,009	81
Accounts receivable, Mech. Dept	36,908	13
" " Cloth Dept	24,605	14
" " Chicago Dept	19,243	40
Due from Trenton Rubber Co	21,728	42
Bills receivable, Mech. Dept	995	90
" " Cloth Dept	7,197	76
" " Chicago Dept	2,499	34
Inventory, Mech. Dept	54,144	39
" Cloth Dept	25,544	87
	$315,700	16

LIABILITIES.

Bills payable, Mech. Dept	$16,000	00
Accounts payable, Mech. Dept	8,964	53
" " Cloth Dept	150	95
" " Chicago Dept	1	38
" " Trenton O. Cloth Co	9,973	01
Capital stock	247,573	00
	$282,664	87
Surplus	$33,035	29
Add loss for 6 mos. ending Jan. 1, 1894	910	04
Total earnings for 6 months	$33,945	33

"On motion made by G. R. Cook, seconded by Allan Magowan, a dividend of thirteen (13) per cent. be declared, payable at the convenience of the Treasurer. Carried."

Meeting of the Board of Directors held January 16, 1895.

"Reading of the statement of Treasurer for year ending December 31, 1894, as follows:

RESOURCES.

Real Estate and Mchy., Mech. Dept.	$102,383 70
" " " " Cloth Dept.	24,009 81
Accounts receivable, Mech. Dept.	31,531 84
" " Cloth Dept.	15,592 17
" " Chicago Dept.	3,438 02
" " Trenton Rubber.	36,700 38
Bills receivable, Mech. Dept.	613 17
" " Cloth Dept.	1,194 07
" " Chicago Dept.	
Inventory, Mech. Dept.	58,233 37
" Cloth Dept.	22,971 26
	$296,667 79

LIABILITIES.

Bills payable, Mech. Dept.	$14,000 00
Accounts payable, Mech. Dept.	12,765 23
" " Cloth Dept.	3,573 36
" " Chicago Dept.	3 00
" " Trenton Oil Cloth.	7,119 99
Capital stock	250,000 00
	$287,461 58
Surplus or earnings for 6 mos.	$9,206 21

Earnings for past six mos.	$9,206 21
Dividend declared July 19, 1894.	32,500 00
Loss for 6 mos. of 1893.	910 04
	$42,616 25

"On motion of W. H. Skirm, seconded by Allan Magowan, a dividend of three and one-half (3½) per cent. was declared, payable at convenience of Treas."

Meeting of the Board of Directors held July 17, 1895.

"On motion of W. H. Skirm, seconded by Allan Magowan, the report of Treas. for the past six months was received, read, approved and ordered to be spread on the minutes.

RESOURCES.

Real Estate and Mchy., Mech. Dept.	$102,383 70	
" " " " Cloth Dept.	24,009 81	
Accounts receivable, Mech. Dept.	77,542 63	
" " Cloth Dept.	22,989 25	
" " Trenton R. Co.	19,203 47	
" " F. A. Magowan	13,295 16	
Bills receivable, Mech. Dept.	1,235 70	
" " Cloth Dept.	1,074 29	
Inventory, Mech. Dept.	60,310 63	10
" Cloth Dept.	20,848 55	
	$342,893 19	

LIABILITIES.

Bills payable, Mech. Dept.	$10,000 00	
Accounts payable, Mech. Dept.	19,292 72	
" " Cloth Dept.	9,467 11	
" " Trenton Oil Cloth	2,804 24	
" " due stockholders	6,812 46	
Capital stock	250,000 00	
	$298,376 53	20
Surplus on earnings for six months	$44,516 66	

"On motion by W. H. Skirm, seconded by Allan Magowan, a dividend of seventeen and one-half (17½) per cent. was declared, payable at convenience of Treas."

Meeting of the Board of Directors held January 15th, 1896.

"Report of Treas. for last 12 months was, on motion by W. H. Skirm, seconded by W. P. Hayes, accepted and spread upon minutes.

RESOURCES. 30

Real Estate and Mchy., Mech. Dept.	$102,383 70
" " " " Cloth Dept.	24,009 81
Accounts receivable, Mech. Dept.	45,264 56
" " Cloth Dept.	8,796 80
" " Trenton Rubber Co.	19,653 84
Bills receivable, Mech. Dept.	2,393 00
" " Cloth Dept.	1,496 96

Inventory, Mech. Dept.	80,754 94
" Cloth Dept.	25,482 98
	$310,236 61

LIABILITIES.

Bills payable, Mech. Dept.	$8,000 00
Accounts payable	16,375 06
" " Cloth Dept.	5,777 09
" " due stockholders	22,967 66
Capital stock	250,000 00
	$303,119 81
Surplus	$7,116 80
Dividend, 17½ per cent., declared July 17, 1896.	$43,750 00
Surplus, January 1, 1896	7,116 80
Earnings for January, 1896	$50,866 80

Meeting of the Board of Directors held July 15th, 1896.

"Moved by W. H. Skirm, seconded by W. P. Hayes, that the report of Treasurer be received and spread upon the minutes."

RESOURCES.

Real Estate and Mchy.	$126,393 51
Accounts receivable	123,228 05
Bills receivable	1,988 23
Inventory	100,288 87
Penn Rubber Stock	10,000 00
	$361,898 66

LIABILITIES.

Bills payable	$6,000 00
Accounts payable	64,047 70
Capital stock	250,000 00
	$320,047 70
Surplus July 1, 1896	$41,850 96
Surplus Jan. 1, 1896	7,116 80
Earnings for past six months	$34,734 16

"Moved by W. H. Skirm, seconded by W. P. Hayes, that a dividend of 10 per cent. be declared out of the earnings of the business of the past six months, payable at the convenience of the Treasurer."

Meeting of Board of Directors held August 17th, 1896.

"Moved by W. H. Skirm, seconded by W. P. Hayes, that a dividend of 5 per cent. be declared out of the earnings of the business of the past six months (ending July 1, 1896), payable at the convenience of the Treasurer."

Meeting of the Board of Directors held February 8th, 1897.

"On motion made by F. A. Magowan, seconded by W. P. Hayes, that the report of Treasurer for the past six months be spread upon the minutes."

RESOURCES.

Real Estate and Mchy		$126,393 51
Accounts receivable		50,153 00
Bills receivable		1,962 05
Inventory		91,607 71
Penn Rubber Stock		10,000 00
Due from Trenton Rubber Co		23,030 24
		$303,146 51

LIABILITIES.

Bills payable		$9,000 00
Accounts payable		25,386 26
Due Stockholders		21,238 67
Capital stock		250,000 00
		$305,624 93
Excess liabilities over resources		$2,478 42

Meeting of the Board of Directors held July 22d, 1897.

"On motion made by W. P. Hayes, seconded by W. H. Skirm, Jr., that a dividend of 8 per cent. be declared out of the earnings of the past twelve months, payable as follows: 2 per cent. Aug. 1st, 1897; 3 per cent. Oct. 1, 1897; 3 per cent. Dec. 1, 1897. Carried."

RESOURCES.

Real Estate and Mchy	$126,393 51
Accounts receivable	97,768 45
Bills receivable	361 25
Inventory	113,119 68
Penn Rubber Stock	10,000 00
	$347,642 89

LIABILITIES.

Bills payable	$24,000 00
Accounts payable	53,484 07
Capital stock	250,000 00
	$327,484 07
Surplus	$20,158 82

Meeting of the Board of Directors held Feb. 9th, 1898.

RESOURCES.

Real Estate and Mchy	$126,393 51
New Bldg. and Mchy	14,397 55
Accounts receivable	75,614 55
Equity in Insurance	1,500 00
Penn Rubber Co. Stock	10,000 00
Inventory	96,553 76
	$324,459 37

LIABILITIES.

Bills payable	$33,653 56
Accounts payable	49,097 05
Capital stock	250,000 00
	$332,750 60
Loss for past 6 mos	$8,291 24

Meeting of the Board of Directors held July 20th, 1898.

"On motion made by B. Gummere, seconded by W. H. Skirm, Jr., the report of the Treas. was read and ordered spread upon minutes.

RESOURCES.

Real Estate and Mchy	$126,393 51

New Bldg. and Mchy	18,061 04
Accounts and Bills Rec	134,215 19
Penn Rubber Co. Stock	10,000 00
Inventory	84,502 19
	$374,171 93

LIABILITIES.

Bills payable	$61,671 76
Accounts payable	41,858 75
Capital stock	250,000 00
	$353,530 51
Surplus	$20,641 42

"On motion made by B. Gummere, seconded by W. P. Hayes, that a dividend of 8 per cent. be declared, payable 3 per cent. August 1st, 1898; 3 per cent. October 1, 1898; 2 per cent. December 1st, 1898, out of the earnings of past six months."

Meeting of the Board of Directors held January 18, 1899.

"On motion made by W. P. Hayes, the report of the Treasurer was ordered spread upon the minutes.

RESOURCES.

Real Estate and Mchy	$126,393 51
New Bldg. and Mchy	19,292 64
Accounts and Bills receivable	107,160 80
Inventory	88,137 75
Penn Rubber Stock	10,000 00
Equity in Insurance	1,200 00
	$352,184 70

LIABILITIES.

Bills payable	$56,758 30
Accounts payable	48,237 60
Capital stock	250,000 00
	$354,995 90
Loss for six months ending Dec. 31, 1898	$2,811 20

Meeting of Board of Directors held July 19th, 1899.

"Regularly moved and seconded that the report of Treas. be received and spread upon minutes.

RESOURCES.

Real Estate and Mchy.	$126,393 51
New Mchy. and Bldgs.	27,891 82
Accounts receivable	125,546 79
Bills receivable	165 28
Cash	1,265 13
Penn Rubber Co. Stock	10,000 00
Inventory	82,638 16
Equity in Insurance	900 00
	$374,800 69

LIABILITIES.

Bills payable	$57,691 43
Accounts payable	46,654 11
Capital stock	250,000 00
	$354,345 54
Surplus	$20,455 15

To obtain total earnings for past six months add the following:

Surplus	$20,455 15
Amt. Paid Mrs. Alpaugh	11,674 90
Shortage Jan. 1, 1899	2,811 20
	$34,941 25

"Regularly moved and seconded that a dividend of 8 per cent. be declared, payable 3 per cent. on or before Aug. 1, 1899; 3 per cent. on or before Oct. 1, 1899; 2 per cent. on or before Dec. 1, 1899."

Meeting of the Board of Directors held Jan. 17, 1900.

"Regularly moved and seconded that the report of Treas. be received and spread upon the minutes.

RESOURCES.

Real Estate and Mchy.	$126,393 51
New Bldgs. and Mchy.	29,691 82
Accounts receivable	88,028 87
Bills receivable	1,362 75

Penn Rubber Co. Stock	10,000 00	
Equity in Insurance	1,200 00	
Inventory	103,859 30	
Cash	1,670 51	
	$362,206 76	

LIABILITIES.

Accounts payable	$67,385 77	
Bills payable	50,240 19	
Capital stock	250,000 00	
	$367,625 96	10
Loss for 6 mos. ending Dec. 31, 1899	$5,419 20	

Meeting of the Board of Directors held July 18, 1900.

"Regularly moved and seconded, that the report of the Treas. be received and spread upon minutes.

RESOURCES.

Real Estate and Mchy.	$126,393 51	
New Bldgs. and Mchy.	33,404 59	
Bills receivable	2,241 60	
Accounts receivable	98,369 79	
Inventory or stock on hand	102,999 14	20
Equity in Insurance	1,522 35	
Penn Rubber Co. Stock	10,000 00	
Cash in bank	1,809 04	
	$376,740 02	

LIABILITIES.

Bills payable	$81,958 79	
Accounts payable	32,037 68	
Capital stock	250,000 00	
	$363,996 77	
Surplus	$12,743 55	30
To obtain earnings for past six months, add shortage Jan. 1, 1900	$3,419 20	
	$18,162 75	

"Regularly moved and seconded, that a dividend of 5 per

cent. be declared out of the earnings of past six months, payable half on or before Aug. 1, 1900, and half on or before Oct. 1, 1900."

Meeting of the Board of Directors held July 17, 1901.

"Regularly moved and seconded, that the report of the Treas. be received and spread upon the minutes.

RESOURCES.

Real Estate and Mchy.	$126,393 51
New Bldgs. and Mchy.	33,701 59
Bills receivable	646 00
Accounts receivable	98,339 07
Inventory	109,773 93
Equity in Insurance	2,142 84
Penn Rubber Co. Stock	10,000 00
Cash in bank	1,143 42
	$382,140 36

LIABILITIES.

Bills payable	$77,324 76
Accounts payable	32,990 98
Capital stock	250,000 00
	$360,315 74
Surplus	$21,824 62

"Regularly moved and seconded, that a dividend of 7 per cent. be declared out of the earnings of the past six months, payable half on or before Aug. 1, 1901, and half on or before Oct. 1, 1901."

Meeting of the Board of Directors held January 13, 1902.

"Regularly moved and seconded, that we pay a dividend of 8 per cent. out of the earnings of the past six months, payable as follows: 1½ per cent. in Jan., Feb., March, April; 2 per cent. May."

Meeting of Stockholders held July 16, 1902.

"Meeting called to order by W. H. Skirm, there being present W. H. Skirm, G. R. Cook, W. P. Hayes, C. E. Murray, C. H. Baker, N. R. Ivins, W. H. Skirm, Jr.

Regularly moved and seconded that W. H. Skirm be temp. Chairman, and W. H. Skirm, Jr., be temp. Secty.

Minutes of last stockholders' meeting read and approved.

The resignations of Geo. R. Cook and B. Gummere, Jr., were presented and accepted.

Regularly moved and seconded, that the report of the N. Y. Audit Co. be and is hereby accepted as the final report of Geo. R. Cook as Treas.

On motion of C. E. Murray the following directors were elected to fill vacancies: C. H. Baker and C. E. Murray.

Regularly moved and seconded, that a dividend of 10 per cent. be declared out of the earnings of the past six months, payable 2½ per cent. Sept. 1, Oct. 1, Nov. 1 and Dec. 1, 1902.

Regularly moved and seconded we adjourn at the call of Pres.

W. H. SKIRM, JR.,
Secty."

Meeting of the Board of Directors held Aug. 4, 1902.

"Meeting called to order by W. H. Skirm, there being present C. H. Baker, C. E. Murray, W. P. Hayes, S. Walker, W. H. Skirm, Jr.

On motion of Mr. C. E. Murray, regularly seconded, after some debate, that the dividend declared be recalled, owing to no account being taken of depreciation in machinery in last statement, and that as certain improvements were necessary, and that an old claim of E. F. O'Brien had to be paid, it was not wise. Carried.

Regularly moved and seconded we adjourn.

W. H. SKIRM, JR.
Secty."

EXHIBIT D. 5 AND C. 6.

WHEREAS, A meeting of the Board of Directors of this Company, held August 4th, 1902, a dividend of ten per cent. on the capital stock of the Company, payable in four installments of two and one-half (2½) per cent., each September, October, November and December, was declared; and,

WHEREAS, The dividend so declared was based upon the

report of the Company's affairs, as made by the Audit Company of New York, showing the surplus of the Company to be Fifty-one Thousand Six Hundred and Fifty-eight Dollars ($51,658.00); and,

WHEREAS, Since the said meeting of Directors the Treasurer of the Company learned of the existence of a mortgage of Twenty Thousand Dollars ($20,000.00) upon the property of the Company, which mortgage was not taken into account by the Audit Company in their report, nor does it appear in any way on the books of the Company; and,

WHEREAS, Since the said meeting, Mr. E. F. O'Brien began suit through his counsel, John H. Backes, against the Company for about Twenty-three Thousand Dollars ($23,000.00), said suit being based upon agreement of the Company to pay said E. F. O'Brien 5 per cent. commission on all sales of Rubber Thread made by the Company through his efforts, and after advising with counsel, the said claim was compromised by the payment of Seventy-five Hundred Dollars ($7,500.00), and a receipt in full taken; and,

WHEREAS, It appears there never has been any allowance of any amount made for the wear and tear of machinery, depreciation of buildings, fire equipments, etc., or, in fact, of any kind whatsoever, since the corporation of the Company; and,

WHEREAS, The rate of Insurance on the Company's property has been doubled this year on account of the failure to properly keep in repair the fire equipments, and on account of such neglect it becomes necessary at this time to expend about Five Thousand Dollars ($5,000.00); and,

WHEREAS, In the judgment of the management of the Company, it is necessary to make further repairs to machinery and buildings, which will cost about Ten Thousand Dollars ($10,000.00); and,

WHEREAS, These expenditures, with amount of mortgage, amount to the total of Forty-two Thousand Five Hundred Dollars ($42,500.00), and the payment of the said dividend at this time would therefore impair the capital stock of the Company, and, therefore, be it

Resolved, The dividend of ten (10) per cent. on the capital stock of the Company, as declared by the Board of Directors,

at their meeting held at the Company's office, August 4th, '02, be rescinded.

EXHIBIT D. 6.

THE AUDIT COMPANY
OF NEW YORK.
CEDAR AND WILLIAM STREETS.
QUEEN BUILDING.

The certificates or reports upon audits or examinations made by the Audit Company of New York are delivered to clients with the understanding in each case that any advertisement or publication of such certificates or reports, or published reference thereto, shall be in a form to be approved by the manager of Company.

Empire Rubber Manufacturing Co., Trenton, New Jersey.

DEAR SIRS—We have examined the books and accounts of your company for the twelve months ending Junue 30, 1902, and now beg to enclose

BALANCE SHEET
AND
PROFIT AND LOSS ACCOUNT

covering that period.

We are informed that a portion of the raw material has been hypothecated to secure loans. With regard to the stock of raw and manufactured goods on hand at June 30, 1902, although the items which go to make up this amount appear to have been taken at cost, it seems that the price paid for some of the raw material was in excess of the market value as of June 30, 1902.

Subject to these remarks, and assuming that the quantities of goods as set forth in the inventories are as stated, the enclosed statements are correct according to the books, accounts and records of the Company. We may mention, however, that the shares of the Pennsylvania Rubber Company were not submitted to us for inspection.

Yours very truly,
THE AUDIT COMPANY OF NEW YORK.
THOS. L. GREENE, N. Y.,
Vice-President.

New York, August 8, 1902.

THE AUDIT COMPANY OF NEW YORK.

Report on Empire Rubber Manufacturing Company, Trenton, N. J.

BALANCE SHEET AS OF JUNE 30, 1902.

ASSETS.

Real Estate, Buildings and Machinery			$160,095 10
Horses, Wagons, etc.			600 00
Office Furniture and Fixtures			480 00
Pennsylvania Rubber Co. Stock			10,000 00
Bills Receivable		$526 60	
Accounts Receivable:			
Miscellaneous	$50,715 67		
Penn Rubber Co.	13,398 46		
Consolidated Rubber Co.	15,571 57		
Officials	608 54		
		80,294 24	
Stock of Raw and Manufactured Goods, Supplies, etc. (partly hypothecated)		159,552 13	
Unexpired Insurance		997 11	
Cash		995 79	
			242,365 87
			$413,540 97

LIABILITIES.

Capital Stock		$250,000 00
Bills Payable (partly secured)	$93,708 25	
Accounts Payable	16,755 87	
Accrued Salaries	1,418 85	
		111,882 97
Profit and Loss Account:		
Balance July 1, 1901	23,959 15	
Add Profits before charging depreciation on Buildings and Machinery, for six months Ending Dec. 31, 1901	16,378 78	

For six months ending June 30, 1902	48,820 07	
	$89,158 00	
Less Dividends paid	37,500 00	
		51,658 00
		$413,540 97

With our report, August 8, 1902.

THE AUDIT COMPANY OF NEW YORK.

Report on Empire Rubber Manufacturing Company, Trenton, N. J. 10

TRADING AND PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDING JUNE 30, 1902.

Dr.	Six Months Ending Dec.31,1901	Jun.30,1902
Stock of Raw and Manufactured Goods, Supplies, etc., on hand at beginning of period	$108,427 98	$116,602 55
Purchases of Raw and other Materials, Mfgd. Goods, etc	188,489 14	249,191 28
Freight	6,962 24	8,663 44 20
Miscellaneous Supplies, Repairs and Expenses	12,920 40	15,530 83
Wages	29,935 77	39,002 32
Salaries	6,300 00	6,300 00
Commissions	14,571 39	19,130 18
Insurance and Taxes	1,497 41	2,532 37
Interest (Net)	2,171 37	4,109 22
Bad Debts and Reserves	2,050 96	2,000 00
Depreciation:		
Office Furniture and Fixtures	60 00	60 00 30
Horses, Wagons, etc	75 00	75 00
Net Profits, before charging depreciation on Buildings and Machinery carried to Balance Sheet	16,378 78	48,820 07
	$389,840 44	$512,017 26

Cr.	Six Months Ending Dec.31,1901	Jun.30,1902
Gross Sales	$291,653 16	$366,360 47
Less Returns, Allowances and Discounts	18,511 27	13,991 34
	$273,141 89	$352,369 13
Stock of Raw and Manufactured Goods, Supplies, etc., on hand at close of period	116,602 55	159,552 13
Rents	96 00	96 00
	$389,840 44	$512,017 26

EXHIBIT D. 7.

TRENTON, N. J., October 16th, 1903.

C. Edward Murray, Esq., Trenton, N. J.

DEAR SIR—I tender you herewith in cash the sum of three thousand six hundred and eighty-one dollars and twenty-one cents ($3,681.21), being the amount of a certain note of hand made by me to your order, bearing date the twenty-fourth day of February, nineteen hundred and three, payable in four months, at the Mechanics National Bank, for the sum of thirty-six hundred dollars ($3,600.00), together with the notarial protest fees, and the sum of $11.80 costs and disbursements incident to the sale of the capital stock of the Empire Rubber Manufacturing Company, hereinafter mentioned, together with the accrued interest, upon the respective amounts to the present time.

I demand of you the return to me forthwith of fifty shares of the capital stock of the Empire Rubber Manufacturing Company, of the par value of one hundred dollars each, which was pledged by me to the said Mechanics National Bank in payment of the note of hand above mentioned.

Very truly yours,

WILLIAM H. SKIRM, JR.

J. H. BACKES, *Atty.*

EXHIBIT D. 8.

(Copy.)

TRENTON, N. J., July 30th, 1903.

C. Edward Murray, Esq., Trenton, N. J.

DEAR SIR—William H. Skirm, Jr., has placed in my hands for collection a claim against you and Mr. Charles H. Baker for $3,837, for that much money had and received by you for and on his account from Howell C. Stull, trustee. Please advise me at an early date whether you desire to pay the claim or prefer to have the matter settled in the courts, and oblige,

Very truly yours,

JOHN H. BACKES,

E.

EXHIBIT D. 9.

(Copy.)

TRENTON, N. J., July 30th, 1904.

Charles H. Baker, Esq., Trenton, N. J.

DEAR SIR—William H. Skirm, Jr., has placed in my hands for collection a claim against you and Mr. C. Edward Murray for $3,837, for that much money had and received by you for and on his account from Howell C. Stull, trustee. Please advise me at an early date whether you desire to pay the claim or prefer to have the matter settled in the courts, and oblige,

Very truly yours,

JOHN H. BACKES,

E.

EXHIBIT D. 10.

Deed, Frank A. Magowan and wife to Empire Rubber Manufacturing Company, dated May 2nd, 1892, and recorded in the Mercer County Clerk's office, in Vol. 183 of Deeds, Page 219, conveying the present plant of the grantee. Consideration, $97,444. Recites: "The said premises are also conveyed subject to the payment of a mortgage for

twenty thousand dollars, held by the Trenton Savings Fund Society, with accrued interest thereon."

EXHIBIT D. 11.

(Copy.)

CAPITAL—$250,000.
SHARES—$100 EACH.

No. 37. 50 SHARES.

Incorporated Under the Laws of the State of New Jersey.

EMPIRE RUBBER MANUFACTURING CO.

THIS IS TO CERTIFY, that W. H. Skirm, Jr., is entitled to Fifty Shares in the Capital Stock of EMPIRE RUBBER MANUFACTURING CO. transferable only on the Books of the Company, in person or by Attorney, on surrender of this Certificate.

In testimony whereof, the said Company have caused this Certificate to be signed by their President and Secretary, and affixed the Seal of the Company.

(L. S.) FRANK A. MAGOWAN,
President.

W. H. SKIRM, JR.,
Secretary.

TRENTON, N. J., May 18th, 1893.

Full Paid and Nonassessable.