

N. J. Court of Errors and Appeals.

<hr/> <i>Between</i>	}	10
THE DIRIGO TOOL CO.,		
<i>Appellants,</i>		
<i>and</i>		
PHILEMON WOODRUFF, <i>et al.</i> ,	}	On Appeal from Chancery.
<i>Respondents.</i>		

BRIEF OF PHILEMON WOODRUFF, *For Respondents.* 20

The controversy in this cause is between the appellants, chattel mortgagees, who held an encumbrance upon certain personal property of the Converse Manufacturing Company, and the respondent Woodruff, who claimed a prior right by reason of a pledge of such property to him by the same company at a date prior to the execution of the chattel mortgage for the benefit of, and to secure the claims of, certain clients. 30

Briefly stated, the position assumed by the respondents is as follows: On March 31, 1885, the Converse Company pledged to Woodruff all the machinery, &c., in their factory at Newark, to secure the claims of the respondents, Meeker, Havell, and B. Atha & Co., (Atha & Illingworth.) The appellants insist that the pledge is not valid as against their chattel mortgage upon the same property, dated April 10, 1885, because the pledgee did not take possession under his pledge prior to the execution of such mortgage. 40

The appellants' bill was filed for the foreclosure of their mortgage, and an injunction restraining a sale under the pledge. No injunction issued, the counsel of the respective parties having agreed that it was for the best interests of all concerned that a sale should be had under both claims, and the proceeds, to a certain amount, paid into Court. At the time of preparing the decree it seemed wise to the Master and to the counsel of respondents that there should be a dismissal of the bill as to the
 10 Converse Company, for the reason that no relief was prayed against them other than a foreclosure, and that had already taken place by and through the sale theretofore made.

The following questions of fact are presented :

I.

Was there a pledge to Woodruff ?

Upon this subject reference is made to the receipt for
 20 the property given by Woodruff, dated March 31, 1885, and ratified by the signature of the Converse Company by its president. State of Case, p. 3.

Also to the ratification by the Converse Company of the pledge. State of Case, p. 18.

See also the testimony of the following witnesses :

P. Woodruff, p. 69, line 15, to p. 74, line 26.

M. D. Converse, p. 47, line 10, to p. 48, line 10 ; lines
 7 to 10, p. 52 ; line 19, p. 56, to line 14, p. 57.

30 Chas. F. Beers, p. 89, lines 20 to 30.

While Converse and Beers both attempt to explain the pledge in such a manner as to relieve themselves from appearing to have obtained money from the appellants by fraud, yet they admit that the receipt was drafted in their presence, read over and executed after a demand made for security, and after they had been threatened with an attachment against the property, and had asked for an extension of time. The subsequent ratification of their acts by the Converse Company on April 4th, and
 40 prior to the execution of the Dirigo Company's mort-

gage, is conclusive. The written contract is clear in its terms, has not been impeached and is binding upon all.

II.

Was possession taken ?

See testimony of Philemon Woodruff, pp. 72, 73, and first 25 lines of page 74.

Alpheus Struble, p. 92, line 36, to line 37, p. 93.

The only other person having knowledge of the actual taking of possession was Beers, who partly admits, 10
pp. 90 and 91, the truth of Mr. Struble's evidence.

Messrs. Huntington and Converse testify that so far as they know there had been no change of possession, and Mr. Huntington says that Beers represented to him that the Converse Company had possession on April 10th, (p. 34, ll. 28 to 32,) while Mr. Converse makes the qualified statement "that he always believed" the Converse Company had exclusive possession at that time. (p. 41, l. 34.) 20

III.

Were the 600 nail pullers pledged ?

It is insisted that they were, on March 30th, and that they were, in part, removed even before the pledge of the machinery.

See order of March 30th, p. 15.

Letter of March 28, 1885, p. 67.

Telegram of March 28, 1885, p. 67.

Mr. Huntington's testimony, p. 28. 30

Mr. Converse's testimony, p. 55.

P. Woodruff's testimony, pp. 66, 67, 68, 69.

C. F. Beers' testimony, pp. 86, 87, 88.

J. E. Boardman's testimony, pp. 98, 99.

As to the question of a removal of only part of the goods, see *Martin vs. Reid*, 11 C. B., N. S., 730, where it is held, that "a delivery of part of the goods pledged and the retention of the rest, with an understanding that the pledgee could take them at his convenience, is a good delivery of all." 40

Certain legal problems may be involved in this cause, and among them—

I.

What possession must be taken by a pledgee of goods in order that the pledge may be binding upon subsequent purchasers or mortgagees, in good faith?

It is admitted that it must be an actual possession, but it is contended—

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A.

That the possession of an agent is sufficient.

B.

That such agent may be both the agent of the pledgee and the servant of the pledgor, at the same time.

C.

That the pledgee can only be deprived of possession by his own voluntary surrender of the property.

20

D.

That formal possession is not necessary.

A.

McPartland vs. Reid, 11 (Allen,) Mass. 231. Held—That if mortgaged personal property is delivered to and kept by the agent of the mortgagee, this is equivalent to delivery to the mortgagee.

Brown vs. Warren, 43 N. H. 430. Held—“That when property is pledged as security for a debt or liability, it is immaterial whether the pledgee holds the property or
30 a third person holds it for him.”

Jewett vs. Warren, 12 Mass. 300.

Way vs. Davidson, 12 Gray, 465.

Calkins vs. Lockwood, 16 Conn. 276.

Jones on Pledges, Sec. 34.

B.

Sumner vs. Hamlet, 12 Pick. 76. In this case certain cloth manufacturers agreed to give a creditor security, and directed one of their workmen to set apart in their
40 own factory certain goods for that purpose, and, as the

same were sold to replace them with other goods. Held—
 “That the defendant had a lien as against subsequent
 attaching creditors.” “That it was not necessary to re-
 move the goods from the factory, it being sufficient that
 they were under the control of a special bailee, although
 he was a workman in the factory.”

See also, *Jewett vs. Warren*, above cited.

C.

Walcott vs. Keith, 22 N. H. 196. Held—“A lien is 10
 always forfeited by delivery, but a delivery procured by
 fraud is not within the rule. It is no delivery.” On
 page 109, the Court says: “The dispossession of the
 pledgee must be voluntary. Holding that a dispossession
 by the pledgor could be made against the pledgee’s will,
 would be equivalent to holding that the pledge might
 be defeated by an act of larceny.”

Jones on Pledges, Sec. 41.

Wallace vs. Woodgate, 1 Carr and P. 575. Held—“That
 a delivery without the consent of the bailee, cannot 20
 effect his rights.”

Danforth vs. Denny, 25 N. H. 167. Held—“A vol-
 untary surrender of possession will work a loss of lien,
 but a wrongful dispossession will not destroy it.”

Jones vs. Baldwin, 22 Pick. 315. “Any fraudulent
 representation made without the pledgee’s knowledge,
 would not affect their rights.”

McComber vs. Parker, 14 Pick., 497. “Possession of a
 chattel by the pledgor is only evidence of fraud which 30
 may be rebutted by proof that he held possession as
 agent for the pledgee.”

Story on Bailments, Sec. 299.

Casey vs. Cavorac, 96 U. S. 479.

D.

In *Tibbets vs. Flanders*, 18 N. H., 284, held, “That
 upon a pledge or transfer of property no formal delivery
 is necessary. It is sufficient that the property is present
 and within the control of the pledgee or vendee, and
 that he exercises any act of possession.” 40

Jewett vs. Warren, 12 Mass. 300. "Jewett pledged \$1,650 worth of logs in a boom as security for endorsements amounting to \$1,350." He simply showed the logs to the defendant, and his men (Jewett's) afterwards cared for the logs. Held—A good pledge.

II.

10 It was claimed that the law of New York required a vote of the stockholders of a New York corporation in order to mortgage its property; and that as the Converse Company was incorporated in that State, and as no such vote was taken, the pledge was invalid.

A.

This is conceded as to property in New York but not as to that in this State. New Jersey law must govern.

Amerman vs. Wiles, 9 C. E. Green, 13.

Runyon vs. Groshon, 1 Beas. 86.

30 *Ball vs. Franklinite Co.*, 3 Vr. 102.

Story Conflict of Laws, Secs. 384-388.

B.

The security given was a pledge and not a mortgage.

Story on Bailments, Sec. 287. "A mortgage of goods is, in the common law, distinguished from a mere power.

By a grant or conveyance of goods in gage or mortgage, the whole legal title passes conditionally to the mortgagee—but in a pledge a special property only passes to the
30 pledgee the general property remaining in the pledgor."

See also notes and cases cited in 8th Ed.

Also, *Woodside vs. Adams*, 11 Vr., 417.

III.

It was claimed at the hearing that as the goods pledged were, substantially, all the assets of the Converse Company, that the pledge was in effect an unlawful assign-
40 ment.

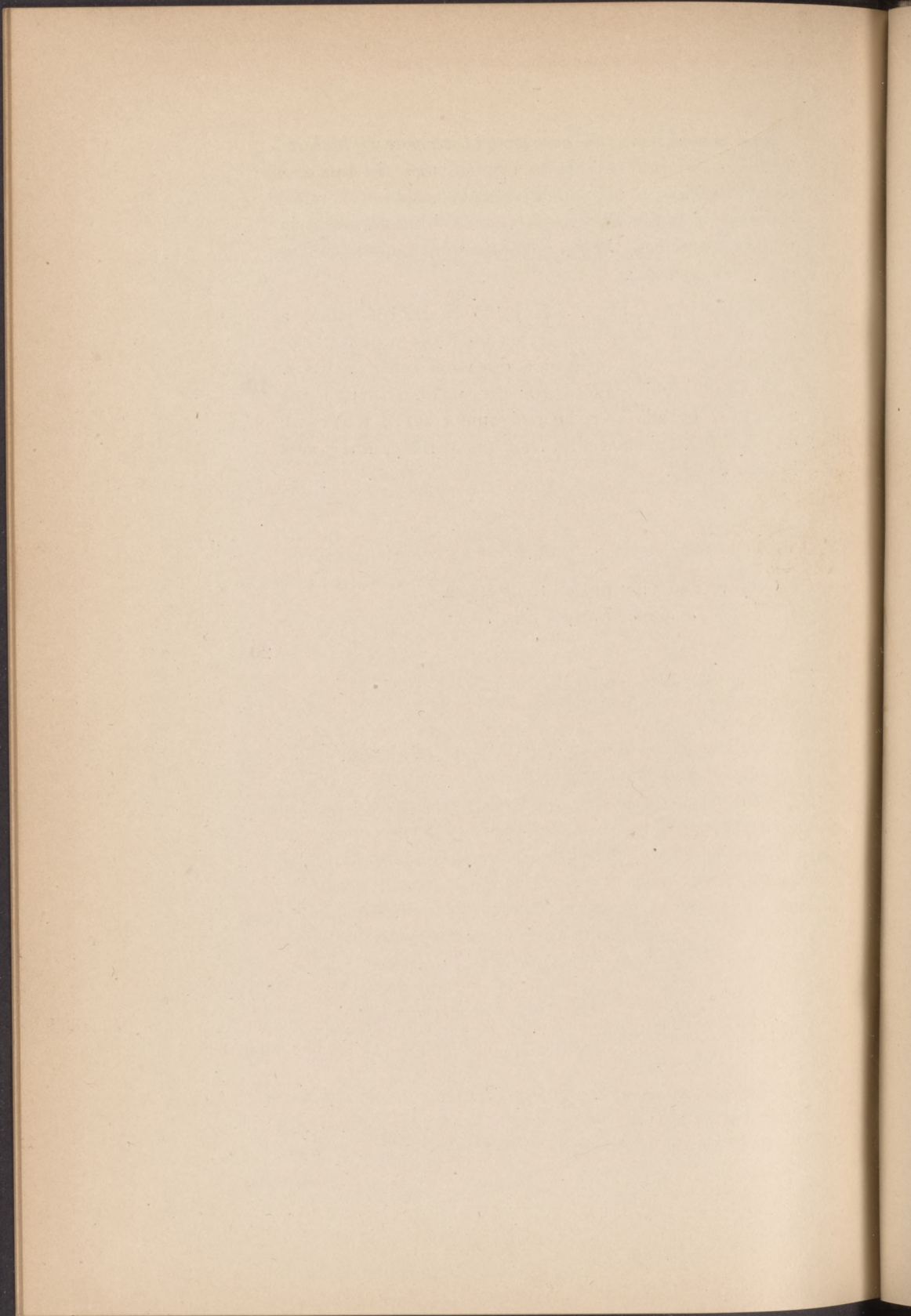
This is incorrect as the case cited (*Livermore vs. McNair*, 7 Stew. 478,) is favorable to respondents. In this case the pledge was a temporary security which was to be canceled in a few days from promised funds, while in the *Livermore* case the conveyances were made to hinder and delay creditors.

See also *Danforth vs. Denny*, 25 N. H. 164, where a debtor transferred to one of his creditors a quantity of goods to secure the pledgee and several other creditors. The Court held such a transfer valid, although the Statute of Frauds and the assignment act of that State do not differ, substantially, from the corresponding acts in New Jersey. 10

IV.

Corporations may pledge their assets.

Jones on Pledges, Sec. 70.



Court of Errors and Appeals.

Between—

THE DIRIGO TOOL COMPANY,
Appellant,

and

PHILEMON WOODRUFF, and others,
Impleaded, &c.,
Respondents.

} Appellant's
Points.

The Dirigo Tool Company filed a bill in the Court of Chancery for the foreclosure of a chattel mortgage made by the Converse Manufacturing Company upon the machinery, tools and stock in its shops in the City of Newark.

In addition to the usual prayer for relief in foreclosure cases, the bill prayed for an injunction restraining Philemon Woodruff and others, defendants, from proceeding with a threatened sale of the chattels covered by complainant's mortgage under an adverse claim; and also for the appointment of a Receiver.

The bill and certain affidavits (which have not been inserted in the printed case since no question as to the propriety of an injunction is involved in this appeal) showed that defendant Woodruff was about to sell the chattels in question under an arrangement claimed by him to be a pledge of the goods to him as security for the payment of certain

claims held for collection by him as an attorney-at-law.

The bill alleged that the chattels were in the sole custody and possession of the Converse Company (mortgagor) at the time the mortgage was made, and that complainant had no knowledge or notice of any lien upon the property in favor of defendants. The complainant claimed therefore that its mortgage was a first lien upon the property, and sought to restrain further interference by defendant Woodruff who had taken possession of the property after the execution of complainants' mortgage, in defiance of its title and in hostility to it.

The Chancellor made an order requiring defendants to show cause why an injunction should not issue, and restraining the sale meanwhile. Upon the return of this order the Chancellor suggested that for the purpose of saving expense, inasmuch as both parties were willing to have the property sold, a sale be allowed to take place at once under the alleged pledge, and also under the chattel mortgage (so that a perfect title could in any event be given to purchasers) and that the proceeds be paid into Court to abide the event of the action.

This course was subsequently agreed upon and the property was sold on the 6th day of May, 1885, and on the 14th day of May an order was made directing the payment of \$2,000 (less certain expenses) into Court to abide the event of the suit. (Case, page 21, &c.)

The defendant, The Converse Manufacturing Company (mortgagor), did not answer.

The defendants Woodruff, and the several creditors, in whose behalf he claimed to have taken possession of the chattels, answered, setting up as a defense that prior to the execution of complainants mortgage the Converse Company pledged this property as security for the debts due them; that Woodruff took formal possession of the property by going to the shops in which the property was contained, and that he thereupon authorized Charles

F. Beers, the Superintendent of said pledgor, to hold possession for him, and that the said Beers did hold possession for him until and after the execution of complainant's mortgage, and that therefore they had a lien upon said property superior to the lien of complainant's mortgage.

A general replication was filed.

The case was referred to Mr. Williams, Advisory Master, who advised a decree dismissing complainant's bill, and directing the payment to the defendants of the several sums due them from the Converse Company out of the moneys in Court, and the residue to complainant.

From, so much of this decree as dismisses the bill of complaint and directs the payment to defendants of the sums due them respectively complainant appeals to this Court.

An important question in the case was whether the mortgagee (the Converse Co.) was in possession of the mortgaged property at the time the complainants took their mortgage.

The complainant's proof shows that on the 2d day of April Mr. Huntington, an attorney-at-law in the City of New York, who was employed by complainant to investigate as to the title of the chattels preparatory to taking the mortgage, personally inspected the chattels, and made a careful inventory thereof, with the aid of Mr. Beers.

Case, page 27, folios 20-30.

The transaction upon which defendants rely as a pledge took place three days before this—March 31.

Two days later—April 4th—Mr. Huntington, in company with Mr. Converse, President of the Converse Co., called upon Mr. Woodruff and stated to him, in Converse's presence, that Mr. Converse had told him that the property had a lien upon it by reason of a chattel mortgage for \$1,500, owned by Frederick Woodruff (and in defendant Philemon

Woodruff's hands for collection), "*and that all the other debts were unsecured.*"

Case, page 30, fol. 20.

No intimation was made in answer to this statement or during this interview by Woodruff to Huntington that there was any pledge or any other claim of lien upon the property.

Woodruff's testimony, p. 80, fol. 35, &c.; p. 81; fol. 1-8.

On the 10th of April—six days later—Mr. Huntington, just on the eve of closing the mortgage transaction, took the precaution of going again to the shops of the mortgagor company to ascertain whether the goods were still in the possession of the Converse Co. He says:

"I was particularly desirous to be sure before I took any steps in the matter that the Converse Company was in full possession of the premises, and that there were no liens of any kind, except this chattel mortgage, which we were to pay off. Mr. Converse assured me that there was no other lien." * * *

P. 34, fol. 1, &c.

(He also testifies that he had no notice of any lien prior to the conclusion of the mortgage transactions.

P. 37a, fol. 20.)

"I then went upstairs and looked all over the place, and asked Mr. Beers, the Superintendent, if there was any attachment or any other lien on the property. *He told me none of any kind.*" * * * "He said there was nothing of any kind on the premises."

Page 34, fol. 10.

And further on the same page,

"He stated that he was in possession of the property himself, and told us that *the Converse Manufacturing Company was in sole possession.*"

Page 34, fol. 27.

Mr. Beers was called by the defendants as a witness in the case, but Mr. Huntington's testimony, just quoted, was, in no respect, contradicted by him.

Nor does Mr. Woodruff deny that Mr. Huntington stated to him that Mr. Converse had said all debts were unsecured except the one secured by the chattel mortgage to Frederick Woodruff.

A portion of the 618 nail-pullers named in the order of March 30, 1885, were carried into an adjoining room on the same floor, which connected with the Converse Co.'s shops by a door which Huntington found unlocked. These nail-pullers that were so removed were pointed out to Huntington by Beers as the property of the Converse Co. (Page 28, fol. 20, &c.)

Woodruff himself knew, two days after he directed their removal, that a portion of them had not been removed, and seems to have made no objection (page 72, fol. 27).

There is further evidence that Woodruff intended to waive any rights he might have under this first order (page 47, fol. 39).

Complainant's mortgage was for advances in cash to the extent of \$1,764, out of which the prior Frederick Woodruff mortgage was paid. The balance of the consideration was a prior indebtedness (Case, page 36),

The defendant's proof shows that formal possession of the property was taken under the pledge on the 1st day of April, and Beers, superintendent of mortgagor, was left in possession for the pledgees. (Case, page 72, fol. 30, &c.)

There is no tangible proof in the case, however, that Beers continued to hold possession for the pledgees.

The answer sets up also and the proof shows that the Converse Co. passed a resolution April 4th approving the execution of this "order to Philemon Woodruff, Atty., dated March 31st, 1885," (pages 18, 19). This resolution was passed at Woodruff's request, made to Converse April 4th, just following the interview between Huntington, Converse and Woodruff, but *after Huntington had withdrawn from the room* (page 75, line 38, et seq.).

POINTS.

I.

The defendant's lien was undisclosed and *undiscoverable*. The alleged pledge was a secret arrangement purposely concealed from third parties. It was agreed it should not be disclosed. Converse, one of complainant's witnesses, and Beers, one of defendants' witnesses, both swore that it was to be kept secret. It is not denied by Woodruff or any other witness. (Page 58, fol. 34; p. 90, fol. 7.)

This alone condemns the transaction—except, perhaps, as between the parties to it.

II.

Defendant Woodruff did not retain such possession as is required to maintain a lien by way of pledge.

The statements of Mr. Huntington (Case, p. 34, fol. 1, &c.), and of Mr. Converse (p. 41, fol. 30, et seq.), are not in any manner contradicted.

Indeed, it is not pretended by defendants that there was any *actual* change of possession, or even a symbolical delivery of the property.

The claim is that upon the 1st day of April, Mr. Woodruff went to the shops where the machinery, tools, and stock were located, and asked Mr. Beers to keep possession for him.

That he did keep possession as requested, there is no definite tangible proof.

But even if Mr. Beers were in possession for Woodruff, still there was no valid pledge as against innocent purchasers or mortgagees for value.

Appointing Beers, who was superintendent of the mortgagor, was the exact equivalent of appointing the mortgagor itself, so far as affording any notice or protection to purchasers was concerned.

Possession in the pledgee is essential to the existence of a pledge.

The reason of it is apparent.

Tyler, in his work on Usury, Pawns, &c., says :

“It is not essential to a valid pledge that the terms of it be in writing and a public record made of it, for the reason that in every valid pledge the creditor is found in possession of the goods ; and that fact, together with the absence of possession in the debtor, is a sufficient publication of the transaction to other parties dealing with him.”

Tyler on Usury, &c., p. 497.

Again he says :

“Another of the essential qualities of the contract of pledge is that the property must be actually delivered to the pledgee.”

Same, p. 506.

And still again, upon the same page, he says :

“Delivery is the essence of this contract.”

Same, p. 506.

It is true that, under some circumstances and for some purposes, the pledged property may be returned to the pledgor—as, for example, for a temporary use, with an agreement to redeliver it to the pledgee—but no reported case holds that a pledgee can at the time of the creation of the pledge appoint the pledgor his agent to keep possession for him, and leave the property in his hands as before the pledge, without restriction as to its use and without any mark upon the pledge or other circumstance to excite inquiry, and still maintain his lien upon the chattel as against a subsequent bonafide purchaser, mortgagee or pledgee for value.

And yet that is the proposition which must be established in order to sustain defendant's lien.

A formal delivery of chattels to pledgee is not sufficient to constitute a pledge when the chattels are left in the actual custody of the general owner,

although a restraint is put upon his use thereof by the pledgee.

Walker *v.* Staples, 87 Mass., 34.

Thompson *v.* Dolliver, (Devens, J.,) 132 Mass., 103. (1882).

Smith *v.* Sasser, 4 Jones, N. C., (Law), 43.

Barrett *v.* Cole, same, 40.

Bodenhamer *v.* Newson, 5 id., 107.

In point of fact the Converse Manufacturing Co. and not Mr. Beers had possession of the chattels until after the execution of complainant's mortgage.

It may be that Woodruff's *understanding* was that Beers was in possession for him; but it was not Beers' understanding. See testimony of Beers (who was defendant's witness) at page 90, fol. 35 et seq., and page 91, fols. 1-15.

But even assuming that Mr. Woodruff and Mr. Beers both considered that Beers was in possession for Woodruff, the fact remains the same—that the Converse Co. had undisputed and unrestrained possession. Converse, president of the company, swears (page 41, fol. 30 et seq.) that the company had possession, and that their workmen were employed there; and at page 54 he states more in detail that work was going on for and by the company till the 9th or 10th of April.

Woodruff had in no way limited the company's use of the machinery or forbidden its dealing with the stock. Could it be questioned that a sale of some of the manufactured products of the shop by the company to a customer who paid for his purchase and took it away with him, would vest in him a good title?

Complainant's position is the same, except in the immaterial circumstance that it did not carry away its purchase.

The case of Sumner *v.* Hamlet, 12 Pick., 76, cited by defendant below, is different from the present case in several important features.

In the first place, the person contesting the pledgee's lien was not a purchaser or mortgagee who had advanced money upon the property, relying upon the possession thereof by its general owner.

In the second place, the property in question was marked "T. N.," the pledgee's initials.

In the third place, the person employed to take charge of the property for the pledgee testified that he told one of the attaching creditors on the same evening that the attachment was made that the property belonged to the defendant (pledgee), but did not point it out.

(This was denied, however, by the creditor.)

In the fourth place, the pledged property, although not removed from the premises of the general owner, was put in a separate part of the building, and was under the agent's special control.

Hazard v. Fiske, 83 N. Y., 287, was a case of pledge, and although the decision of the case turned upon another point, Judge Rapallo, who wrote the opinion, says at page 296 :

"There is much force in the argument that the plaintiffs [pledgees] had either negligently or through their confidence in Nims [general owner] permitted him to take possession of the corn and that they had lost their lien as against his subsequent *bona fide* pledgees without notice of the rights of the plaintiffs," &c.

At page 292 in the same case he says :

"Nims is admitted in the case to have been the general owner, the plaintiffs claiming only a lien thereon for their advance, and if they voluntarily placed Nims in possession of the corn, their alleged lien could not be enforced against a *bona fide* purchaser or pledgee of Nims. To retain their lien it was necessary that they should retain the possession."

Hazard v. Fiske, 83 N. Y., 292-293.

See also same opinion at page 294 (bottom).

The true rule governing cases of this kind is believed to be that a person holding the general title

of a chattel and being permitted by a lienor, by way of pledge or otherwise, to hold undisputed possession of the property, can convey the property so as to give a perfect title to a *bona fide* purchaser for value.

Indeed, this rule seems necessarily to follow from the principle now well established, that the owner of a chattel (e. g. a certificate of stock) who delivers it to another together with the indicia of ownership is estopped from asserting his own interest or title in the chattel as against a *bona fide* purchaser who has parted with value therefor, relying upon the possession and evidence of ownership in the seller.

McNeil *v.* Tenth National Bank, 46 N. Y., 325.

Moore *v.* Met. Bank, 55 N. Y., 41.

In other words, a person who has possession (by permission of a secret lienor) and the general title can convey a good title to an innocent purchaser as against the lienor.

Voorhees *v.* Olmstead, 66 N. Y., 113-117.

III.

Defendant is estopped from asserting a lien upon the property in question.

Barnard *v.* Campbell, 55 N. Y., 456, 463.

- (1.) When Woodruff was told by Huntington that Converse had said all claims except the Frederick Woodruff mortgage were unsecured on the 4th of April, *five days after* the transaction now claimed to be a pledge, Woodruff remained mute (p. 30, fol. 20).
- (2.) When Beers, who is claimed by defendants to have been in possession *as agent for pledgee*,

was asked April 10th, by Mr. Huntington (who had told him the purpose of his inquiry, (p. 27, fols. 18-20), whether there was any lien and as to the possession, he told him that there was no lien of any kind, and that the Converse Co. was in sole possession—p. 34, fols. 13 and 27.

Beers was there either as the agent of Woodruff or he was not; if not, manifestly there could be no pledge; if he was there as Woodruff's agent, as Woodruff claims, he was there *to hold possession for him* and to answer questions as to that possession (Woodruff's testimony, p. 74, fol. 6). In regard to that *business of possession Beers was the alter ego* of Woodruff, and his statement in respect to that possession was the statement of Woodruff.

It is elementary that the statements of an agent made within the scope of his authority, bind and estop the principal to the same extent as would the statement of the principal.

The rule is thus explicitly stated in *Sharp v. Mayor*, 40 Barb., ~~237~~ 273

"The principal is liable for the false representations of the agent made in and about the matter for which he was appointed agent, not on the ground of express authority given to the agent to make the statement, but on the ground that as to the particular matter for which the agent is appointed, he stands in the place of the principal, and whatever he does or says in and about that matter is the act and declaration of the principal."

Sharp v. Mayor, 40 Barb., 237. 256

~~*Booth v. Boree*, 40 Barb., 114.~~

Barwick v. Eng. Joint Stock Bank. L. R.,
2 Exch., 258. 259, 260

Mackey v. The Commercial Bank, 30 L. T.
N. S., p. 186

Story on Agency, Sec. 452; where the rule is thus stated:

"It is a general doctrine of law, that the principal is held liable to third parties in a civil suit for the frauds, deceits, conceal-

ments, misrepresentations, torts, negligences and other malfeasances of his agent, in the course of his employment, although the principle did not authorize, or justify, or participate in, or indeed, know of such misconduct, or even if he forbade the acts or disapproved of them."

Story on Agency, Sec. 452.

(3.) The very act of selecting Beers, who as superintendent of the mortgagor was the one person who would be expected to be in charge of the property for the Converse Co., was well calculated to deceive, and did in fact deceive, complainant.

(4.) Defendants are estopped upon the principle that where one of two innocent parties must suffer from the wrongful act of a third party, that one must suffer who has reposed the confidence.

It is not easy to conceive of circumstances which would more imperatively call for the application of this equitable principle than those existing in the present case.

IV.

The transaction under which defendants' claim was void because in violation of the assignment act.

It had the three elements or features required to bring it within the prohibition of the statute. (1.) The element of trust; Woodruff was trustee for certain creditors. (2.) It comprised substantially the whole of the debtor's property and estate (case, p. 59, fols. 30, &c.). (3.) It provided for the payment of certain creditors to the exclusion of all others.

Owen *v.* Arvis, 2 Dutch., 22.

Fairchild *v.* Hunt, 1 McCarter, 367.

Livermore *v.* McNair, 7 Stewart, 478.

V.

Upon the principle of subrogation, complainants, upon the payment of Frederick Woodruff's mortgage, occupied his position of priority to the extent of \$1,230, the amount thereof.

Even if defendant's lien were prior to complainant's, payment by the latter of the first mortgage, in the belief that there was no intervening lien, gave additional value (to the extent of that payment) to defendant's lien.

Thus defendant was enriched at complainant's expense and without fault of the latter.

Such a result cannot be tolerated by a Court of Equity.

This feature of the case shows that the rule enunciated by the Advisory Master (p. 104, fol. 26) does not apply: the pledgees *did* benefit by the fraud of Beers; because complainants made the loan upon Beers' statement and paid off the first mortgage, thus giving defendant's lien additional value to the extent of \$1,235.

Complainant's equities appear more clearly from the fact that a portion of the debt due from the Converse Co. was for the purchase price of these same chattels.

While the testimony is not explicit upon the point—the bill not having been filed upon this theory—still the fact is manifest that this debt was in part a balance of the purchase price.

Page 31, fol. 30.

Page 44, fol. 20 *et seq.*

VI.

The Court of Chancery had jurisdiction.

First—Complainant had an undoubted right to foreclose its chattel mortgage. This of itself gave jurisdiction.

Chapman *v.* Hunt, 2 Beas., 370, and cases cited.

Second.—Where a question arises upon conflicting liens a Court of Equity is the proper forum.

The Long Dock Co. *v.* Mallory, 1 Beas., 93, 97. Reversed in 1 Beas., 431, 448.

Third.—The arrangement claimed to be a pledge by defendants created, if anything, a trust which is invalid under the laws of the State of New Jersey. A suit to attack an invalid trust is properly brought in a Court of Equity.

Fourth.—The deposit of the proceeds of the sale of the chattels in question in the Court of Chancery was a voluntary submission to the jurisdiction of that Court, and the claim in the answer (by way of recital) that the rights of all parties, &c., were preserved does not avail defendant.

Indeed, there is no proof whatever in the case that the payment of the money into Court was accompanied with any disclaimer of submission to the jurisdiction of the Court.

• *Fifth.*—The rights of complainants to subrogation could properly be passed upon only in a Court of Equity.

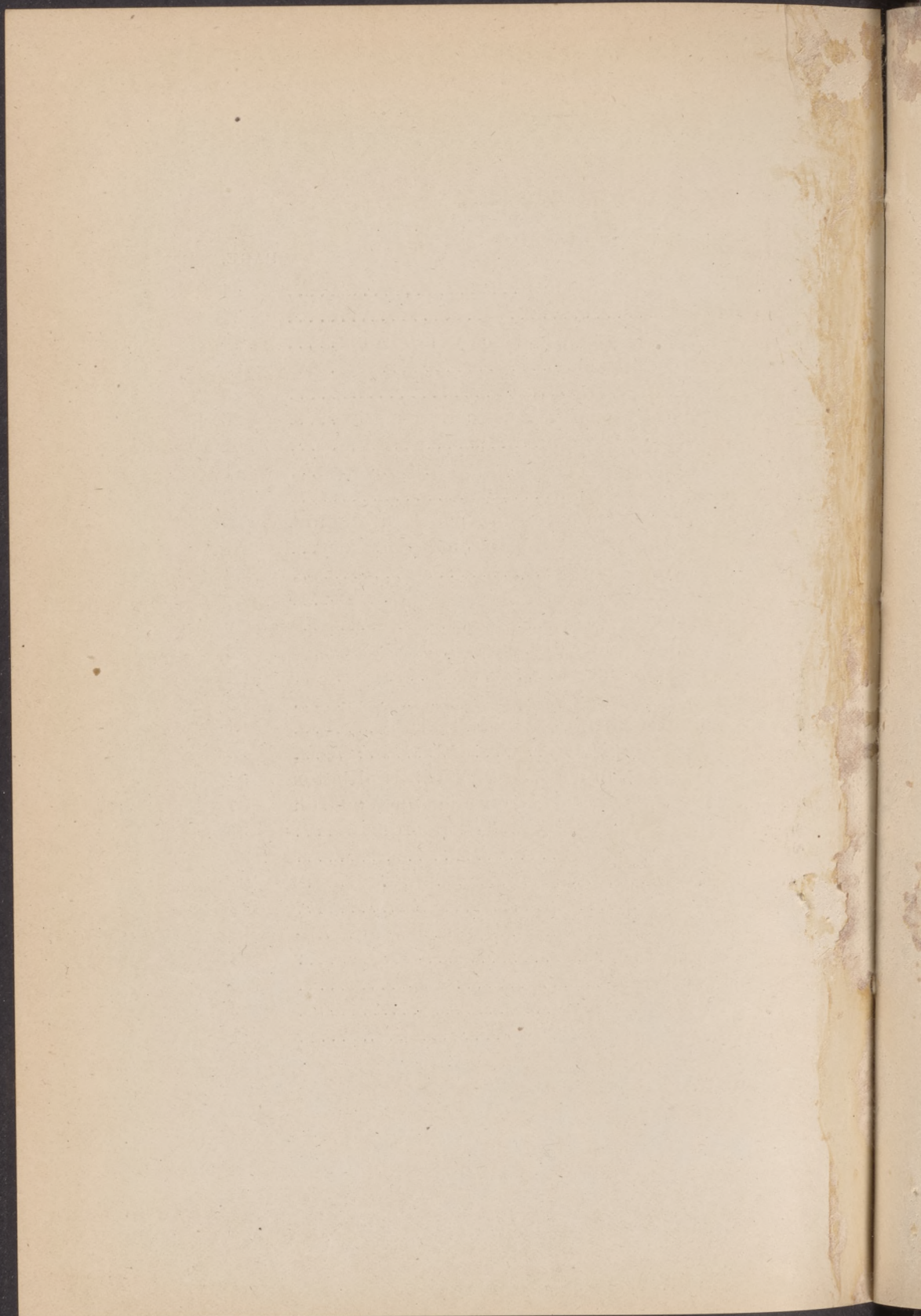
The decree appealed from is erroneous, and should be reversed, with costs.

Respectfully submitted,

CHAS. W. KIMBALL,
Of Counsel for Appellant.

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In Chancery of New Jersey.

To the Honorable, the Chancellor of the State of
New Jersey :

Humbly complaining shows unto your Honor,
your orator THE DIRIGO TOOL COMPANY, a corpora- 10
tion organized pursuant to the laws of the State of
New York, that THE CONVERSE MANUFACTURING
COMPANY, also a corporation organized pursuant to
the laws of the State of New York, was, on the
tenth day of April, eighteen hundred and eighty-
five, justly indebted to your orator in the sum of
five thousand seven hundred and sixty-four dollars,
and being so indebted made and delivered to your
orator a certain indenture of mortgage, dated on
said day, in and by which it sold and conveyed to 20
your orator all the goods and chattels then in the
possession of said Converse Manufacturing Compa-
ny, and then and now at its shops Nos. 211 & 213
Mulberry street, in the City of Newark, Essex
County and State of New Jersey, mentioned and
described in the schedule hereto annexed and
marked "A," and hereby made a part hereof, and
also six splitting dies, then (and now) in the shops
of the Newark Stamping Company, Mulberry street,
Newark, and one duplicate set of boot patterns and 30
two sets of handle patterns then (and now) in the
foundry of S. J. Meeker, in Clay street, in said city
of Newark, which said mortgage contained a proviso
to the effect that should the said Converse Manu-
facturing Company, its successors or assigns, pay or
cause to be paid to your orator, its successors or
assigns, the sum of five thousand seven hundred
and sixty-four dollars on demand, without any
fraud or other delay, then the same should be void,
otherwise to remain in full force and virtue. 40

And your orator further shows that prior to the execution of said mortgage, the written assent thereto of a majority of the stockholders, owning, at least, two-thirds of the whole capital stock of said Converse Manufacturing Company, was duly obtained, as required by the laws of said State of New York, pursuant to and under which said Converse Manufacturing Company is organized; that the said written assent was signed in triplicate, and one of said assents was filed in the Office of the Clerk of the City and County of New York, where said Converse Manufacturing Company has its principal place of business (in said State of New York), one was filed in the office of the Clerk of Essex County, New Jersey, in which County said goods and chattels are situate, and one was attached to and recorded with said mortgage.

And your orator further shows that the execution of said mortgage was, on said tenth day of April, 1885, duly proved in the manner required by law to entitle the same to be recorded, and the oath of Lawson Valentine, the president of your orator, the mortgagee in said mortgage named, was annexed to said mortgage, setting forth the true consideration of said mortgage and stating the amount actually due thereon as required by law, and said mortgage, with said affidavit, proof of execution and assent of stockholders was, on said tenth day of April, 1885, duly recorded in the Office of the Register of said Essex County.

And your orator further shows that thereafter and on the fourteenth day of April, 1885, payment of said sum of five thousand seven hundred and sixty-four dollars was demanded of said Converse Manufacturing Company; that payment thereof was refused and said sum now remains wholly unpaid.

And your orator further shows that it is informed and believes, and charges the fact to be, that one Philemon Woodruff has taken possession of all of

said goods and chattels which are in the shops of said Converse Manufacturing Company at Numbers 211 and 213 Mulberry street, Newark, New Jersey, in defiance of and in hostility to your orator's said mortgage and, threatens and intends to sell said goods and chattels at public auction on Saturday, April 18th, 1885, at two o'clock in the afternoon upon said premises; that said possession was taken after the execution and record of your orator's said mortgage, and with full knowledge thereof.

10

And your orator further shows that the said possession by the said Philemon Woodruff is now held and said sale is intended to be made by virtue of a certain paper writing signed in duplicate by said Woodruff and by M. D. Converse, President of said Converse Manufacturing Company, and delivered, one part to said Woodruff and one part to said Converse Manufacturing Company, of which the following is a copy:

“NEWARK, N. J., March 31, 1885.

Received from the Converse Manufacturing Company all the goods and chattels mentioned in the chattel mortgage made by them to Frederick Woodruff with such other goods and chattels as has been added to the machinery and stock on the two floors of the building occupied by said company, at numbers 211 and 213 Mulberry street.

20

The same to be held by me as security for the payment of the following sums of money until Saturday the eleventh day of April next, after which date they are to be sold for the payment of said sums.

30

First.—The sum of \$338.49 due B. Atha & Co.

Second.—The sum of \$42.72 due George Havell.

Third.—The sum of \$1,160.29 due S. J. Meeker.

Proceeds of said sale to be applied in the above order.

(Signed in duplicate,)

PHILEMON WOODRUFF,
THE CONVERSE MANUFACTURING
COMPANY,

40

Pr. M. D. CONVERSE,
Pres.”

And your orator further shows that it is a mortgagee of said goods and chattels in good faith for value: that it had no knowledge or notice of said pretended lien upon or claim to said goods and chattels now asserted by said Woodruff until after the execution and record of its said mortgage, and that at the time of taking its said mortgage, said goods and chattels were in the sole custody and possession of said Converse Manufacturing Company at its shops as aforesaid, and your orator
 10 relying upon said possession, and upon the records in the office of the Register of said Essex County, a search of which it caused to be made, it accepted said mortgage, and your orator charges and insists that the lien and incumbrance, if any, created by said paper writing, is secondary and subordinate to your orator's said mortgage.

And your orator further shows that the said paper writing, dated March 31st, 1885, has no certificate of acknowledgement or proof annexed thereto or endorsed thereon, and has no affidavit attached showing the consideration thereof, nor the amount due or to become due thereon, and your orator charges and insists that by reason thereof the same is wholly inoperative, null and void.
 20

And your orator further shows that said paper is a conveyance or assignment in trust for certain creditors of the said Converse Manufacturing Company, and is not for the equal benefit of all the
 30 creditors of said company in proportion to their several demands; and your orator charges and insists that by reason thereof the same is null and void.

And your orator further shows that said Converse Manufacturing Company is organized pursuant to an Act of the Legislature of the State of New York, passed February 17th, 1848, entitled "An Act to Authorize the formation of Corporations for Manufacturing, Mining and Mechanical and Chemical Purposes," and the acts amending the same.
 40

That by section twenty-one of said act, as amended, any corporation organized thereunder may make a mortgage upon its real or personal property, provided that the written assent thereto of the stockholders owning at least two-thirds of the capital stock of such corporation be first filed in the office of the Clerk of the County where the mortgaged property is situated.

And your orator further shows that no such assent to said paper dated March 31, 1885, has been 10
filed in the office of the Clerk of Essex County, nor has such assent been procured.

And your orator further shows that it is apprehensive that, unless restrained by the order of this Honorable Court, said goods and chattels will be sold and removed from said premises and become scattered, thus causing your orator irreparable loss and injury and rendering necessary a multiplicity of suits to recover said property.

In consideration whereof, and inasmuch as your 20
orators is remediless in the premises in the Courts of Law, and can only have adequate relief in a Court of Equity, and to the end that the defendants, The Converse Manufacturing Company, Philemon Woodruff, Benjamin Atha, John Illingworth, George Havell and Stephen J. Meeker, and each of them, may, without oath, answer, according to the best of their respective knowledge, information and belief, all and singular the premises, that an account may be taken under the direction of this Court of 30
the amount due upon your orator's said mortgage; that the said defendants, or some of them, may be decreed to pay your orator the amount found to be due with interest and the costs of this suit by a short day, to be appointed by this Court, and that in default thereof, they, and each of them, stand debarred and foreclosed of all equity of redemption in said mortgaged property, that said goods and chattels be sold by the order of this Court, and out of the proceeds of sale 40

your orator may be paid the amount so found due upon said mortgage with interest and costs; that the lien of your orator's said mortgage be decreed to be prior and paramount to the lien or encumbrance, if any exists, of said Philemon Woodruff, Benjamin Atha, John Illingworth, George Havell and Stephen J. Meeker, and of each of them, and that the said Philemon Woodruff, Benjamin Atha, John Illingworth, George Havell and Stephen J. Meeker and, each of them, be restrained by injunction from selling said goods and chattels or any of them and from removing said goods and chattels or any of them, from said premises, or in any way interfering therewith, and that a Receiver be appointed to take and hold said goods and chattels subject to the further order of this Court, and that your orator may have such other and further relief as to the Court shall seem just.

May it please your Honor to grant unto your orator the State's writ of subpoena issuing out of and under the seal of this Court, to be directed to the said Converse Manufacturing Company, Philemon Woodruff, Benjamin Atha, John Illingworth, George Havell and Stephen J. Meeker, commanding them to appear before your Honor in this Court, then and there to answer the premises and to stand and abide by, and perform such order and decree as your Honor shall make therein, and also the State's Writ of Injunction. issuing out of and under the seal of this Court, directed to the said Philemon Woodruff, Benjamin Atha, John Illingworth, George Havell, and Stephen J. Meeker, requiring and commanding them, and each of them, absolutely to desist and refrain from selling said goods and chattels, or any of them, and from removing the same from said premises, and in any way interfering therewith.

And your orator will ever pray, &c.

CHAS. W. KIMBALL,

40

Solicitor for and of Counsel with complainant.

*# Added by way of amsubmitt
at trial*

#

and your orator shows that the goods referred to in the foregoing paper writing were substantially all the property owned at the date thereof by said Converse Manufacturing Co.

STATE OF NEW YORK, }
 City & County of New York, } ss :

JAMES H. FULLER, being duly sworn, says: that he is the treasurer of the Dirigo Tool Company, complainant in the foregoing bill of complaint named; that he has heard the said bill read and knows the contents thereof, and that the same is true of his own knowledge except, as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it 10 to be true.

JAMES H. FULLER.

Sworn to this April 17th, 1885, }
 before me, a notary public in }
 and for said State & County. }

WM. H. SLOANE,
 Notary Public,
 Kings and N. Y. Cos.

SCHEDULE A.

20

4 Spindle Drill Press.	
1 Universal Milling Machine.	
2 Power-Milling Machines.	
1 Hand Milling Machine.	
1 Surface Grinding Machine.	
1 Tapping Machine.	
3 Buffing Stands.	
1 Shaft & Pulley.	
2 Emery Wheels.	30
1 Polishing Stand.	
10 Polishing Wheels.	
1 Pair Small Scales.	
2 Small Hangers.	
2 Machine Stands.	
1 Emery Grinder.	
2 Iron Stands.	
Lot of Belting assorted.	
1 B. & O. Screw Machine.	
6 Emery Wheels.	40

- 8 Emery Weeels.
- 4 Emery Wheels.
- 49 Ft. Belting.
- 1 Rack Cutting Machine.
- 1 Saw, Hammer and Brace.
- 1 20 in. Shaper.
- 1 Lathe, Prentess.
- 1 Lathe, Spencer.
- 1 Grindstone and Frame.
- 10 2 Prentice Vises.
- 3 Parker Vises.
- 1-8 Eagle Anvil.
- Miscellaneous Small Tools.
- 1 Pulley 18x14.
- 2 Bdls Lacing.
- 18 5-8 ft. in. Belting.
- 50 Lag Screws.
- 1 Sprinkling Pot.
- 3 lbs. Soldering Crow.
- 20 36 Lag Screws.
- File Handles.
- 4 Mallets.
- 1 Iron Ladle.
- 2 Lbs. 5-8 Washers.
- 1 Pine Beam.
- 2 Doz. Shingles.
- 1 Lb. Washers.
- 3 Sheets Tin.
- 1 Piece Gas Pipe.
- 30 Factory Furniture and Fixtures.
- Taps and Dies.
- 5-16 Steel Wire.
- Small Welt Wire.
- Split Pulley.
- Blow Pipe & Connections.
- 3 Pulleys.
- 4 Pulleys.
- Nat'l Chuck.
- 1 B. & S. N. N. Vise.
- 40 1 B. and S. Dog.

1 Power Press.	
1 Muffler Furnace.	
1 Forge.	
1 Scale.	
1 Lincoln Mill.	
Screw Press.	
Benches	
Tackle and Fall.	
15 Stools.	
1 Water Trough.	10
1 Mahogany Table, with drawer.	
1 Table, Desk and 3 Chairs.	
1 Step-Ladder.	
1 Table.	
Benches and Timber.	
1 Clock.	
1 Stove.	
Testing Machine.	
Wire for 30,000 Nail-pullers.	
Extra Shafting.	20
Polishing Lathe.	
Two Ovens.	
Two Upright Drills.	
New Belting.	
Gas Fixtures.	
3 New Sets of Cutters.	
Special Tools for Cutting Pins.	
" " " Gang Drills.	
" " " Hand Miller.	
" " " Power Press,	30
" " " Drilling Boot.	
Rack for Drying Nail Pullers.	
Finished and Unfinished Nail Pullers.	
7,000 to 8,000 Blades for Nail Pullers.	
300 Janes riveted to handles.	
150 Boots ready to put together.	
600 Finished Nail Pullers.	
1 Large Printers' Lathe.	
Chucks, &c., for same.	
3 Vises.	40

- 1 Vise.
- 50 Galls. Lard Oil.
Can.
- 30 Galls Machine Oil.
Can.
Bag of Waste.
Two Presses.
Emery Grinder.
Scale.
- 10 Benches.
Anvil, 112 lbs.
Forge.
Tank.
Pulleys and Shafting.
Gas Blast.
Miscellaneous Tools.
Step Ladder.
Gas Pipes.
Safe.
- 20 Hand Lathe.
Grindstone.
Harness Snap Hook Patterns.

And all other tools, implements, machinery, fixtures, furniture, stock and materials of whatever kind and nature now in said premises, Nos. 211 & 213 Mulberry Street, Newark, New Jersey.

30

40

IN CHANCERY OF NEW JERSEY.

Between

THE DIRIGO TOOL COMPANY,
Compl'ts,*and*THE CONVERSE MANUFACTURING
Co. *et al.*,

Def'ts.

On Bill, &c.

Answer.

10

The joint and several answer of the defendants Philemon Woodruff, Benjamin Atha, John Illingworth, George Havell and Stephen J. Meeker to the bill of complaint of The Dirigo Tool Company, complainants, in the above entitled cause.

These defendants, answering the said bill, or so much and such parts thereof as they are advised it is material for them to make answer unto, say :

That it may be true that the Dirigo Tool Company is a corporation organized under and pursuant to the laws of the State of New York ; and that it may be true that The Converse Manufacturing Company was indebted to the complainants on the 10th day of April last in the sum mentioned in their bill, but these defendants leave them to make such proof thereof as they may be advised is necessary, as these defendants have no definite knowledge in relation thereto. But these defendants admit that an instrument purporting to be a chattel mortgage, as therein described, has been and was recorded as therein stated.

Further answering, these defendants say they have no knowledge that the assent of a majority of stockholders of the Converse Manufacturing Company was obtained prior to the execution of the alleged mortgage, as in said bill stated, and leave the complainants to make proof thereof if they are ad-

vised that it is necessary ; but these defendants admit that a paper purporting to be such consent was attached to and recorded with their alleged mortgage.

Further answering, they deny that said mortgage was proved as required by law, because they are advised that mortgages upon chattels no longer require proof as to the true consideration thereof, but they admit that what appears to be a proof of execution and an alleged assent of stockholders were recorded, on the tenth day of April last, with the alleged mortgage of complainants, as set forth in the complainants' bill.

And these defendants, further answering, admit that at the date of the filing of complainants' bill that no part of said alleged chattel mortgage had been paid. And they say they have no knowledge of any demand for the payment of the amount thereof having been made and refused, and therefore leave the complainant to make such proof of demand and amount due as they are advised is necessary.

These defendants, answering, admit that Philemon Woodruff did take possession of all goods and chattels in the shops of the Converse Manufacturing Company, and that he did intend to sell the same at public auction at the time stated ; but they deny that he threatened to sell or that he took possession after the execution and recording of the alleged mortgage of the complainants, or with knowledge thereof. They deny that the possession of Philemon Woodruff was held, or that sale was intended to be made, by virtue of the writing signed in duplicate by said Woodruff and M. D. Converse, set forth at length in said bill ; and, on the contrary, aver that said writing was a mere receipt given by said Woodruff, and signed and set forth by said Woodruff and Converse for the purpose of showing that all of said goods and chattels had been transferred to said Woodruff on the thirty-

first day of March last past as security for the payment of certain sums of money therein mentioned.

Further answering, these defendants say that they do not know or admit that The Dirigo Tool Company is a mortgagee in good faith for value, and leave said complainants to prove the same, as also the allegation that they had no knowledge or notice of the claim asserted against said goods by Philemon Woodruff, and the assertions that The Converse Manufacturing Company were in the sole 10
custody and possession of the goods and chattels when the pretended mortgage was given to complainants, and that the lien and incumbrance of these defendants is secondary and subordinate to the claim of complainants. On the contrary, these defendants aver and charge the truth to be that one Austin Huntington, Esq., a Counsellor-at-Law, of the State of New York, and the attorney and counsel of the complainants, at that time, and then acting in the capacity of attorney and counsel for said 20
complainants, on the fourth day of April last, in company with M. D. Converse, the president of The Converse Manufacturing Company, called at the office of said Philemon Woodruff; that said Huntington was then informed by said Woodruff that he, Woodruff, had in his hands for collection the claims of Benjamin Atha and John Illingworth, also of George Havell and Stephen J. Meeker; that he was also informed of the amount of each claim; that at that time there existed upon 30
said goods and chattels a mortgage for fifteen hundred dollars payable to one of said Woodruff's clients, not a party defendant hereto, and that said Huntington was then informed of its existence, and also that said mortgage was due; that he was also informed that unless the said last mentioned mortgage, as well as the claims of B. Atha & Co., George Havell and Stephen J. Meeker were paid by the eleventh day of April, the goods and chattels would 40
be sold by said Woodruff. That at that time said

Huntington, in behalf of the Dirigo Tool Company, requested that the said Woodruff should not foreclose said chattel mortgage, but, on the other hand, should telegraph to the First National Bank of Yonkers, New York, in order to have the protest stopped of a note for about three hundred dollars, due on that day, and made by the Converse Manufacturing Company and secured by the last mentioned chattel mortgage. That said Woodruff did

10 send such telegram for that purpose, and to save the credit of the Converse Manufacturing Company. That said Huntington at that time requested said Woodruff to delay proceedings under said chattel mortgage upon the representation that he had made a careful examination of the affairs of the Converse Manufacturing Company at the request of the president of the Dirigo Tool Company; that he had found the same to be about as represented by M. D. Converse; that the Dirigo Tool Company were to

20 have a meeting on the following Wednesday; that he should advise them to help the Converse Manufacturing Company out of its difficulties, and that he had little or no doubt that his advice would be followed; that said Huntington had then with him a paper which purported to be a list of the indebtedness of the Converse Manufacturing Company; that the same was produced in the presence of said Woodruff, and that there appeared thereon the names of B. Atha & Co., George Havell

30 and S. J. Meeker, as creditors; that when said Huntington made such request it was concurred in by M. D. Converse, and that said Woodruff asked said Huntington if he was familiar with the true condition of the company, and Huntington replied that he was; that said Woodruff thereupon agreed to take no action until Saturday, the eleventh day of April, provided that things were permitted to remain as they then were, no goods being removed or other action taken whereby the chattel mortgage

40 or B. Atha & Co., George Havell or S. J. Meek-

er's claims in any way prejudiced; that the said Huntington agreed thereto and assured said Woodruff that he believed that the claims of all of said persons would be paid before that date.

These defendants, further answering, say that, at the date of filing of the bill in this cause, Philemon Woodruff held possession of the goods and chattels in the factory of the Converse Manufacturing Company under the following circumstances, viz.: That on the 27th day of March last, the firm of B. Atha 10 and Company, a firm composed of Benjamin Atha and John Illingworth, two of the defendants herein, placed in the hands of Philemon Woodruff, for collection, a claim against the Converse Manufacturing Company, amounting to three hundred and thirty-eight dollars and forty-nine cents; that said Philemon Woodruff thereupon prepared papers for issuing a writ of attachment against the property of said company on that day; that said Woodruff, not being willing to 20 ruin the credit of the company called at their office in Newark, stated the above facts and requested that the claim be secured in some way other than by attachment; that thereupon the Converse Manufacturing Company agreed to pledge, and did pledge, to him all of the nail pullers upon and about their premises, amounting to about six hundred, as security for said claim; that said nail pullers were transferred to him by virtue of the following order: 30

“ New York, March 30th, 1885.

Charles F. Beers, Supt., 211 Mulberry St,
Newark, N.J.

“ Please deliver to Philemon Woodruff, Atty, six hundred (600) finished nail pullers, with this order, as collateral security in the case of Benjamin Atha 40

account, taking his (Woodruff's) receipt for the same, reciting this condition, and deliver the said nail pullers to whomsoever he may direct,

The CONVERSE MFG. Co,

M. D. Converse, Prest."

That said Woodruff receipted to said Beers therefor, directed their removal into the factory of E. Shultz by said Beers, to be there stored at the risk
 10 of the Converse Manufacturing Company ; that said Woodruff went to the factory of said company, saw such removal begun, and saw about one-third of said nail pullers actually removed.

These defendants further say that on the thirty-first day of March the claims of George Havell and Stephen J. Meeker were also placed in said Woodruff's hands for collection ; that on that day he also prepared the papers for a foreign attachment against
 20 of Stephen J. Meeker. That said Woodruff again called at the office of that company on that day to see whether anything could be done to protect and secure his clients as well as to save the credit of the Company ; that he found there Charles F. Beers, the Superintendent of the Company ; that said Beers at once went to New York to seek the President of said Company, and returned with him to Mr. Woodruff's office at about
 30 six o'clock in the evening of that day ; that said Woodruff then stated that he had claims of B. Atha & Co., George Havell and Stephen J. Meeker in his hands ; that he was about to issue a writ of attachment, and should do so unless all of those claims were satisfactorily secured ; that it was then agreed that all the goods and chattels in the factory of the Company should be transferred to said Woodruff as security for the above claims ; that they should remain in his hands until the 11th of April then next, after which date said Woodruff should sell the same
 40 for the payment of those claims ; that they should be

paid in the order of priority as received by said Woodruff; that thereupon the receipt set forth in the complainant's bill was drawn and signed in duplicate as a memorandum of the contract of pledge, and said Beers was thereupon requested to hold possession for said Woodruff, and not for the Converse Manufacturing Company thereafter; that said Beers agreed to do so in the presence and hearing of said Woodruff and M. D. Converse; that on the following day said Woodruff called at the factory of the Converse Manufacturing Company, and found there Charles F. Beers; that said Woodruff then stated that he had called to take formal possession; that he declared in the presence of said Beers that he did take formal possession of all the goods and chattels therein; that said Woodruff then again requested said Beers to hold possession for him; that said Beers agreed to do so, and was instructed by said Woodruff to inform any one who inquired as to the ownership of said goods and chattels that he, Beers, was in possession for said Woodruff, who held the goods and chattels as security for the above claims of Atha, Havell and Meeker.

These defendants, further answering, say that on the third day of April said Woodruff went to the said factory with one Alpheus Struble, Esq.; that they found Charles F. Beers there alone, doing some work which he said was for himself; that said Struble went there at the request of said Woodruff as a witness, said Woodruff representing that he was desirous of taking every precaution in behalf of his clients' interests; that said Woodruff then asked said Beers to state in what way he was in possession; that Beers replied "that he was holding possession for Mr. Woodruff and that the property there had been placed in his, Woodruff's, hands as security for the payment of the debts of the Converse Manufacturing Company to B. Atha & Co., George Havell and S. J. Meeker." That said Woodruff stated that he wanted Beers "to make a

public statement of these facts in the presence of Mr. Struble, in order that they might be known by other persons than Beers, Converse and himself, as to the manner in which said goods and chattels were held," and that thereupon Beers replied "that that was all right, and that said property was held by him for Mr. Woodruff, and the Converse Company had placed the same in his (Woodruff's) hands as security, and that he was holding possession for him only," and that said Beers thereupon stated the amount of the claim of each of the concerns which Mr. Woodruff represented.

And these defendants, further answering, say that said Woodruff visited the factory of the Converse Manufacturing Company a number of times between the thirty-first day of March and the eleventh day of April following, for the purpose of taking due care of the property pledged to him as aforesaid; and that for the purpose of having the matter so definitely settled that it could not be questioned by any one, requested that a resolution be passed by the Board of Directors of the Converse Manufacturing Company, ratifying the action of their President in pledging the goods to him. That in pursuance of that request, said Woodruff received a paper of which the following is a copy, signed by their Secretary from said President:

COPY OF RESOLUTION.

"At a meeting of the Board of Trustees of the Converse Mfg. Co. held in accordance with a call of the President on the 4th day of April, 1885, the following was adopted, viz:—

"Whereas, under peculiar pressing necessities of the company, the President required to secure certain creditors pending negotiations for money with which to carry on the company's business, and whereas it was the part of business expediency and good judgment on the part of the President, now, therefore, resolved, that his action in the exe-

cution of the *order* to Philemon Woodruff, Atty., dated March 31st, 1885, be and is hereby approved. The above is a true copy of the record as it appears in the minutes of said meeting.

ALFRED WILD, Sec'y."

These defendants further say that after the receipt of the copy of the above resolution, Philemon Woodruff visited the factory on two occasions and each time found that it was closed and locked and that from the thirty-first day of March last the business previously carried on there had been stopped; the said Woodruff met Beers upon the street and asked him where he had been as he had called twice at the factory during the early part of the week (beginning on the sixth of April.) and Beers stated that he had been out temporarily attending to his private matters. 10

That on Saturday, the eleventh day of April last, Charles W. Kimball called at the office of Philemon Woodruff and offered to pay the amount of the chattel mortgage mentioned in the receipt of March thirty-first, with a certified check; that said Woodruff not knowing and never having previously seen Mr. Kimball declined to receive the same; that he learned from said Kimball of the existence of the chattel mortgage claimed by complainants and that no provision had been made for the payment of his clients' claims; that thereupon said Woodruff, in company with Henry E. Jepson, John Murray and Richard Lewis went to the factory of the mortgagors on said day; that they found there in possession one Isaac Boardman; that, upon request, the said Boardman gave up the keys to them without objection or protest; that said Woodruff asked Boardman "if he knew of the true condition of affairs, and that Mr. Beers had been holding the property for him as security for the debts of Atha & Co., George Havell and S. J. Meeker;" that thereupon Boardman replied that "Beers had so informed him and had asked him to hold possession 40 30

for him on that day while he went to New York to attend to some private business.”

These defendants, further say that said John Murray was employed to advertise said property for sale under the chattel mortgage referred to in said receipt as well as the claims of B. Atha & Co., George Havell and S. J. Meeker; but that said chattel mortgage was paid on the 13th day of April, and the goods and chattels were therefore advertised for sale, as mentioned in the bill of complaint.

These defendants, further answering, say that as to the receipt not having been proved, acknowledged or filed as a chattel mortgage that it is true, but that they insist that the said receipt was not a mortgage nor an instrument intended to operate as a mortgage upon goods and chattels.

They also deny that it is null and void as a conveyance or assignment in trust because it is neither a conveyance nor assignment but a mere receipt.

These defendants, further answering, say, that they neither admit or deny the complainants' statements as to the law of the State of New York relating to chattel mortgages made by corporations organized under their laws, as they have no knowledge thereof; they, however, admit that no such assent as is stated in said bill was procured prior to the pledging of said goods and chattels to Philemon Woodruff, either from The Converse Manufacturing Company or its stockholders.

And these defendants further say that since the filing of the bill herein, said goods and chattels have been sold and a portion of the proceeds paid into this Court by and with the consent of the respective parties, and that said proceeds, amounting to the sum of nineteen hundred and thirty-nine dollars and thirty-five cents, are to remain in this Court to abide the event of this suit and the further order of this Court, the rights of all parties being preserved in the same condition as they were at the return day of the rule to show cause why an injunc-

tion should not issue, heretofore granted in this suit.

And these defendants, further answering, say and claim the same advantage of this defence as if the same had been interposed on the return day of said rule to show cause; that as the defendant Philemon Woodruff was in full possession of all the goods and chattels in controversy at the date of the filing of complainants' bill, he having obtained such possession in a peaceable manner and without op- 10
position; that the complainants' remedy, if any they have, which these defendants deny, is in a Court of law and not in this Honorable Court, and they most respectfully submit that this Court is without jurisdiction in the premises.

And these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

PHILEMON WOODRUFF,

Solicitor for and of Counsel *pro se.*, 20
and for Benjamin Atha, John
Illingworth, Geo. Havell and
Stephen J. Meeker.

IN CHANCERY OF N. J.

Between—

THE DIRIGO TOOL COMPANY,
Complts.,

30

and

THE CONVERSE MANUFACTURING
COMPANY,
Defts.

On Bill, &c.

A rule to show cause having been heretofore 40
granted in the above suit why an injunction

- should not issue according to the prayer of complainants' bill and counsel for the complainants' and for all defendants other than the Converse Manufacturing Company having appeared on the return day of said rule and having agreed that said property claimed to be pledged to Philemon Woodruff as pledgee for certain defendants, and to have been mortgaged to the complainants, should be sold and the proceeds paid into the hands of the
- 10 Clerk of this Court to abide the event of this suit and the further order of this Court less the necessary costs and expenses of sale by said Philemon Woodruff; and said counsel having further agreed that it would not be necessary to have the whole proceeds of said sale thus paid into Court, and that the sum of two thousand dollars less the necessary costs of advertising and selling and keeper's fees would be a sufficient amount to answer the purpose of this suit and to cover such decree as might be made, if
- 20 any be made, in favor of the defendants or any of them.

- And the said Philemon Woodruff having given due notice of sale of the goods and chattels referred to in said bill to The Converse Manufacturing Company on the twenty-ninth day of April last, and that the same would take place at their premises, Nos. 211 and 213 Mulberry street, in the City of Newark, on May 6th A. D. 1885, at 2 P. M., and the said notice having stated that such sale would
- 30 be made under and by virtue of his claim as pledgee, and also by virtue of the complainants' mortgage, and said goods and chattels having been advertised for sale at said time and place on the fourth and fifth days of May, 1885, in the Newark "Evening News" and the Newark "Daily Advertiser," and notice of such sale having been placed in five of the most public places of the County of Essex at least five days before the date of said sale, and upwards of forty notices of such sale having been posted
- 40 for at least forty-eight hours before such sale in as many public places in the county.

And it having appeared wise to the solicitors of the respective parties that said goods and chattels should be sold together and not in parcels, for the reason that together they would probably bring a higher price than if sold in parcels, and the president of the defendant, The Converse Manufacturing Company, having requested in writing that the same should be sold together and as a whole.

And the said property having been duly offered for sale at public auction for cash to the highest bidder at the time and place mentioned, and the same having been duly sold to Lawson Valentine for the sum of twenty-six hundred and fifty dollars, he being the highest bidder for the same (the nail-pullers mentioned in said chattel mortgage and pledge having been excepted from said sale because of an injunction existing against the complainants and The Converse Manufacturing Company, restraining them from making and selling the same, issued by the United States Circuit Court of the Southern District of New York) and the sum of two thousand dollars having been paid said Philemon Woodruff in cash, and the sum of six hundred and fifty dollars having been duly credited upon the chattel mortgage of complainants, mentioned in their bill by their solicitor.

It is, on this fourteenth day of May, A. D. eighteen hundred and eighty-five, by consent of the solicitors of the respective parties (other than The Converse Manufacturing Company), ordered that said Philemon Woodruff pay to the Clerk of this Court, to remain in this Court and abide the event of this suit, the sum of two thousand dollars aforesaid, less the following sums paid by him for expenses.

Watchman, ten days, at \$1.50 per day, fifteen dollars.

Watchman, nine nights, at 1.50 per night, thirteen dollars and fifty cents.

Constable's charges for putting up notices of sale and selling, twenty-five dollars.

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Newark Daily Advertiser, for advertising in paper and printing posters, five dollars.

Newark Evening News, for advertising in paper, two dollars and fifty cents.

And that the Clerk of this Court do hold said sum to abide the event of this suit and the further order of the Court.

THEODORE RUNYON, C.

We consent to the foregoing order.

10

CHAS. W. KIMBALL,

Sol. for Complainants.

PHILEMON WOODRUFF,

Sol. *pro se* and for BENJAMIN ATHA,

JOHN ILLINGWORTH, GEORGE HAVELL and

STEPHEN J. MEEKER.

A true copy.

G. S. DURYEE,

Clk.

The cause will be duly referred to Hon. W. B.
20 Williams, Advisory Master.

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IN CHANCERY OF NEW JERSEY.

Between—

THE DIRIGO TOOL Co.,
Comp't,*and*THE CONVERSE MANUFACTURING
Co. *et al.*

Def'ts.

On Bill, &c.

10

CHAS. W. KIMBALL, Esq.,
Counsel for Complainants.PHILEMON WOODRUFF, Esq.,
Counsel for Defendants.

Transcript of short hand notes of testimony
taken in the above stated cause before his
Honor, Washington B. Williams, advisory
master, at the office of the advisory master,
Jersey City, N. J., on Wednesday, July 8th,
1885. 20

Pleadings were read.

By MR. KIMBALL: I understand that Mr. Wood-
ruff is willing to admit as a matter easily suscepti-
ble of proof, the corporate character of the com- 30
plainant, the Dirigo Company, and the Converse
Company, one of the defendants.

By MR. WOODRUFF: Yes, sir.

By MR. KIMBALL: They incorporated under the
laws of the State of New York.

By THE COURT: The stenographer will enter then
upon his minutes, that the corporate character of
the complainant, and of the Converse Company is
admitted, under the act of 1848, and its amend-
ments, of the laws of the State of New York. 40

AUSTIN HUNTINGTON, a witness called, being duly sworn according to law, deposes and says:

Direct-examination by MR. KIMBALL:

Q. You live in New York?

A. I do.

Q. And you are an attorney and counsellor of that State?

A. Yes, sir.

10 Q. Did you represent the Dirigo Tool Company in relation to the mortgage referred to in the bill in this case?

A. I did.

Q. Wont you state briefly the circumstances leading to the mortgage, especially as regard its consideration?

A. About, as near as I can remember, the 27th day of March last, Mr. Lawson Valentine, the President of the Dirigo Tool Co.,
 20 sent for me, and told me that the Converse Manufacturing Co. was anxious to secure a loan on its goods and chattels, and he asked me to thoroughly investigate the matter and see Mr. Converse, and go over the whole matter with him. I saw Mr. Converse within a day or so afterwards, probably the same day, and he submitted to me a schedule of the assets and liabilities of the Converse Manufacturing Co., of which he stated he was the president. He told me—he showed me a paper on which it ap-
 30 peared, as far as I can remember, that the first liability was a mortgage secured by a chattel mortgage, in favor of one Woodruff. I have forgotten his first name. Frederick I believe it was. He told me none of the other debts were secured in any way. He gave me a schedule of the assets which came to, I think, about the sum of \$5,000 over all possible liabilities. Then I would state, moreover, that there were two notes, one of \$1,000 and one of \$500, which were secured by some nail pullers pledged as col-
 40 lateral, held by Mr. Valentine as an individual.

They had nothing to do with this present loan and did not enter into the question. Then I went on the second day of April, at Mr. Converse's request, over to Newark to examine the goods and chattels on which the loan was to be made, and I took an inventory of the same, in order to report upon their value. Mr. Fuller, the Treasurer of the Dirigo Tool Co. went with me, and Mr. Converse was to meet us. When we arrived there Mr. Converse had not appeared. He was to have met us at the factory. 10 I went there and I think I knocked at the door, and a man came to the door, and I told him I came over to make an inventory of the goods of the Converse Manufacturing Co. He stated that he was Mr. Beers, the Superintendent of the Converse Manufacturing Co., and I said to him, I am desirous of taking a thorough inventory of the stock of goods; it has been proposed by the Dirigo Tool Co.—(I may not have mentioned the persons)—to make a loan on its goods and chattels, and I 20 want to know thoroughly all about them. Well, he said, I suppose I can tell you more about it than anybody else can because I am Superintendent of the Company, and have been from the beginning, and I have a certain interest in the matter, because there is a good deal of money due me, and I will do my best to give you a true account of the stock. So I went over every single machine with him and took his estimate and value, and conferred with Mr. Fuller, the treasurer, who was supposed to have some 30 practical knowledge on the subject, and then we jotted each thing down.

Q. You mean Mr. Fuller, the treasurer of the complainant?

A. The Treasurer of the complainant. And then after the various tools had been considered, we came to the question of the number of nail pullers which were being constructed by that company, and which according to a list given to me by Mr. Converse, amounted to six or seven thousand jaws of nail pul- 40

lers. Mr. Beers pointed those out to me, and gave me his estimate of the value. Then there were about six hundred finished nail pullers on the premises, and I said. "Well, Mr. Beers, I don't see those nail pullers, where are they" and he replied. "They are scattered all over the shop." "Well, I said, "in order to make an inventory I want everything shown to me, or accounted for." Then he took me around and I found some down
 10 stairs on the lower floor, which the Company occupied. They had two floors of a building on Mulberry street, and on one of those there was quite a large number of boxes filled with nail pullers. They were not covered, We counted those. And there were some on an upper floor, hanging on a rack I think, and there were some others I know in another part of the shop. Then I counted them, but even then the number was not made up, and I said to him. "There is not quite six hundred of
 20 them here" and he said, "Oh, yes, and more than six hundred." I said, "Well, where are the others" "Well he said, "there are some just outside in another room" and I went out with him, and he pointed them out to me, and I said to him, "are those part of this six hundred nail pullers" and he said "yes." Said I, "Do those belong to the whole lot?" he said "yes." Then I said, "are those all the nail pullers" he said, "yes." Then I made a complete inventory of all that property,
 30 and went away. A day or two afterwards, I think it was—let me say first, that I went back to the Company and reported, but there wasn't any meeting of the Board of Trustees, and nothing could be done as to loaning money—Mr. Converse came to me and told me he was in a good deal of trouble, because he had certain claims coming due at that time, and he was afraid that unless he got a loan from us immediately, that it would be too late, that his credit would be damaged, and it would defeat all his pur-
 40 poses. I did what I could for him, and tried to

push the loan through at once, but I found it could not be done, and I think that on the 4th day of April, he told me that a note was coming due on Mr. Woodruff's chattel mortgage.

Q. That is, a note secured by it?

A. A note secured by a chattel mortgage. And that note was payable at the Yonkers Bank, and if it was protested, he did not see how any loan could benefit him in any way. I said to him, "Cannot something be done to obviate this, you see it is impossible for me to get you a loan of the money, until the Company come together at their next meeting, which is on Wednesday" —which I think was the 7th of April, as near as I can remember; he said "Well, it is possible Mr. Philemon Woodruff, who is attending to this case and has always been very friendly toward me, and who controls this mortgage, it is possible, if I can assure him that these negotiations are being carried on in good faith, that he would save the protest of the note and there will be no further trouble in the matter." I said. "Will you go over and see Mr. Woodruff about that." He said. "Yes." "Do you think it will do any good if I am with you." I said, "And if I should tell him that the loan is being considered, and will be carried out?" He said yes, he thought it would, and he wished I would go with him. So I did. We went to Mr. Woodruff's office and Mr. Converse went into Mr. Woodruff's office while I remained in the ante room.

Q. Can you fix the date of this?

A. The fourth of April, that is to the best of my recollection. I wont be absolutely positive. I remained there about ten minutes, then Mr. Converse called me in and introduced me to Mr. Woodruff. I don't know exactly how the conversation began, but I think Mr. Woodruff stated that he had always been on friendly terms with Mr. Converse, and he believed he was an honest man, and meant to pay his debts, and he would be very glad to do anything he

could to assist him, and that he wanted to know something about these negotiations that were going on. I said that Mr. Converse had asked us for a loan, and I think the amount was stated. I don't quite know how much it was. I don't believe I could state without referring to my papers. And then it was about that time, I think, that Mr. Woodruff stated to me that he had other claims besides the chattel mortgage of quite a number of the
10 creditors in Newark; that the Newark creditors had placed those things into his hands. He didn't mention the names or amounts, but simply spoke in a general way of the Newark creditors. I had in my hands a list, which Mr. Converse had given me, and I stated to Mr. Woodruff that I had been over to the factory and made an inventory, and it seemed to be in very good condition. I also stated to him that Mr. Converse had told me that this property had a lien on it by reason of this chattel mortgage,
20 and that all the other debts were unsecured. I will state, also, on the first day of April (I had forgotten to state that), in the interview with Mr. Converse, I went over all the debts put down on that schedule, and he stated to me that Mr. Woodruff's mortgage was secured, and that all the other debts were unsecured. I went over those and wrote down the word "unsecured" after each claim, so as to be absolutely sure that the chattel mortgage was the only lien on the property. Well,
30 Mr. Woodruff said he thought the matter could be arranged, and that if there was any reasonable probability that this loan was going to be carried out, he would telegraph to Yonkers and have the protest of the note stopped. We then drew up a telegram in my presence, and I suppose he sent it. Then I told him that the Company—that I thought the Company would make this loan; that my examination of its affairs was so satisfactory that I should advise them to make the loan at
40 the next meeting, and I believed that they would

do so. Then he said, "Well, I have been thinking apart from the chattel mortgage, with reference to the other claims, of attaching the chattels, but I won't touch the property or take any other steps until the following Saturday, I think it was—until there was reasonable time to allow the Company to conclude this loan, if they decided to do so. He said, "There is simply one condition that I will make with you, and that is that if this loan is made, that you will pay over to me, and not to the creditors, the amount of money which you perceive is due to them, because you know if money is paid to a creditor a lawyer does not always find it as easy to collect his fees." I said certainly, I will do that. Then I think we shook hands and parted. As far as I can recollect at this moment, that was the amount and drift of the conversation. Then I returned back to New York and reported to Mr. Valentine the result of the interview, and I said that everything would remain stationary until the following Saturday, and if the loan was made everything was all right. It was on the seventh day of April that this meeting of the Company was held, which was Wednesday. I went before the meeting and reported everything; stated the assets and liabilities as given to me, and what I thought was a safe margin, and I told the Company that it seemed to me safe for them to make the loan. They discussed this matter at the meeting, during which I was present, and said they thought they had loaned so much money on the property at various times, and inasmuch as they had already sold the various goods which were pledged on the chattel mortgage to the Converse Manufacturing Company, and had never been paid \$2,200 or \$2,300 of it, it hardly seemed to them that they were going to gain sufficient by loaning the money, although certain tools had been added by Mr. Converse, which made the property of considerable more value, yet they thought it was too much of a risk, and they did not

care to loan, and they positively refused or declined to make the loan. I then saw Mr. Converse and told him about it, and Mr. Converse seemed very much distressed because the loan could not be carried through. He said the delay had been very hard on him, and put him in a very serious position—more serious than it was before, because it hindered him in making arrangements with other parties, and he did not really see what could be done. Then I saw him on the following morning after this meeting, and I said, “Now I am very sorry for you I believe my people think you are acting in good faith, and if there is any proposition, or anything you may suggest, that will save you in this matter I will recommend it. “Then we considered what his most pressing necessities were, and I think I made a memorandum at the time. I know I made this memorandum, which is just simply an application of that loan, which was to be made, on the day that I paid out this money. I had another memorandum on which the notes were down. There was this note on the chattel mortgage which had become due, and was unpaid, and Mr. Converse suggested that if that chattel mortgage could be paid off he thought it would establish his credit in that direction. There was also a \$400 note coming due at Yonkers, and if that could be paid it would again help his credit, and he thought he could get along if a loan of about \$1,764 could be made, about \$1,800. Which was the sum he suggested, which he thought would save his credit, inasmuch as he thought he would be able to secure all his other creditors, and raise money by other means, and therefore everything would be satisfactory, and that the business would go on. The interest the Dirigo Tool Co. particularly took in having the business going on was the fact that the Converse Company was under a contract to supply them with nail pullers, which they were selling, and therefore in case the Com-

pany stopped it would interfere considerably with their getting their tools, and besides that, special tools had been made for the castings and manufacture of these articles, and which probably could not be used to so much advantage in any other business. Mr. Converse said that he thought that \$1,800 would fix things, and he would give a first mortgage—chattel mortgage, on all the goods of the company, with the understanding that the only lien then existing on that company, or its assets 10 (being the Woodruff mortgage) would be paid out of that loan and got out of the way. That seemed to me to be a fair proposition, and I went into the company, which had adjourned for the morning, and submitted to them Mr. Converse's proposition. They said that seemed more like business, but that they had been loaning him money without any consideration, without any security I mean, and had sold him chattels which they had no security for, and now there was a proposition to secure them for 20 their past indebtedness, as well as the new loan, so that it seemed to be thoroughly satisfactory, and they said they would do it, and in a few minutes the treasurer came out and asked Mr. Converse if he could do with an \$1,800 note. He said he thought he could. He tried it and found it was not quite as easy to arrange it as he had hoped, so then the company discounted it themselves and paid the amount of \$1,764, which was the proceeds of the note, and 30 then a chattel mortgage was drawn up and that amount of money in cash was handed to me, and I went over on the tenth, I think, but I am not quite sure of my dates.

Q. Refresh your memory from the mortgage, if you can?

A. It was the 10th of April. I went over with Mr. Converse and Mr. Albert Wild, the secretary of the Converse Company, and Mr. Kimball to Newark, to the office of the Converse Manufactur- 40

ing Company. I was particularly desirous to be sure before I took any steps in the matter, that the Converse Company was in full possession of the premises, and that there were no liens of any kind except this chattel mortgage which we were to pay off.

Mr. Converse assured me that there was no other lien. I went with Mr. Converse, Mr. Wild and Mr. Kimball to the office of the Converse Manufacturing
 10 Company, and I then went up stairs and looked all over the place, and asked Mr. Beers, the superintendent, if there was any attachment or any other lien on the property. He told me none of any kind, and seemed to be particularly jubilant on the prospect of getting a loan of money. He said there was nothing of any kind on the premises. Then I returned down stairs after having carefully inquired to ascertain whether there was any incumbrance on it, and went into the office on the lower floor and
 20 there this chattel mortgage was drawn up and signed, and at the same time a memorandum was made and signed by Mr. Converse and myself, which is here and relates to the application of \$1,764 in cash.

Q. The Mr. Beers that you have reference to is Charles F. Beers, the superintendent?

A. Yes, sir. He stated that he was in possession of the property himself, and told us that the Converse Manufacturing Company was in sole possession.
 30

Q. Who told you that—Mr. Beers?

A. Yes, sir.

Q. What other inquiry did you make in order to ascertain whether there was any lien of any kind upon the property?

A. I went up to the Register's office and looked at the record of the chattel mortgages to see if any had been made, and there was none filed except the Wood-
 40 ruff mortgage before mentioned. Then I went to

the Sheriff's office and asked if there had been any attachment issued, or any process against the Converse Manufacturing Company. I didn't ask them personally, but Mr. Kimball did in my presence and hearing; and the sheriff stated that no process of any kind had been placed in his hands. And my recollection is — Yes, I know — that I went into the county clerk's office and examined there as to the question of whether or not there was any judgment. 10

Q. Do you remember filing any paper at that time?

A. Yes, sir; I filed in the county clerk's office a paper of which this is a copy, being the assent of the stockholders of the Converse Manufacturing Company.

Q. A duplicate of the one attached to the mortgage?

A. Yes, sir; it is their assent to the execution and delivery of this mortgage. 20

Q. (Handing witness a paper.) What is this paper?

A. The chattel mortgage in question made by the Converse Manufacturing Company to the Dirigo Tool Company.

Q. Dated April 10, 1885?

A. Yes, sir. And another copy of that that was signed was delivered to and filed in the county clerk's office in New York.

Q. Now annexed to that mortgage is a paper 30 which purports to be the consent of the stockholders. Do you recognize the signatures?

A. I recognize the signature of M. B. Converse and Albert Wild.

Q. And the affidavit?

A. Yes, sir; I also know the signature to the affidavit.

Q. As to the consideration?

A. Yes, sir; as to the consideration.

Q. Proceed. 40

A. Then I put the chattel mortgage on record and returned to New York. I then proceeded, out of the \$1,764, to apply the moneys as agreed upon. I went to Yonkers and paid the \$400 note, and on that same day I paid over to Mr. Mott the amount agreed upon, \$133. And I paid Mr. Woodruff in full on the following Monday \$1,230, in full discharge of the chattel mortgage; and I spent seventy cents in discharging the mortgage and thirty cents in going out to cover the \$1,764.

10 Q. Did you do that in behalf of the complainants in this suit, relying upon what you saw at the Converse Company as to the possession of the goods, and upon what Mr. Biers told you in regard to the non-existence of any liens except the chattel mortgage?

A. I did; and I would like to say something more which I have not as yet testified to, and that is with reference to the consideration. This transaction was all carried on between Mr. Converse and myself. There was a promissory note of \$1,000 given for money loaned, to the order of Mr. Valentine and endorsed by him, and held by the Dirigo Tool Company. That note I saw was endorsed by him personally in my presence and delivered to the Dirigo Tool Company. There was also a note of \$600 made by M. B. Converse, and endorsed by the Converse Company.

Q. Have you those vouchers?

30 A. Yes, sir. Here is the note of \$1,000 to which I have just referred.

Q. As part of the debt secured by this mortgage?

A. Yes, sir.

(Said papers offered in evidence.)

Q. Do you know the signature?

A. I know all the signatures on that. Then there was a book account for goods sold and delivered, which after adjusting the credits between the parties left \$2,400, and that was adjusted between the

40

And here was the door of the little back room, and in this back room were these nail-pullers.

Q. In a different one of the Converse Company's rooms?

A. Yes, sir; Mr. Beers opened the door and took me out there.

Q. Was there any locked door or other indication that they were not one and part of the same shop?

A. No indication of the kind; I should think they were one and the same.

Q. Was any intimation given at that time that they were not a part of or in the suite of rooms occupied by the Converse Co.?

A. Not at all, except as far as you may say that he said that some of the nail-pullers are put there; that was all.

Q. They were not with the others?

A. No, sir.

Q. Was any notice or information or intimation of any kind given to you prior to the conclusion of this mortgage matter of the existence of any lien of any kind upon any of this property except the Woodruff chattel mortgage?

A. None.

By Mr. KIMBALL: I will offer in evidence the cancelled Woodruff mortgage for the purpose of enabling us to identify the property mentioned in that receipt, marked Exhibit No. 2.

The former mortgage, heretofore referred to, is marked Exhibit No. 1.

Cross-examined by Mr. WOODRUFF:

Q. You attended an interview with me on or about the 4th day of April at my office in Newark, coming there with Mr. Converse, the president of the company—the Converse Man'f'g Co.?

A. Yes, sir.

Q. Wasn't your errand there principally to ob-

tain my consent to telegraph to the Yonkers National Bank, to stop the payment of a note of about \$304 that was payable to Frederick Woodruff and secured by his mortgage?

A. I can answer that question; my object in coming there was to assure you that negotiations were being made in good faith in order that you might telegraph; it was Mr. Converse's suggestion, not mine; I went to guarantee the truth of Mr. Converse's statement.

Q. That was the topic first spoken of when you came into the office after you were introduced to me?

A. No; the topic first spoken of was the probability of this loan.

treasurer of the company, Mr. Converse, and myself. Then there was \$1,764 money advanced and loaned at the time of the delivery of the mortgage, and which sum I have just accounted for. The \$600 note I thought I had amongst my papers. I think Mr. Kimball has it, as I cannot find it. I want to make this additional statement; that the note of \$600 had as additional collateral some shares of the Converse Manufacturing Company's stock.

Q. You say you cannot find the \$600 note? 10

A. No, sir; I had it among my papers yesterday.

Q. Have you made diligent search for it?

A. Yes, sir; I think I have; and with the addition of that \$600 note which I cannot find I have covered the entire consideration of the mortgage.

Q. You knew there was a \$600 note?

A. Yes, sir; as I have testified.

Q. Just a word about those nail pullers, some of which you have said were in another room; state how those rooms, that is, the room in which you 20 found the additional nail pullers, and the room in which the other nail pullers were, were related to each other; how they stood; and how they were occupied, if at all, so that the Court will have a clear idea substantially of the rooms?

A. The nail pullers were pretty generally scattered; the Converse Company occupied two floors, and some of the nail pullers were up one flight and some were up two; the room I refer to was directly here (witness illustrated). #

Q. It was discussed at some length? 30

A. Yes, sir.

Q. Did not you at that time have in your pocket a memorandum of the indebtedness of the Converse Manufacturing Company?

A. I had a paper.

Q. Didn't you take it from your pocket at my office?

A. I think it is quite probable that I did.

Q. Did you not at that time look over that list 40

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and have pointed out to you the claims which I stated were in my hands for collection :

A. No, I didn't. I have no recollection of it. In fact, I am quite sure I did not. You stated you had the list of the Newark creditors' claims in your possession.

Q. Wasn't allusion made to the claim of S. J. Meeker ?

A. Possibly, but I don't remember.

10 Q. And Atha & Company ?

A. No, sir.

Q. Nor George Havell ?

A. No, sir ; I am quite sure they were all mentioned together as Newark creditors, but not individually.

Q. Those gentlemen were all Newark men.

A. Well, I didn't know that.

Q. How long did you say that conversation lasted ?

20 A. I didn't say. I do not know. I should think about fifteen minutes.

Q. No longer ?

A. It may have been. I didn't look upon it at that time as of as grave importance as at present.

Q. You testified as to making an examination into the condition of the Converse Manufacturing Company, and as to making an inventory of this property at Newark ?

A. I made an inventory and verified it.

30 Q. Did you look at the minutes of the company to ascertain anything of its position ?

A. Not at that time. The minutes of the company were not—I never saw them until the assent to mortgage this property.

Q. You did see them at that time ?

A. I only saw that entry. I didn't examine the minutes at all.

Q. Have you ever examined the minutes ?

A. Never, except as I state.

40 Q. I understand, on the 2d of April, when you

first went there to the office of the Converse Manufacturing Company, you found the door locked, and knocked, and Mr. Biers admitted you ?

A. I don't know whether the door was locked or not. I didn't try. I knocked.

Q. And Mr. Biers admitted you ?

A. Yes, sir.

Q. Was there any work going on in the factory at that time ?

A. I am unable to say. I should think there was, 10
but I am not perfectly certain. There may have been some work going on in the upper room. Yes, there was.

Q. Who was there; do you know ?

A. No, sir.

Q. Do you know what work was being done ?

A. No, sir; I am not absolutely positive.

Q. You made no memorandum of that conversation at my office on the 4th of April ?

A. No, but I fixed it in my mind, however, by 20
going over it and telling Mr. Kimball about it when I got back to the office.

Q. Was there a request made at that time that no proceedings should be taken under the chattel mortgage until after a meeting of the company ?

A. Not in those terms.

Q. Did it not substantially amount to that ?

A. No, sir. I told you it would be impossible for the company to make that loan until it had this meeting, and if anything was to be done in the 30
matter it would have to wait until the company got together. You then said that you had been thinking of making an attachment on behalf of your creditors, but would not take any steps, say until I think you said the following Saturday, which would give us time enough.

Q. You went there on the 10th day of April to the Converse Manufacturing Company's shop in Mulberry street. Who did you find there ?

A. Mr. Biers was there.

Q. He was the only one?

A. I think not. I think there was somebody else there.

Q. Well, who else?

A. I think the workmen; perhaps the tool-maker, but I am not positive.

Q. There was no work going on, was there?

A. My impression is—Well, I am not able to state positively from my recollection. The first time I
10 went there there was somebody working there.

Q. You think so?

A. I am quite sure; and the second time I went there, my impression is there was; but I was so much occupied by other things that I cannot tell. I simply made a cursory view to find out whether there was a chance at the sheriff or anybody else being present; but Mr. Biers assured me that there was no lien or attachment on the property.

Q. Did you notice whether there was a partition
20 on the second floor dividing the front room from the rear with a door in it leading into the back room, in which some nail pullers were to which you refer?

A. I should have thought it was an adjacent or adjoining room. It was unquestionably in the same room, if that is what you mean, but I thought it was a back shop.

Q. Was there any work going on in there?

A. Yes, I think there was. I think there was some boys in there eating lunch.

30 Q. Did you notice the character of the goods there?

A. Not at all. I just simply looked at those things. He said the machinery down there belonged to them, and I did not care anything at all about that.

Q. That is all.

Re-direct:

40 Q. I do not think of any other question to ask you, but if there is anything you wish to explain you may do so.

MASCHIL D. CONVERSE, a witness produced on the part of the aforesaid complainant, having been duly sworn according to law, deposeth and saith :

Direct examination by Mr. KIMBALL :

Q. You are the president of the defendant, the Converse Manufacturing Company, are you ?

A. I was. I am not now.

Q. You were until what date ?

A. Until, I think, the 12th of May. 10

Q. During the month of April and all the time that these transactions were going on that Mr. Huntington has testified to you were president ?

A. Yes, sir.

Q. Your place of business was, as far as the manufacturing business was concerned, where ?

A. 211 and 213 Mulberry street, Newark.

Q. Do you remember the occasion of the execution of the chattel mortgage which we are seeking to foreclose in this suit given to the Dirigo Tool Company ? 20

A. Yes, sir.

Q. It was finally executed on the premises there, was it ?

A. Yes, sir.

Q. By you as president ?

A. Yes, sir.

Q. At that time and for several weeks prior to that time, in whose possession were the goods and chattels which are covered by this mortgage except those that were at Meeker's and the Newark Stamping Company ? 30

A. The Converse Manufacturing Company.

Q. Exclusively ?

A. So I always believed and do still.

Q. Were you not yourself daily or almost daily at the office during the first ten, eleven or twelve days of April, Sundays excepted of course ?

A. I was anyway until the 10th or 11th.

Q. Well, then, you know, don't you, whether 40

your company was in possession of the property or not ?

A. Yes, sir.

Q. Your answer is then what as to the possession?

A. My answer is as to the possession, that the Converse Manufacturing Company had possession up to that time any way. Mr. Biers was our superintendent, and had charge for us; we had workmen there at work for us up to that date also.

10 Q. Down to how late a date, as near as you can tell, was Mr. Biers in the employ of the Company ?

A. I think he remained in the employ of the company even beyond that date.

Q. Beyond what date ?

A. Beyond the 10th or the 11th.

Q. And his wages charged to the company in the regular way ?

A. Yes, sir.

20 Q. And prior to that time subject to the Woodruff mortgage that has been referred to, who was the owner of the property ?

A. The Converse Manufacturing Company.

Q. Did your company to your knowledge, or did you individually or as president of the company, authorize the transfer of the possession of this property to Mr. Biers as the representative of Mr. Woodruff ?

A. No, sir.

30 Q. You were the direct head of the company and had charge of the business of the company as president ?

A. I was the executive officer of the company.

Q. Have you with you a paper dated March 31st in the nature of a receipt signed by you and Mr. Woodruff ?

A. No, sir, I have not.

By Mr. KIMBALL: Have you a duplicate of it, Mr. Woodruff ?

40 Mr. WOODRUFF: Yes, sir.

By Mr. KIMBALL: Will you let me see it, please?

By Mr. WOODRUFF: Yes, sir; here it is.

Q. Do you recognize that as a paper signed by you about the date of it?

A. Yes, sir.

(Said paper offered in evidence and marked Exhibit No. 3 for identification, being the receipt of March 31, 1885, set forth in complainant's bill.) 10

Q. Have you heard the testimony of Mr. Austin Huntington this morning?

A. Yes, sir.

Q. You heard that part of it relative to a conversation between Mr. Woodruff and Mr. Huntington, at Mr. Woodruff's office, at or about April 4th, 1885. Did you hear that part of it?

A. I heard his testimony.

Q. Were you present on that occasion referred to? 20

A. Yes, sir; but I don't know whether it was on that date or not.

Q. Do you remember the occasion of coming from New York to Newark with Mr. Huntington to Mr. Woodruff's office, and a conversation taking place there?

A. Yes, sir.

Q. And that is the only time you went there in that way? 30

A. Yes, sir.

Q. And it was about that date, to the best of your recollection, was it?

A. My impression about it is that it was earlier. My impression was it was a week or more before that.

Q. Did you go from New York to Newark and hold a conversation with Mr. Woodruff one day?

A. Yes, sir. 40

Q. Did you more than once ?

A. Only once.

By Mr. WOODRUFF :

There is no doubt about the date; it was the 4th of April.

Q. According to your present and best recollection state whether the conversation was substantially as given by Mr. Huntington ?

10 (Question objected to by defendant's counsel upon the ground that this witness should be interrogated on the conversation itself.)

By the WITNESS :

I would like to state in full all the circumstances connected with that transaction.

Q. Well, give us the conversation first, or state generally the circumstances, if you wish ?

A. The Converse Manufacturing Company had a
 20 contract for supplying to the Dirigo Tool Company a large number of nail extractors, which we manufactured for them ; and the Converse Company bought from the Dirigo Tool Company the machinery plant at the time of making the contract for the supply of nail pullers ; and the two contracts, that is, the purchase of the machinery, and for the supply and manufacture of nail pullers, were contained in one contract, one
 30 paper. We finally succeeded in getting out the first lot of these goods, and the Dirigo Tool Company after some delay took the first lot, or their then president, Mr. Valentine, as individual, took the first lot, and gave us \$2,000 for them. The Converse Manufacturing Company was without sufficient means, even if the contract had been carefully carried out on the part of the Dirigo Tool Company, to properly conduct its business, and as early I think as the first part of January, or the first part of February, I commenced to negotiate
 40 with Mr. Lawson Valentine, to furnish money,

either individually or through his company, to our company, in order that it might go on. And as an inducement, I explained to him that there was considerable profit in the manufacturing of these nail pullers, and as I could control the entire stock inside of our company, if he saw fit to assist us he could reap considerable advantage by furnishing us with such money as was necessary, from the fact that I would only ask them to put up the amount of money that would be equal to the profit to be derived on their contract with us. At first he gave me no encouragement; and up to probably the middle of February; but from time to time, having been very intimate with him, and having an office in the same building with him—his office and that of the company were in the same room—he continued further negotiations with me, and expressed some hope that some such arrangement as I had proposed could be effected, and it took different forms from day to day. Some days he thought he might be interested personally, and at other times he thought there might be a consolidation between the two companies. At other times he thought the loan might be made through the company, or from himself as individual to ourselves, taking our chattels and goods as security and allowing us to work the contract out in the ordinary way. Well, subsequently to that he made me a loan personally of \$1,000, taking as collateral for that nail extractors. His Company being unable to carry out the contract which called for \$650 worth of goods per week, they did not take the goods, and that really was what cramped me and cramped our Company. The fact that, though we were ready to carry out our contract, and having the goods on hand, and having our arrangements made so that we could turn them out as rapidly as a thousand a week, as the contract called for, they were unable to take the goods, as they had agreed to. And as I had already stated to him the profit there was in the

goods, it seemed the wisest thing for me to do to make some arrangement with him whereby his company could take the responsibility of manufacturing or furnish money for that purpose, especially as I was only asking them to furnish an amount equal to the profit that would afterwards accrue upon the goods under the contract.

After a number of days' negotiation with him personally, not having met Mr. Huntington as yet, and when I urged him and told him that I had obligations coming due which must be met, he finally said to me: "If any money is loaned on your chattels, then that is a legal question; that is a question for a lawyer, and I will have Mr. Huntington go and look into the state of the Converse Manufacturing Company's affairs and report to me, and we will act on his report." Up to that time he had so encouraged me that I had so stated to Mr. Woodruff and others with whom the Converse Company had dealings, that Mr. Lawson Valentine or his company proposed to take an interest with us, and I thought it would be carried out, and I repeated that to them continually as the negotiations were going on. Well, about this time, which, I think, was near the 14th day of March (and my memory is refreshed as to that, because the last conversation I had with him was on the 12th, and it was two or three days after that), he called with Mr. Huntington, and the first thing I did was to give to Mr. Huntington a schedule of the assets and liabilities of the company, which took twenty-four to forty-eight hours to prepare. Immediately after that we went to Newark with someone else (I don't know who), and made an examination of the machinery, and checked off the articles shown upon the schedule—the list of machinery and tools—and after figuring out with me all the obligations and liabilities and assets of the company, he finally went and made his report to Mr. Valentine. Well, the day on which he made that report Mr. Valentine called me into his office

when the report was made, and he says, "Well, Mr. Converse, I am satisfied now that it is only a question of how quick we can get it." He then asked me if I could hold these parties off who had claims that were pressing me, as I had before explained to him, among others being the foundryman who would not furnish us with any more goods; so we were unable to continue manufacturing. I told him I thought I could; that the key to all of them was Mr. Woodruff; that he knew of these parties and had some of their claims in his hands. He first suggested that we should join in a telegram to Mr. Woodruff. I told him I thought, in view of the fact that I had repeatedly told Mr. Woodruff what had been going on, and as there had not been any received from it, I would rather have some representative of his, or he must go with me personally and have a conversation with Mr. Woodruff. He said, "Very well, we will have Mr. Huntington go with you." Now, then, just previous to this date, a few days, in view of this negotiation which was going on and the encouragement which they had held out to me *this* paper was executed, Mr. Woodruff explaining to me at the time that he had these claims put into his hands; that these parties were all friends and acquaintances of his, and that this paper would not be forced against us, but he wanted some evidence of good faith on our part, and then he could hold these parties off until these arrangements were made; and in justification of that this paper was executed. I asked at the time why I should sign a paper which would prejudice all the other creditors of the company; and I also pointed out to him that he had this Benjamin Atha's claim mentioned in there, which he claimed had been secured before by nail pullers delivered to him as collateral, and it was understood between us at that time that the reason why he waived the former security was, that the Dirigo Tool Company held the right to manu-

facture and sell, and that we were simply the agents to manufacture, and the Dirigo Tool Company might enjoin them if they undertook to sell and realize on them as collateral. At any rate, I refused to sign that paper if it was going to prejudice the other creditors or prejudice our negotiations, and he said that the very purpose of it was to prevent any attachment or trouble arising, and not to prevent my negotiating with anybody. I

10 had negotiations going on with other parties, and almost every day some one would call in there from New York to examine the machinery and look it up and see what it was worth. And I didn't want anything done that would defeat my object. Mr. Huntington went over there to justify me in my statement to Mr. Woodruff that negotiations were going on. And I might say, that negotiations were to that time with Mr. Valentine and the Dirigo Tool Company contemplated the loaning of money

20 enough to pay every obligation of the Converse Manufacturing Company, everything, and that was so stated by Mr. Huntington to Mr. Woodruff at that time. I don't know whether this paper was shown to Mr. Huntington when he was there or not. I think not, as it was regarded between Mr. Woodruff and myself as a purely personal and private matter which had no bearing or weight or force, and I should have never signed that paper if I had not supposed

30 that it would be held off indefinitely in view of the negotiations that were going on; and as I was dealing with such responsible parties as Mr. Lawson Valentine, and having his word for it that he would undertake to see me through in some way, I felt justified in doing anything which would not lay our Company liable to be thrust at once into the midst of possible success.

On the day that the mortgage was executed—I mean the one that the Dirigo Tool Company now

40 have—I called at Mr. Woodruff's office after the

mortgage was executed with the intention of— I don't know whether they had the money with them. I believe they had— with the intention of paying off the mortgage of Mr. Woodruff, and saying to Mr. Woodruff that the balance of the money would be likely to be had the next morning—was sure to be had the next morning, in accordance with my arrangements that had been made. That this mortgage contemplated relieving my credit in such direction in order that I could place new notes which I had prepared that very evening for placing; and I told him if he would bring in his mortgage I supposed the money could take up all those claims of Mr. Atha, Mr. Havell, Mr. S. J. Meeker, and the workmen, and all others round Newark would be forthcoming. We found Mr. Woodruff had gone out. He had gone home for the evening, and we didn't know where he lived, so were obliged to go to Yonkers in order to get my paper into the bank, and in order also to take my other paper out of the bank. I had to go at that time, as that was the discount night, and I would find the bank open a little after banking hours, so that I could not spend much time in hunting Mr. Woodruff up then, but we contemplated doing so the next day. Mr. Huntington then went with me to the Yonkers bank, and I took with me a note which I intended to have discounted, but I found it was too late to make any presentation that evening of the paper that I intended to offer for discount, as the board had already adjourned its meeting—its formal meeting. So we went into the telegraph office, and I sent a telegram to Mr. Woodruff, a part of which Mr. Huntington dictated, saying to him that some one would call upon him to-morrow—I don't remember who—and take up the Frederick Woodruff mortgage, and that arrangements had been made for the taking up or payment of the other claims in his hands. Well, the next morning came, and I called upon the President of the Bank, and found that the size of

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the note that I desired discounted was one which he could not take and discount over the counter without a meeting of the Board of Trustees or without consultation with them. I left it with him and I was to have some sort of an answer on Monday. I came down to New York, and spent a day about my own affairs—the Converse Company's affairs in the city, and then went home and remained until Monday. On Monday

10 morning I went to the bank and there I found that they had information that one of the endorsers on that note that I had offered was not acceptable, and upon my pressing them to state which one it was, said it was the Converse Company's endorsement. I asked them why. They said they had learned that morning of an attachment against the Company's goods in Newark. That was a surprise to me. I didn't understand it at all; and I then came straight to New York; went to Mr. Huntington's

20 office, or Mr. Kimball's office, Mr. Huntington having gone away—he had started before I got back, to be gone a number of weeks, and had left matters in Mr. Kimball's hands—I went to Mr. Kimball and he stated to me that such was the case; that there was an attachment here issued by Mr. Woodruff; that he had offered Mr. Woodruff the money for the cancellation of the Woodruff mortgage, and I believe he had refused it up to that time, but had taken possession of the mortgage.

30 Q. Just there let me interrupt you. In point of fact are you sure that I said it was an attachment, or what was it you understood it to be. What was the possession taken under?

A. Under the mortgage.

Q. There was no attachment. I don't want to mislead you. (Handing witness paper.) Won't you look at this note and the date of the purchase, and by thus refreshing your memory, see if you can state whether the conversation at Mr. Woodruff's

40 office was or was not about the 3rd or 4th of April?

A. It must have been at or about the 3rd or 4th.

Q. There is no doubt about it really; that is the fact?

By Mr. WOODRUFF: He has not yet answered your question as to the conversation on the 4th.

Q. Oh, yes. Go right on with that.

A. Well, I will state what took place there. On the day that Mr. Huntington was there I called Mr. Woodruff out and explained to him that I had brought Mr. Huntington, who was attorney for the Dirigo Tool Company, and Mr. Valentine, who wished to tell him what I had before assured him of—that there were really bona fide negotiation going on for the money. 10

Q. Leave out any conversation between you and Mr. Woodruff in the absence of Mr. Huntington?

A. Well, that is all there was of it. Then I took Mr. Huntington inside and introduced him to Mr. Woodruff and Mr. Huntington did the talking. We went in together and came out together, and what Mr. Huntington said was this, that there were negotiations going on between Lawson Valentine or between the Dirigo Tool Company and the Converse Manufacturing Company looking to to the loaning of a sufficient amount of money to pay all the obligations of the Converse Manufacturing Company and the taking up of the Woodruff mortgage, and otherwise putting the company into business shape, and that I had given him a list of the liabilities and assets of the company, and he had made a thorough examination and found them about as I had represented in every way, and that they were very much disposed to help me, and he hadn't any doubt in his own mind but that they would do so,—that he should recommend them to do so. And Mr. Woodruff then stated that he had always held me in the highest esteem, and that he knew Mr. Beers and regarded him favorably too, and was also satisfied that he was a capable man, that we had a nice ma- 30 40

chinery plant and that he was willing to do anything that he could to favor the Converse Company; that certain claims had been put into his hands for collection, and I am not sure whether he mentioned the names of the parties or not, but I am rather inclined to think that he did, and that he could hold those off for a time but he wished the thing should be settled up by Saturday of that week which was two or three days hence. He would delay until then
10 anyway. Mr. Huntington seemed to be satisfied that it would be done, and I believe that Mr. Huntington, at that time, thought it would be done. That these negotiations would result in the raising of sufficient money to pay all the indebtedness of the Converse Company. We then went back to New York and the company held a meeting, that is, the Dirigo Tool Company did, and Mr. Huntington made a report to that meeting and then came out and told me the result of it, which was, that they had
20 decided not to make a loan, and the only reason they gave for that was, that they didn't want a machine shop on their hands. Well, this was a complete surprise to me and I told him that I didn't know how to get out of it. I think that was on Saturday. I then asked him if there wasn't some way for either the Dirigo Tool Company or Mr. Valentine to save my credit in some way, in order that I could get through and relieve myself or the company, and out of that grew this
30 mortgage, and the payment of the Woodruff mortgage and the taking up of the note at Yonkers that I spoke of, &c., which was all done in great haste during the next day, Friday, I think, and that seemed to promise a solution of the problem; it would undoubtedly have given us a solution had it not been that a report was spread that the place was under foreclosure, which reached the ears of the Yonkers Bank and discount of my note was refused on that ground.

40 Q. Prior to the signing of the paper of March

31st, which is spoken of as a receipt in the answer, was there or not any agreement on your part or on the part of your company to transfer these chattels or any of them to Mr. Woodruff?

A. No, sir; nothing except the chattel mortgage.

Q. Will you state whether or not a demand was made on behalf of the Dirigo Tool Company by me for them or any body else for the demand of this mortgage before the filing of the bill? 10

A. You made a demand on me personally.

Q. Can you state whether or not the date was about the 14th of April, 1885, when I made the demand?

A. It was as early as that.

Q. Look at the consent annexed to the mortgage, and state whether or not you know the signatures, and if so, whose they are?

A. I know all of them; there is my own, my wife's and Mr. Wild's, who was then secretary. 20

Q. Do you know whether or not you three held the majority or two-thirds of the shares of the stock?

A. Yes; those three persons held a majority of the stock as it stood on the books of the company at that date.

Q. Two-thirds?

A. Yes, sir; upwards of two-thirds.

Cross-examined by Mr. WOODRUFF: 30

Q. You have alluded in your testimony to the manufacture of nail pullers at this shop in Mulberry Street, Newark?

A. Yes, sir.

(At this point Complainants' counsel desired to still further examine the witness, and asked the cross examination to be suspended for the purpose.) 40

Re-direct-examination :

Q. State whether or not during the first 9 or 10 days in April last, there was any work going on by the Converse Manufacturing Company?

A. Yes, sir; there was.

Q. At the factory?

A. Yes, sir.

Q. I mean the factory referred to in Mulberry street?

10 A. Yes, sir.

Q. Was the work being done for yourselves, or for whom?

A. It was being done for the Converse Manufacturing Company; the Converse Company was doing work for itself on nail-extractors or on parts of nail-extractors.

Q. Part of the business of the company?

A. Yes, sir; we had not castings so that we could make them complete, but we were finishing up cer-
20 tain parts of them.

Q. That is all.

Cross examination by MR. WOODRUFF :

Q. You said that these conversations, beginning in March with Mr. Valentine, or beginning earlier than that, and continuing through the month of March, and seeing me from time to time in connection with the claims of certain creditors. Now, in
30 connection with that subject will you please to look at this paper, and tell me whether or not it is in your handwriting and what it purports to be?

A. It is in my handwriting.

(Said paper is a paper dated March 30th, 1885, being the paper set forth in the answer, and being an order to deliver 600 nail-pullers to Philemon Woodruff, attorney, and signed by Mr. Converse as president.)

40 Q. How came that to be executed?

A. Well, one afternoon our superintendent, Mr. Beers came over to New York and saw me about it, and told me that Benjamin Atha had put his claim in the hands of Mr. Woodruff for collection, and that Mr. Woodruff had seen him or met him, and asked him to come over and see me about it, that he had suggested that he could give us leeway if we would give him something which would enable him to say we intended to do what was right, and that Mr. Woodruff had suggested that we make an order for some finished nail-pullers if we had them, and that he would just hold them in that position until the debt was paid, and I told him that we had no objection to that at all, but there was only one fact connected with it and that was that the goods were manufactured for other parties, and that if it ever came to levying on them or anything of that kind, that the chances were the sale could be enjoined by the other parties who held the patents. Mr. Beers said that Mr. Woodruff had stated that he would or could hold these parties off easily on such a paper. I sat down and wrote that out hastily, and gave it to Mr. Beers and he took it over; that is all I ever knew of it or heard of it.

Q. You were subsequently at the factory, subsequent to that date?

A. I was very frequently.

Q. Did you see that any of those nail-pullers had been taken from the rooms of the company and removed?

A. That was a very difficult thing for me to determine even if I had wanted to, because I knew nothing about what was already in, or was being manufactured; I didn't notice that any of them were missing from the room.

Q. Did you know it?

A. No, sir; not at that time.

Q. How long was it before you knew it?

A. On the day of the sale, I think, first.

By Mr. KIMBALL: Q. Can you fix that date?

A. No, sir : they were finishing goods all the time at that time and putting them on the rack, and it was difficult to say or guess how many were on the rack and how many were in the boxes, because they were scattered around the place, and unless you went and examined the boxes you could not tell how many there were in the place.

Re-cross :

10 Q. You say that certain work was going on in the factory on the 31st of March; who were at work then?

A. Mr. Boardman, and I forget the names of the other workmen; I can't recall them, but there were two or three; there was Mr. Beers, but the names of the other workmen I am not familiar with. Mr. Boardman was our machinist or tool-maker; I rarely came in contact with the others.

Q. (Handing witness a paper.) State whether
20 you have seen that paper before?

A. Yes, sir.

Q. Did you send it to me; did you mail that paper to me yourself?

A. I don't know whether I did or not.

Q: Whose signature is attached to it on the back?

A. Albert Wilde.

Q. He was secretary of the company?

A. Yes, sir.

Q. Was that resolution, which this appears to be
30 a copy of, passed by the company?

A. Yes, sir.

Q. How came that resolution to be passed?

A. At your request.

Q. At the time that is stated there?

A. Well, that was a number of days afterwards.

Q. Well, it is stated here, "that at a meeting of the Board of Trustees of the Converse Company, &c., on the 4th of April, 1885, the following resolution was passed;" was there a meeting on that day?

40 A. I suppose there was, if that states so; there

must have been ; that resolution was passed at your request.

Q. Made at what time ?

A. Either at the time of signing that paper or subsequently, I don't know which; I think subsequently.

Q. Wasn't that request made on the same day that Mr. Huntington was at my office with you ?

A. I hardly think so; it may have been; my recollection is that I came and went with Mr. Huntington without any opportunity of speaking to you further than I have already testified. 10

Q. Do you recollect what took place on the evening of March 31st, looking at a paper signed at that time to refresh your memory ?

A. Did you say in the evening ?

Q. Afternoon or evening—late in the afternoon ?

A. No, sir.

Q. How came that paper to be signed ?

A. This paper was signed as I have already explained. 20

Q. What time in the day was it ?

A. I can't say.

Q. What conversation took place, state it fully, at the time the paper was signed, the paper dated March 31st, 1885, what conversation took place at the time and just before that paper was signed ?

A. I recall now that it was in the evening that that paper was executed ; Mr. Beers came over to New York at Mr. Woodruff's request to see me ; I suppose Mr. Beers found me at the office which was then 5 o'clock or 5:30 P. M., and he said, wont you come right out to Newark ; I replied, " Yes," and we went to the depot and got a train and he explained before we reached the train, on the way to it, that Mr. Woodruff had had two or three accounts placed in his hands for collection against our company, and Mr. Woodruff had asked him to come over at once and see me as he didn't want to issue any attachment on the place or do anything 40

to bother me in my negotiations and that if I were to come over he thought he had a way whereby I could have plenty of time and such a thing as an attachment would be avoided. I went over with him and after I got there Mr. Woodruff hastily and, in fact, I think he had a satchel in his hand and was about leaving his office, but he came back and hastily explained to me that Mr. Meeker and a Mr. Havell had placed their claims in his hands, and that he had previously had Mr. Atha's claim, and that they had directed him now to issue an attachment against our property, but he did not want to do that if there was any way of avoiding it and as he believed, as the thing had been explained to him by myself and Mr. Huntington that the negotiations would be carried out, he desired to do nothing that would interfere with them; I then told him hastily what was going on and repeated to him the progress of the negotiations; he said, wait a minute and he took his pen, sat down and wrote out two papers which, upon reading, appeared to be duplicates; now, he said, if you will sign this paper there will be no necessity of any attachment, and I can hold these parties in check for any length of time; I then called his attention to the fact that I wouldn't sign any paper that would prejudice the interests of any of our stock-holders or creditors and he reiterated that the paper would not be one that would get me into any trouble whatever, or that I should have any difficulty upon that point, and with that understanding I signed the paper; that is all there was said about it, except that Mr. Woodruff leaned back in his chair and said, now then that is the wisest thing you could do; just keep this thing quiet until we get the negotiations through with, and then nobody will know anything at all about it; there will be no publicity or anything else to disturb the negotiations.

Q. Mr. Beers was present at that time?

40 A. Yes, sir; he came in there.

Q. Did he stay there the whole time?

A. Yes, sir.

Q. Do you recollect any conversation taking place with respect to Mr. Beers getting his salary out of the company before you left?

A. No, sir; he up to that time had never made any demand on me for what was due him.

Q. Didn't you request that this paper should be executed in duplicate, so that you could have a copy?

10

A. No, sir.

Q. How often were you in Newark between the 30th day of March and the 10th day of June?

A. Every day almost, I think every day.

Q. Were you in my office ever except on March 31st and April 4th?

A. Not that I remember of.

Q. That is all.

(It is admitted that the sale was on the 6th day of May, 1885.)

20

Recess.

July 8, 1885, 2 P. M.

Re-direct examination of Mr. CONVERSE continued:

Q. State, Mr. Converse, whether the property referred to in the receipt of March 31, was or was not substantially all the assets of the Converse Manufacturing Company?

30

A. I suppose it was all their goods and chattels.

Q. Had they any real estate?

A. No, sir.

Q. Any assets of any consequence?

A. No, sir.

Cross-examination by Mr. WOODRUFF:

Q. The company was the owner of the patent was it not?

40

A. It had a title to the patent, which has lapsed since, or was lapsed, I believe at that time.

Q. Do you know the date of the lapsing of the title to the patent and how it lapsed?

A. By failure to record its title.

Q. Do you know the date of that?

A. No, sir.

Q. What was that patent for?

A. It was not a patent, the patent was allowed,
10 but not issued; it was for a snap back.

AUSTIN HUNTINGTON, being recalled, saith :

Q. Referring to the conversation of April 4, with Mr. Woodruff, state what if anything further than has been stated, you said to him with reference to your power to bind the Dirigo Tool Company or
20 Mr. Valentine?

A. I told Mr. Woodruff whilst I had every belief that this loan would be allowed, that I would at the same time distinctly state that I had no authority to bind either the Company or Mr. Valentine, but that I should advise them to make this loan, and I believed they would follow my advice.

Complainant offers the Statutes of New York, 7th edition, volume 2, act of 1864, Chapter 517, and the amendment 1871, Chapter 481, and Laws of 1878, Chapter 163, Section 1, on page 1749 of volume 2.
30

Complainant declares his testimony closed.

It is admitted for the purpose of this case the amount due Benjamin Atha and Company, \$338.49, and the amount due George Havell, \$42.72, as alleged in the answer, are correct.

JAMES M. CORY, being duly sworn on his oath, saith :

Examined by P. WOODRUFF, Esq.:

Q. You reside in Newark ?

A. I do.

Q. You are a bookkeeper for Mr. Meeker, are you not ?

A. I am superintendent.

Q. Are you acquainted with Mr. M. D. Converse ? 10

A. Yes, sir.

Q. Please look at this note dated January 15, 1885, made by M. D. Converse, and state whether the signature to that note is his and whether it is his endorsement ?

A. Yes, sir ; they are correct.

(It is admitted that the note for \$885.50, which is offered in evidence, dated January 15, 1885, is made by M. D. Converse, and that 20 the endorsement "The Converse Manufacturing Company," by M. D. Converse, their president, is correct.)

Q. Have you the books of the concern here ?

A. I have.

Q. Look at them, please, and say what is the condition of the accounts of the Converse Manufacturing Company with S. J. Meeker ; what is the total amount due by the book ?

30

A. \$1,160.29.

Q. Does that include the note ?

A. Yes, sir ; and the protest.

Q. Have you the book of original entries of the S. J. Meeker account here ?

A. I have.

Q. Produce it ?

A. It is here. (Book offered in evidence.)

Q. Are the entries all in your own handwriting ?

A. Yes, sir.

40

Q. In both books ?

A. Not in both books. We have a bookkeeper who makes entries in the original book.

Q. Are the goods mentioned as recorded in this book ; have they been furnished to the Converse Manufacturing Company at or about the dates as appears in the books ?

A. Yes, sir.

10 *Cross-examination* by Mr. KIMBALL :

Q. Who made the sales ?

A. Well, I do not understand fully the question. The goods were sent down from time to time, and I had charge of sending them down ; I suppose that is properly your answer ; do you mean who gave the order for the goods ?

Q. Who conducted the negotiations which resulted in the sales to the Converse Manufacturing
20 Company ?

A. Mr. Meeker.

Q. In your presence ?

A. Partially so.

Q. The entries as made by you were made from what ; I understand the entries in the day-book were made by you ?

A. Yes, sir.

Q. From sales reported to you ?

A. Usually from the weights, as I weighed them
30 myself.

Q. You weighed the goods first, and, in most instances, you made the entries from personal knowledge of the weights ?

A. Yes, sir.

Q. How about the prices ?

A. The prices were given by Mr. Meeker ; some of the prices in my presence.

Q. And reported to you in other cases ?

A. Yes, sir.

40 Q. Was any work done, or rather was this ac-

count solely for goods sold and delivered, or did it include some of the work performed?

A. Those goods were all charged as for goods delivered.

Q. The account does not include any charge for work done?

A. Not delivered; no, sir.

Q. Were goods manufactured in some instances for Mr. Converse or the Converse Company?

A. Yes, sir.

Q. How much—to what extent—generally speaking? 10

A. The full amount of their account.

Q. Was it for work done, most of it, or only a small part? As I understand your testimony, your account is made up of two classes of charges; the first for goods sold and delivered outright on which you performed no work. Am I right so far?

A. We performed the work before the goods were delivered.

Q. What work? A. Materials and castings? 20

Q. Then the charges are for goods manufactured, to a great extent?

A. Yes, sir.

Q. Altogether?

A. With the exception of this note, which is in the total charge which represents castings.

Q. The amount is for materials furnished?

A. Yes, sir.

Q. All made up of charges for castings? 30

A. I cannot tell that without looking at the account.

Q. Have you not some goods in your possession or in the possession of Mr. Meeker in his shop, which you have partially or wholly made for Mr. Converse or his company?

A. Yes, sir.

Q. To what extent in value, as near as you can tell me?

A. Probably \$100 worth. 40

Q. Are those charged for in the account as you have stated it?

A. No, sir.

Q. None of them?

A. No, sir.

Q. Have you ever made any charge for that work, to him; rendered him any bill?

A. We wrote to him telling him about what we had on hand; it did not go to him in the shape of a
10 bill.

Q. General information?

A. Yes, sir.

Q. About what value of goods have you belonging to him?

A. None.

Q. The goods you have performed this work on, you claim do not belong to him?

A. Yes, sir.

Q. On what ground do you make that claim?

A. We made them on his order, and if they had
20 kept going they would have been delivered; probably.

Q. Did not they furnish something?

A. They furnished some steel.

Q. That steel is made up into pulleys and are in your possession?

A. Yes, sir, I should think about 500 pounds of that steel.

Q. I want to get at what is the value of that property or those pulleys, including the steel in them
30 and the work; what is the value of those goods as manufactured by you to-day?

A. Some castings have not the steel in, what we properly term the butts.

Q. Then you make those?

A. Yes, sir, we make both.

Q. You did not furnish the steel?

A. No, sir.

Q. Could you give me the value of the articles as
40 made up, including the steel?

A. As I remarked there was probably one hundred dollars worth between the two kinds.

Q. I understand that it was the work done on that and the charges on them were worth one hundred dollars; was not the steel worth something?

A. As they sent up steel we gave them credit, as it went down and was fixed in the castings.

Q. The goods which you have charged for, as appears from your books, have all been delivered?

A. Yes, sir.

10

Re-Direct examination by Mr. WOODRUFF:

Q. This \$100 worth of goods you have still on hand are still subject to the order of the Converse Manufacturing Company, on their paying you for the material and labor put on them?

A. Yes, sir.

Q. The others are free from all these complications; this \$1,160 claim?

A. Yes, sir.

20

PHILEMON WOODRUFF, being duly sworn on the part of the defendant, saith:

I am attorney and counsellor at law of the State of New Jersey, practising in the City of Newark.

About the latter part of December, 1884, application having been made to me for a loan upon the goods and chattels of the Converse Manufacturing Company, my brother Frederick Woodruff consented to make the loan of \$1500, on those goods and chattels, and the chattel mortgage marked Exhibit 2 for the complainant was drawn up, executed and recorded, by the Converse Manufacturing Company to Frederick Woodruff, to secure the payment therein mentioned of \$1500. 30

The first mentioned in this mortgage Exhibit 2 for the complainant was paid at its maturity; after that I have no direct connection with the affairs of the Converse Manufacturing Company, further than one or two casual conversation with Mr. Bearse, its 40

superintendent, and Mr. Converse, its president, until the month of March, 1885, except the collection of one small claim against the company which was paid, and which is not relevant to this issue.

In the latter part of March, about the 28th, I think, I received from Mr. B. Atha & Company, a claim for collection against the Converse Manufacturing Company, amounting to \$338.49.

I then prepared papers for issuing a writ of attachment, but before using them for any purpose I
10 went to the office of the Converse Manufacturing Company, and there saw Mr. Barse, its superintendent.

I told him that this claim had been placed in my hands for collection, and unless paid or secured at once, I should be compelled to issue a writ of attachment against its property, as a non-resident corporation, which I had then prepared.

He desired an opportunity to see Mr. Converse,
20 the President of the Company, and ascertain whether some delay could not be had in the matter.

I informed him that if the claim was secured in a way that was satisfactory to myself, that some concession of time would be granted.

The subject as to the kind of security was then discussed, and he informed me that the company had six hundred and seventeen completed nail pullers, in the factory building, at 213 Mulberry street, Newark.

I told him that security would be satisfactory, if
30 they were turned over to me.

He then left me, stating he was going to New York to see Mr. Converse, the president of the company.

On the following morning I received a letter, which I here offer in evidence, signed by the Converse Manufacturing Company, signed, M. D. Converse, its president, and dated March 28, 1885.

The letter is as follows :

“211 Mulberry Street, Newark,
March 28, 1885.

PHILEMON WOODRUFF, Esq., 810 Broad Street.

Dear Sir :

Mr. Beers informs me of the action of the Steel Company. I would say that I did not reach Newark, to-day till after 5:30 P. M., and that I will call some time Monday, if possible, and before Tuesday 3 P. M., at latest. I cannot set more specific time in consequence of negotiations which I must follow 10
to a conclusion, which are to give the company funds. The account will be adjusted satisfactorily soon, in some shape or other.

THE CONVERSE MANUFACTURING COMPANY,
M. D. Converse, President.”

Not receiving any satisfactory reply from Mr. Converse, for I did not deem this letter a satisfactory reply, I insisted on Mr. Beers having those tools turned over at once, as security, and Mr. 20
Beers again stated he would go to New York and arrange in relation to the matter.

He did go I am informed, on the 30th of March and on that day I received from him a telegram, which he has since acknowledged that he sent to me and which is as follows :

“ NEW YORK, 30th March.

To PHILEMON WOODRUFF, 810 Broad Street, Newark :

Can have tools as security ; accounts will be set- 30
tled by first of month, sure.

CHARLES BEERS.”

Mr. Beers soon after returned from New York ; I went to the factory, saw him there, and directed that the six hundred tools should be set at one side, in a place outside of the premises occupied by the company, and on the evening of the 30th of March, I saw the work of removal of those tools begin personally. 40

Mr. Beers brought back with him from New York a paper in the handwriting of Mr. Converse, dated March 30, 1885, ordering Mr. Beers to deliver to me "six hundred finished nail pullers, with this order, as collateral security in the case of Benjamin Atha taking his (Woodruff's) receipt for same, reciting this condition, and deliver the said nail pullers to whomsoever he may direct," signed, Converse Manufacturing Company. M. D. Converse, President.

The work of removing these goods, from the part of the building which was occupied by the Converse Manufacturing Company, to another part of the building which was occupied by the owner of the building and in which he carried on an independent business, was commenced under my personal observation on the night of the 30th of March.

On the following morning, March 31, early in the morning, I went to this factory and saw boys at work there still putting the finished nail pullers in boxes, carrying them down stairs as finished, and carrying them out into this back room, which was separated with aboard partition, from the premises leased by the Converse Manufacturing Company.

I waited there until a considerable number had been removed, and on receiving Mr. Bearse's assurance that the balance would be removed there during the day, and not having time to stay until all were removed I gave him a receipt, I have not got a copy of it, for six hundred nail pullers as security for the claim of B. Atha & Company, and on that day I made a memorandum on the back of an envelope on which I had placed the claim of Atha & Company against the Converse Manufacturing Company, with certain other memoranda, indicating where they were recorded in my books; this memorandum reads as follows :

"Received six hundred nail pullers for above and stored them at the company's risk

in E. Sheets factory, March 31, 1885, 10
A. M."

The heading upon that envelope is B. Atha & Company versus the Converse Manufacturing Company.

After that was done, and about noon of that same day, I received a claim from George Havell against The Converse Manufacturing Company, for \$42.72, and placed it in the envelope, and later about 3 10
o'clock of the same day I received a claim from S. J. Meeker, against the Converse Manufacturing Company, for \$1,160.29.

The claim of Havell, being small I prepared no papers in that matter, but the claim of Meeker being a large claim, I prepared a writ of attachment in the Essex Circuit Court, sent to Mr. Struble, of Newark, who has an office adjoining to the office of Mr. Meeker, and had the affidavit sworn to, necessary 20
for the attachment.

The papers were then as they are now in my hands, in a position ready to issue the writ of attachment.

I then saw Mr. Beers again, Mr. Converse not being at the office of the company, told him of these claims I had in my hands, and that they must be secured, and must be secured that day, and if it were not done, I should issue a writ of attachment, and seize the property.

Upon that Mr. Beers desired some time in which 30
to see the President of the Company.

I told him it was then perhaps four o'clock in the afternoon, and that he might go to New York, and see Mr. Converse, and if no person would get any preference from my delay, in retaining the writ of attachment, I would not issue the writ until the following morning, but in the meantime these claims must be secured.

He wanted to know how they might be secured. I told him they might be secured by chattel mort- 40

gage or by a pledge of the goods, and if Mr. Converse would turn over the goods in the factory, machinery and all the property there as security for the three claims I then held, that I would grant him a reasonable indulgence before distressing the company.

Mr. Biers left me, said that he would go to New York and said that he would bring back Mr. Converse, without fail that night.

- 10 I waited at my office until six o'clock; they did not come; I then took my bag of papers and walked to the depot of the Newark and New York Railroad and waited there; I was anxious to catch the train to Orange, where I lived, if they did not come on the train due at Newark at six o'clock; for that reason I went to the depot.

Converse and Beers stepped from the train, shook hands with me, and walked with me from there to my office.

- 20 When we all reached my office I explained to them fully the position in which the company was situated; that these claims must be secured and must be secured then, or on the following morning I should issue a writ of attachment.

Mr. Converse, as to whether a chattel mortgage should be given or not, that was not much discussed; I did not care that that should be done, for at that time I had in my hands the chattel mortgage given by them to the Converse Company to Frederick Woodruff, and was fully satisfied that a pledge of the property would better answer my purposes than the formalities connected with the execution of a chattel mortgage, and the delay that would probably ensue from calling a meeting of the company for the purpose of passing a resolution that the goods and chattels should be mortgaged.

- 30 That had been done in the chattel mortgage given to Frederick Woodruff, and occasioned some delay, and I was anxious for immediate security and in-
40 sisted on it.

After a whole discussion of the matter and the statement that I would draw up a paper in which I would receipt for the goods and chattels that were to be turned over to me and the consent of Mr. Converse that this should be done, and the approval of Mr. Beers of this course, as the wisest course to pursue under the circumstances, I drew up the receipt of March 31st, 1885, which was signed by myself and by the Converse Company, as appears by inspection.

10

There was considerable objection on the part of the company, on the part of Mr. Converse representing the company, to do this thing. Mr. Beers said he was interested to the amount of three or four hundred dollars for wages, and if this thing were done and the money did not come from Mr. Valentine, as they expected, that his jig was up; that is about the expression; and Mr. Converse and Mr. Beers expressed themselves as fully understanding it.

20

What I mean to say was that this matter was thoroughly explained on my part in all its bearings, and both gentlemen present expressed themselves as understanding it and referred to the position in which they would be placed after the money was raised.

It will also be seen by reference to this paper that the goods were to be held as security for the payment of the following sums of money, until Saturday, 11th of April next, after which date they were to be sold for the payment of said sums.

30

That clause was the subject of considerable discussion at that time. I asked Mr. Converse how much time he would want to straighten out the affairs of the Company; he said they would have the money in a few days.

I then asked how long a time do you want? Will a week do? and he said a week from the following Saturday would be ample time, so the date of the 11th of April was fixed at that time after that conversation.

40

Before they left me I spoke of putting a man in charge of that place as my agent, who would take charge of the goods and chattels there and hold them for me.

Mr. Beers said that he had a little work that he desired to do there in the shop, and that he would hold possession for me, if I was willing that he should do so.

He had formerly been employed by me, about a
10 year before, as foreman in a factory which was turned over to me as trustee for the firm that owned it, and had been in my employ for some months. I was therefore willing to entrust the care of this property to him. I said at that time I cannot take formal possession of this place to-night; it is time I should go home; it was then, I think, fully seven o'clock.

But I told Mr. Beers that I would call the following morning at the factory and take formal possession of the place.
20

On the following morning immediately after coming to my office, and before ten o'clock—this is on the first day of April—I went to the factory and found Mr. Beers there alone, with the exception, I think, of one boy, who was bringing the nail pullers, still bringing them down stairs from up stairs, but not carrying them into the back room, so far as I could see.

I said, Mr. Beers, I have come here to take formal possession of this place. I could not do it last
30 night; it was so late, and I went up stairs through the factory, then came down stairs, and saw that all was in proper order. I asked Mr. Beers whether he, as a representative of the Company, could give up formal possession of the place to me. He said he would, as security for the claims of Meeker, Atha and Havell, and he said yes. I said, I see you are at work here, as you said you desired to do some work, and as you are here I presume you may as
40 well retain possession of this place for me. While

you are here it is not necessary that any one else should be hired, and if I put any one else in your place I should have to pay them for their services.

Mr. Beers at that time was working on a small lathe at one side of the room, which was no included in the chattel mortgages, but which was the personal property of Mr. Beers himself.

I left him there at work.

On the third day of April, thinking of the condition of my own health, and the fact that no one would know definitely about the position which I had assumed in the case if I should die, I determined to take Mr. Struble to the factory. This was done for the reason that I had been advised that I have some heart difficulty which may or may not result fatally at any time. 10

Mr. Struble consented to go with me, and on the morning of the third of April we went together to the building occupied by the Converse Manufacturing Company; we went through both floors; there was no person at work there except Mr. Beers. 20

I then said to Mr. Beers that I had deemed it wise to bring Mr. Struble there in order that he might know that I had possession of that place, that I was troubled with a heart difficulty, and that it was due to my clients that I should take some such step, and I requested Mr. Beers to state how he was in possession of that place.

He then stated in the presence of Mr. Struble and myself that he had possession of that place for me and that I had possession of the place as security for the payment of the claims of Atha, Havell and Meeker. 30

Mr. Struble is not very quick of hearing, so he repeated my question, and asked Mr. Beers in relation to this thing, and Mr. Beers stated not only that he had possession for me as security for the claims of Meeker, Atha and Havell, but he mentioned at that time the amount which was due to Meeker, Atha and Havell from the company, and for which I had possession. 40

I then said to Mr. Beers, as I had said to him on the first day of April, in case any inquiry is made as to the condition of affairs here, you are to inform the parties making such inquiry as to the exact condition of affairs. He said, must I tell anyone that comes along? I said, no, but anybody who asks in relation to the possession of this property must be informed as to the way in which it is held. He promised he would do that, and we left him.

10 From that day until the eleventh day of April I went to their place of business, in Mulberry street, at least every other day, and, perhaps, oftener.

On several occasions I found the factory locked. I knocked at the door repeatedly and rang the bell, and was unable to get in, but I generally met Mr. Beers on the street, at least once or twice during that time. I met him and he informed me that there was nothing being done there except his own private work, and on one occasion, between the
20 the third and the eleventh of April, I think, I went into the building and had a talk with Mr. Beers, but it was merely a general conversation, nothing relating to any of the matters which have been testified to to-day. Simply making these visits to the factory to see if my clients' interest was fully protected.

On the fourth of April Mr. Huntington and Mr. M. D. Converse came to my office.

On that day the second note secured by the chattel mortgage given to Frederick Woodruff was due.
30 What conversation had taken place between Mr. Huntington and Mr. Converse, of course I do not know, nor what was in their minds when they came to my office, but I understood from my conversation with them that the object of their visit was for me to telegraph, it was requested by one or the other of them or both, that I should send a telegram to the Yonkers Bank not to protest the note that had been given to Frederick Woodruff. That note was still his property, and there was no
40 special reason why it should be protested.

I consented to telegraph to that effect, wrote the telegram and I think sent it ; however, it may have been sent by either Huntington or by Converse ; I know I wrote the telegram.

The conversation that took place between the parties lasted some time. Mr. Huntington produced from his pocket at that time a memorandum of what purported to be the indebtedness of the Converse Manufacturing Company, and upon my stating the amount of the claim of S. J. Meeker to be \$1160.29 he said there was some little difference between that amount and the amount he had on his memorandum. He stated the amount but the difference was very slight. He stated that he had made at the request of Mr. Valentine, who was the President of the Dirigo Tool Company a very thorough investigation of the Company's affairs, and his statement was at that time that he had no power to bind Mr. Valentine or the Dirigo Company and that he thought he should advise Mr. Valentine or the Dirigo Company to advance the moneys necessary to pay all the indebtedness of the Converse Manufacturing Company of which he had a memorandum there. 10 20

I am quite sure that at that time Mr. Converse made the request that I should take no action under the chattel mortgage of Frederick Woodruff until the following Saturday. The conversation was to the effect that it was expected that there would be a meeting of the Dirigo Company about the following Tuesday or Wednesday, that some of the directors of that Company were away, but they would get together as soon as practicable. 30

I requested that when the money was paid on the claims of Atha, Havell, and Meeker, that that money should be paid to me so that I might deduct my commission for the collection of the money before paying it over to my clients. That was agreed to by Mr. Huntington, and after Mr. Huntington had stepped into the next room I think 40

before he had left that room, he may have gone into the entry, in pursuance of the request made on the 4th of April, 1885, Mr. M. D. Converse, of the Converse Manufacturing Company, agreed to call a meeting of the Converse Manufacturing Company, and pass a resolution ratifying the pledge of the goods and chattels of the Converse Manufacturing Company to me.

A few days after I received a copy of the resolutions offered in evidence and which is set out in the answer and reads as follows :

“ At a meeting of the Board of Trustees of the
“ Converse Manufacturing Company, held in ac-
“ cordance with a call of the President, on the 4th
“ day of April, 1885, the following was adopted,
“ viz :

“ Whereas under peculiar pressing necessities of
the company, the President required to secure cer-
tain claims pending negotiations for money, with
20 which to carry on the company's business.

“ And whereas we believe it was the part of bus-
iness expediency and good judgment on the part of
the President.

Now therefore resolved, that his action in the
execution of the order to Philemon Woodruff, At-
torney, dated March 31st, 1885, be, and is hereby
approved.

The above is a true copy of the record as it ap-
pears in the minutes of said meeting.

30 (Signed) ALFRED WILD, Secretary.”

Adjournment till July 27, 10.30 A.M.

Transcript of stenographer's notes of testimony taken in the above stated cause before W. B. Williams, Esq., Advisory Master, July 27th, 1885, 10.30 A. M., in the presence of the counsel of the respective parties.

PHILEMON WOODRUFF continues his testimony and says:

The copy of that resolution was received about the seventh of April.

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Nothing further was done in connection with these matters so far as I was concerned until the eleventh of April, at which day Mr. Kimball, the solicitor in this case, called upon me and tendered the payment of the amount due on the mortgage held by Frederick Woodruff.

At that time I asked him whether any provision had been made for the payment of the other claims in my hands and showed him the receipt of March 31st, as well as a copy of the resolution.

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He stated that no arrangement had been made for the payment of those claims so far as he knew.

On that day from him and from a gentleman who called about that time I learned of the existence of the chattel mortgage given to the Dirigo Tool Company. I at once went to the office of the Converse Manufacturing Company with a constable, John Murrar, Mr. Jepson of Newark, and a man named Richard Lewis.

I found in charge Isaac E. Boardman, who was, as I have always understood, the foreman of the Converse Manufacturing Company. In presence of one or more of these gentlemen I asked him where Mr. Beers was, and he replied that Mr. Beers had asked him to take charge of the place for him that day while he went to New York. I asked him for the keys of the place, which he gave up at once, and were handed to Mr. Murrar, the constable.

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I asked him if he knew in regard to the condition of affairs, and he stated that he did, and that he

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held possession there at Mr. Beers's request, and that Mr. Beers had possession for me, holding the place as security for the payment of the claims of Atha & Company, Stephen J. Meeker and George Havell.

I left Richard Lewis in charge of the place, and Mr. Murrar at my request was directed to advertise the goods and chattels in the building of the Converse Manufacturing Company for sale at public
 10 auction, both under the pledge of those goods and chattels to me, and under the chattel mortgage given by the Converse Manufacturing Company to Frederick Woodruff.

On Monday morning, the thirteenth of April, Mr. Austin Huntington and Mr. Frederick H. Lum, of Newark, called and paid the mortgage of Frederick Woodruff, and a change was made in the advertisement of Mr. Murrar, and the one prepared which is offered in evidence.

20 At this point the further testimony was taken by W. J. Knight; the official stenographer.

BY THE WITNESS .

I have also a copy of the advertisement of that sale that was published in the Newark Evening News and the Newark Daily Advertiser.

BY MR. KIMBALL :

30 Q. A copy of which was annexed to one of my affidavits ?

A. I think it was copied in.

Q. That will identify it ?

40 A. There was nothing further so far as I recall the circumstances of the case now to which I desire to testify, except to state that the papers which I now offer in evidence were the papers that were prepared for the attachment of which I spoke on or about the 31st of March. I offer it simply in connection with the whole matter; now, if there are any questions you desire to ask I am ready.

Cross-examination, by Mr. KIMBALL:

Q. Do you remember receiving from Mr. Converse on or about the 11th of April, a telegram dated the 10th of April, 1885?

A. Yes, sir.

Q. And you received that telegram earlier in the day on the 11th than you saw me?

A. Yes, sir.

Q. I saw you I think towards night, didn't I?

A. About 4 o'clock in the afternoon.

10

Q. Do you remember generally the contents of that telegram?

A. I had that telegram, or I did have it a moment ago; I don't find it now; I can tell the contents of it?

Q. What from your present recollection were the contents of that telegram?

A. The telegram was to this effect, that I was to obtain the satisfaction piece of the mortgage, that Philemon Woodruff and some one — I don't recollect the name, would call on me and pay that mortgage and that arrangements were pending for the payment of the other claims.

20

Q. You responded by telegram to that message, didn't you?

A. I think not; I may have done it; I did respond to a later telegram, but I won't be sure about that one.

Q. Well, we haven't the telegram here, but when we get it we will agree about that. Now going back to the removal of the nail-pullers as you have described it, that is the 600 lot, to what place were they, as you alleged, being removed?

30

A. They were being taken to a small room occupied by Schultz and Company immediately in the rear of the room on the second floor of the Converse Manufacturing Company there being a partition between the two rooms.

Q. A door?

A. And a door; I found it locked, I think, once or twice, when I have been there.

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Q. Can you fix those times?

A. I think in winter, before any of those transactions came up.

Q. At any time immediately preceding or following or during these transactions?

A. I have no recollection one way or the other about that, except that the door was opened when these goods were being carried in there; I know that.

10 Q. You say you saw a portion of the goods delivered; did you ever return to see whether the residue had been delivered?

A. You mean to the rear room?

Q. Yes; removed from the Converse Manufacturing Company's place?

A. I saw some removed on the night of the 30th, as I think I have testified that was the date, and again on the morning of the 31st they were removing them. I saw those that were removed in the
20 rear room. Now, after that I saw none removed; I was at the building afterwards, after I had placed, as I testified before, Mr. Beers there to represent me.

Q. In your testimony you stated the contents, or read the contents, of a memorandum in an envelope, commencing something like this: "Received 600 nail-pullers;" in point of fact that memorandum wasn't literally true, was it?

A. No. it was true no farther than I have testified; I meant just exactly what I have stated, that
30 the goods that were in the rear room had been removed, and the other goods were in process of removal, and the arrangement was that they were all to be removed that day.

Q. Whatever goods were removed were removed several days before the day Mr. Huntington called upon you?

A. Yes, sir.

Q. Did you say anything to him about the goods
40 having been taken, as you claim, from the possession of the Converse Company?

A. No, sir.

Q. Did you say anything to him about the receipt, as you call it, or the evidence of pledge?

A. No, sir; I did nothing further than to ask whether he was entirely familiar with the condition of affairs of the company, and he said that he had thoroughly examined them, and I made no further inquiries or statements.

Q. You testified, as I remember, that Mr. Beers said he would hold possession for you; now, was that said in the presence and hearing of Mr. Converse, at any time?

A. Yes, sir.

Q. When and where?

A. At my office on the 31st day of March.

Q. What compensation, if any, did you on your own behalf or in behalf of the creditors you represented make to Mr. Beers for the possession which he held for you, as you claim?

A. Nothing further than the consent that he should use the factory for manufacturing—for his work that he wanted to do. 20

Q. Was that spoken of between you as in the nature of compensation or return?

A. No; no, sir.

Q. And never has been spoken of between you in that relation whatever?

A. No, sir.

Q. You understood, of course, at that time, that Mr. Beers was the superintendent of the Converse Company? 30

A. I had always understood so.

Q. In your testimony this morning you said that you always understood that Mr. Boardman was superintendent?

A. Did I say superintendent?

Q. Foreman I think you said; you are right.

A. Foreman.

Q. Mr. Beers was the superintendent?

A. Yes, sir. 40

Q. Had you any knowledge on that subject?

A. I had no further knowledge than having been introduced by the president of the company, or being told, I had better say, because I knew Mr. Beers before—that Mr. Beers was superintendent and being introduced to Mr. Boardman—I must beg pardon for using the word introduce—being informed by Mr. Converse and Mr. Beers both, that their foreman was Mr. Boardman.

10 Q. That is all.

HENRY E. JEPSON, a witness produced on behalf of the aforesaid defendants, having been duly sworn according to law, deposes and saith:

Direct-examination by Mr. WOODRUFF:

Q. Where do you reside?

A. East Orange, N. J.

Q. Are you engaged in business in Newark?

20 A. Yes, sir.

Q. Have you ever been in the factory of the Converse Manufacturing Company in Newark?

A. I have.

Q. When were you there?

A. I can't tell the day, but it was one Saturday afternoon, about 5 o'clock. I have been in the factory several times other than that, but not in relation to this case though.

Q. What took place there at that time?

30 A. An officer took possession of a certain amount—took possession of all the goods there was in that factory.

Q. Just state the circumstances?

A. I don't know the date. I had no reason to fix that in my mind.

Q. Do you know Mr. Kimball, who is here in Court?

A. I do not, sir.

40 Q. Well, what took place? Give the circumstances of the officer's taking possession there at that time?

A. Well, I was in your office, and you invited me to walk down Mulberry street with you to the office of this company, and when you went in you told Officer Murray that you now—

(Interrupted.)

By MR. KIMBALL: One moment. So far as any act that this witness can testify to was performed that day, and which is relevant to the issue, *that* may be competent, but I object to any conversation that took place between the constable and Mr. Woodruff in the absence of the defendants. 10

MR. WOODRUFF stated that this witness was called a little out of order, and the object in calling him was to show a continued possession.

Q. Now, if you will just continue, please?

A. I heard you direct the officer to take possession of all there was in that factory, and I continued there with you as long as you stayed there, and I saw him turn every one else out of the factory and send them into the office, and I saw him in possession of the goods that were there. 20

Q. Do you recollect anything in relation to the keys of the shop, being said or done at that time?

A. I remember you giving him the keys, and I remember him locking the door.

Q. Do you remember from whom the keys were obtained? 30

A. They were obtained from, I can't remember his name—yes a man named Boardman, I think, but I don't remember exactly what his name was; you introduced me to him and I have an indistinct recollection that that was it.

Q. What statements were made by Mr. Boardman, if any, at the time of his giving up the keys?

A. I don't remember any statement made at that time.

Q. That afternoon? 40

A. That afternoon. I remember distinctly his stating that he knew you were in possession of the factory and had been in possession of the factory, and I remember his showing you a telegram relating to—

(Interrupted.)

(Objected to.)

10 Q. Never mind that. Did he say under what terms I was in possession of the factory?

(Objected to.)

Q. Did you see the keys given up by Mr. Boardman to any one?

A. I saw them given up to the officer.

Q. Was there any demur made by any one, by any of the parties who were there—being directly in the building?

20 A. No, sir; no demur of any kind.

The witness supplemented this answer with a further remark, which, upon motion of Mr. Kimball, was expunged from the record.

Cross-examination by Mr. KIMBALL :

Q. What was said by Mr. Woodruff to the officer, if anything, relating to the loan or claim under which possession was to be taken or held?

30 A. Well, that I can't remember in the precise terms. I know Mr. Woodruff spoke in a very formal manner, and directed the officer to take possession of those goods and hold them, and not allow any one to come in there, &c., but his formal directions I didn't take note of at the time. I don't remember them.

Q. Do you remember that he did state under what possession was to be taken?

A. I remember that he did state the nature of the possession that was to be taken; yes, sir.

40 Q. But you don't know what that statement was?

A. No, sir ; I don't remember.

Q. That is all.

CHARLES F. BEERS, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith :

Direct-examination by Mr. WOODRUFF :

Q. You are a resident of Newark ? 10

A. Yes, sir.

Q. You were formerly employed in the Converse Manufacturing Company ?

A. Yes, sir.

Q. As Superintendent ?

A. As Superintendent ; yes, sir.

Q. From what time to what time were you so employed ?

A. Ever since the company was organized.

Q. Until what time ? 20

A. Until my resignation, which has not been accepted, so that I am still Superintendent.

Q. Are you acquainted with the concern of S. J. Meeker and George Havell and B. Atha & Company ?

A. Somewhat.

Q. Have you had, as Superintendent of the Converse Company, any dealings with them ?

A. Yes, sir.

Q. Have you, as Superintendent of that company, had any dealings with me as representing them ? 30

A. Yes, sir.

Q. What was the first occasion in which you knew me in connection with either of those concerns ?

A. Are you talking now about the Converse Company ?

Q. Yes.

A. I don't know ; the first business that I did with you that had connection with the business of the Converse Company was a matter of a chattel mort- 40

gage of \$1,500, but that had no connection at all with Messrs. Meeker and Havell.

Q. Well, state whether or not you remember my calling upon you or calling at the factory in relation to the claim of B. Atha & Company for the purpose of having the same secured?

A. I do.

Q. What took place at that time?

A. You called at the factory. Previous to this
 10 you knew, or had known, or had come into possession of facts that there were negotiations pending between the Converse Company and the Dirigo Company for a loan of \$5,000, with which to carry on the manufacturing and fulfil their contract, that is the Converse Company had a contract to supply the Dirigo Tool Company with 30,000 nail extractors. Mr. Converse, I believe, enlightened you on that fact; he told you there was negotiations pending, and that sufficient money
 20 would be raised to pay off the mortgage and pay all the liabilities of the concern, and you came to me in April, I think; I haven't fixed the dates in my mind.

Q. Well, I can give you those.

A. Well, I don't suppose it is material; it was in April anyway; you called upon me and said the Newark Steel Works had put their claim, which was \$338.65, I think, in your hands for collection, or had put it in the hands of Dunn & Company; and you
 30 represented them, and that they wanted you to attach the property of the Converse Company, you asked me what I thought would be the best thing to do, because you stated that an attachment on the property would necessarily ruin their credit or injure it; that it would take a long time to recover; I told you I thought it would be kind of bad—they owed me \$300 or \$400 of wages, and I didn't want to see that salted. Then you told me to go and see Mr. Converse in New York, which I did; but
 40 before I went you asked me if we had any goods

that we could set aside to secure that claim, as you simply wanted something so that you could go to your clients, and say you had got good security for their claim. You said it was only a matter of time as you knew the negotiations were going through, and there would be lots of money in the concern, and that we were now in a better condition than we ever were before—which is a fact that has not proved itself. Well, I told you we had a lot of nail pullers on hand which were patented articles, but that I had no right or power as superintendent to do anything in the matter until I saw Mr. Converse. Then I went to New York and saw Mr. Converse and Mr. Converse I believe gave me a written order for you. 10

Q. Just wait one moment. Look at this paper and see if this is the order (handing witness paper)?

A. That is the order.

(Defendant's counsel offered said paper in evidence, and same is marked Exhibit D. 1.) 20

Q. Proceed.

A. After I brought that order out, which was authority for you, I set aside about twenty-two dozen nail pullers in the building outside of the rooms occupied by the Converse Manufacturing Company. It was understood all the way through that this whole thing—(interrupted)

Q. One moment, you are going too fast. I want to get one thing at a time.

A. Well, I can keep you straight. 30

By the COURT: You had better, if you can conveniently do so, give it in chronological order.

A. Yes, sir.

Q. Now go on?

A. What I was going to state was, it was an understood fact that these nail pullers were simply set aside as security and simply as a matter to relieve Mr. Woodruff from a certain pressure that would be brought to bear upon him by his clients, so that he could make representations to him that 40

he had them secured, because it was an ascertained fact that there would be a certain amount of money coming from the Dirigo Tool Company in the way of a loan, to brace up the Converse Manufacturing Company, and I believed that then, and I don't know but what I believe it now, but that was the fact. I had a good deal of faith in it. Well, we set aside these nail pullers, and the next day, or I think the next day—(Interrupted).

10 Q. One moment. Do you remember a receipt being given?

A. Yes sir, you gave a receipt.

Q. For how many?

A. I think it was 600.

Q. They were all to be removed?

A. They were all to be removed, and 22 dozen of them were removed, but the rest of them were not, only part of them were removed, because the whole blessed thing was only considered as a measure to gain time. Two or three days after that, or it might
20 have been two days, you came to me and said, "There is another fellow wants an attachment on you; now what are you going to do. You have not got any more nail pullers to set aside". I went down and saw Mr. Converse again and told him that things looked pretty blue; you must hurry up the Dirigo Tool Company in your negotiations, or something must be done. Mr. Woodruff now has got Meeker's claim in his hand, and Mr. Havell's claim,
30 and he has got to move in the matter someway or other, and Mr. Woodruff wants me to bring you out to Newark, and he will wait there until six o'clock to see you. Well we hurried up to catch the train, and we met Mr. Woodruff at the depot at six o'clock. We came out on the half past five train, and from the depot we went to Mr. Woodruff's office, and there a paper was drawn.

Q. Just one moment. See if this is the paper you refer to?

40 (Handing witness a paper.)

A. This is the paper, yes, sir. This is a copy of it.

By Mr. KIMBALL: What is that?

By Mr. WOODRUFF: That is the receipt of March 31st.

By the WITNESS. This is a receipt. It has got many names on the paper. It is the original paper.

By Mr. WOODRUFF: It is Exhibit No. 3, for identification.

Q. Now, just state what took place as far as you 10 remember?

A. Well, when you met Mr. Converse, you stated the facts to him, and you went on to say that these claims had been put in your hands for collection, and that he must do something; that the parties were pushing you, and one or two of them were new clients, and that you would like to do their business, and you were a lawyer and liked to get all the business you could, which was natural, and you said you wanted to do something, or make 20 some arrangement with him, whereby you could say to your clients, "Here, you are all right, you are secured," and at the same time give Mr. Converse a certain amount of time, which he said he required, pending the negotiations; then you started and drew up that paper and Mr. Converse read that paper; he read it aloud, and Mr. Converse said, said he: "Mr. Woodruff, I want you to distinctly understand that I do not give that paper to protect one creditor as against another," and said he, 30 "Here is Mr. Beers, that we owe \$500 or \$600 to for back wages." Well, you said, "I will tell you," said you, "This is simply a measure to gain time, you are sure you are coming out right in the negotiations with that Dirigo Tool Company, and if that is so, why it will only be just a matter of paying these bills, and then you will be right on your feet again. It was very plausible. It was splendid. It was just what I was working for. Well, Mr. Converse, on the strength of that, and on the strength 40

of your telling him that you could give him ten days' time, and if it came to the pinch you might extend that time five or six days longer, which you did not do, that Mr. Converse signed that paper, and I was there when it was signed. He signed it, and it was all straight. And then you looked up to me and said, "Here is this paper. Now, you said, this can only be known by three of us, this must be kept an absolute secret, there is no use in
 10 letting this be published to the world outside at all." I said "No," and I fulfilled my part of that.

Q. What, if anything, was said at that time in regard to the effect of that paper on Mr. Converse's interest in case the money was not paid?

A. Mr. Converse's interest was the company's interest.

Q. Well, I mean Mr. Converse's interest in the company?

A. There was to my recollection nothing said.
 20 The paper was not given, it was simply a measure to protect you with your clients, so that you could show it to them, and say, "There, I have got something from these fellows, and you will come out all right," for which you agreed to stretch the time, or at least I understood it that way, and so did Mr. Converse; otherwise if I hadn't, I should have taken measures to protect my own interests.

Q. Are you acquainted with Mr. Struble?

A. Yes, sir.

30 Q. Did you ever see him at the office of the Converse Manufacturing Company?

A. Yes, sir; you called there with him.

Q. What took place?

A. You called, and the factory was running. There was some of the hands working—(Interrupted).

Q. How many?

A. My father, Mr. Boardman and the boy were running the factory, and they were working on the
 40 work of the Converse Manufacturing Company.

You brought Mr. Struble in and you said, "Good morning, Mr. Beers;" I said, "Good morning, Mr. Woodruff." Then you said, "Now about this matter, I have got the heart disease, and I am liable to drop off at any minute, and I have confided all these affairs to Mr. Struble, and in case of my falling over he knows all about these," and you introduced me to Mr. Struble; you said, "I suppose you know Mr. Struble." I said, "Yes, sir," but my hands were all black, and I don't know as I 10 shook hands with the gentleman. You then said, "Mr. Struble, this is Mr. Beers, the Superintendent of the Converse Manufacturing Company," and then you walked out. That is all you said.

Q. Is that all the conversation you had at that time?

A. That is all the conversation we had at that time, that I recollect of.

Q. What work were you engaged on there; do you recollect? 20

A. I was manufacturing or fixing a die for a scoop hook.

Q. Whereabouts?

A. Down stairs in the little room. In the top floor. I was in the scoop-hook department. My father was working on a portion of the goods, and Mr. Boardman was making cutters for the nail-pullers. We were finishing up one set.

ALPHEUS STRUBLE, a witness, produced on the 30 part of the aforesaid defendants, being duly sworn according to law, deposes and says:

Direct-examination by Mr. WOODRUFF:

Q. Where do you reside?

A. Orange, New Jersey.

Q. You are engaged in business where?

A. 810 Broad Street, Newark, New Jersey.

Q. At what?

A. Attorney and Counsellor at Law. 40

Q. State whether you are acquainted with Mr. M. D. Converse and Mr. Charles F. Beers?

A. Mr. Converse I have seen a few times, perhaps three times, Mr. Beers I have known five or six months, I have seen him quite frequently during that time.

Q. Did you ever see him at the office of the Converse Manufacturing Company, at the building occupied by that company?

10 A. Yes, sir; on the third day of April.

Q. What took place there that day?

A. Well, I went to the office of the Converse Manufacturing Company in Mulberry street with you. I saw Mr. Beers there, and in response to a question put by you to him he said he was there
 ——-(interrupted.)

By Mr. KIMBALL: One moment. I object to this statement made by Mr. Beers to this witness, in the absence of the complainant, and undertaking to
 20 show in what capacity he was there.

By Mr. WOODRUFF: I propose to prove that Mr. Beers at that time had possession of the place for the company.

By The COURT: By something that he said?

By Mr. WOODRUFF: By his formal declaration, and by the circumstances attending it, and by the acts which I did while there, and that were done by Mr. Strubble.

By The COURT: I think you might go on and
 30 show what took place with reference to these matters. It is pretty difficult to see the bearing of each particular thing or remark of the witness until the narrative has been finished, and in case it should appear that the evidence is illegal I will overrule it.

By Mr. KIMBALL: I do not object to that course.

Q. You may proceed.

A. In response to a question put by you to Mr. Beers he said he was there in possession for Mr. Woodruff, that the goods of the Converse Manu-
 40 facturing Company had been turned over to Mr.

Woodruff for security for certain claims which Mr. Woodruff had in his hands for collection. Mr. Beers said that the Converse Manufacturing Company were doing no work. I asked him the question, and I asked him this question, "What claims Mr. Woodruff had," and he replied, that he had the claims of Benjamin Atha, S. J. Meeker and another, who I don't now recall the name of, and he gave me the amounts. He said there was also another claim which Mr. Woodruff had for collection, but those claims were over and above the chattel mortgage. 10

Q. State whether or not at that time you went through that part of the building occupied by the Converse Manufacturing Company, or those parts of the building occupied by that Company?

A. Well we only went to one room, into the large room, where the machinery was, and Mr. Beers pointed out to me some of the machinery that they had there. I cannot say whether the Converse Manufacturing Company occupied any other room in that building or not; I don't know. 20

Q. Where was Mr. Beers standing when you went in there?

A. Well, he was about in the center of the room, a little nearer the South side if anything, near by a heavy drop press.

Q. Who else was there, if any one?

A. I don't remember seeing any other persons. There was no other person engaged in the conversation. 30

Q. Was this conversation in the presence of Mr. Beers and you and I?

A. We three were together.

Q. That is all.

Cross-examination by Mr. KIMBALL:

Q. You have no means of designating which room of the Converse Manufacturing Company you were in, have you? You said you went in one only? 40

A. We went in one room, a large room. I took it to be their work room.

Q. How many flights up?

A. Only up one flight of stairs, and we had to turn a little to go around.

Q. Do you know whether there were any other premises occupied by the Converse Company there?

A. I don't know what the fact is. We simply went into one room, and that appeared to be a deserted work room; there was no one there but Mr. Beers.

Q. That is all.

AUSTIN HUNTINGTON, a witness produced on the part of the aforesaid complainants, being duly sworn according to law, deposes and says:

Direct examination by Mr. KIMBALL:

20 As near as I can remember there was a \$600 note that I could not find upon my previous examination. In my testimony the other day I was unable to find one of the instruments which constituted a part of the consideration of this chattel mortgage to the Dirrigo Tool Company, and which was a note for \$600, given by M. D. Converse and endorsed by the Converse Manufacturing Company, M. D. Converse, president, dated December 20th, at three months, for \$600. I now produce
30 said note in question, and offer it in evidence.

(Said note was marked Exhibit "C. 4.")

I have now stated all of the \$5,764; that is, I have produced all the papers which go to make up that amount.

Q. That is the note which constituted a part of the consideration of \$5,764 mentioned in the complainant's mortgage?

A. Yes, sir.

40 Q. Now proceed.

A. One other statement I desire to make, which is with reference to the interview alluded to by Mr. Woodruff in his testimony, which took place on the 13th day of April, at his office, when I called there in company with Mr. Frederick H. Lum. The question of the payment of the chattel mortgage of the Converse Manufacturing Company to Mr. Frederick Woodruff came up, and I was desirous of paying it off, and some question came up between Mr. Woodruff and myself as to the amount of the constable's fees—the constable in possession—and the constable himself was sent for, and came there, and in the presence of Mr. Woodruff I stated that the charges were so much, and Mr. Woodruff wished to have the charges divided, so that half should go on the pledged goods and the other half on the chattel mortgage, and at that moment the constable, whose name I am informed was Murray, turned to Mr. Woodruff and said, "I was only in possession under the chattel mortgage, Mr. Woodruff." He said, "No, you were not. You were in possession under the chattel mortgage, and under the pledge." If I remember correctly, Mr. Murray repeated that he was in possession under the chattel mortgage only, and that is all that was said in reference to it. On the evening of the 12th of April, the night before I was in Newark, I passed by the Converse Manufacturing Company's shop, and seeing a light up there I thought perhaps the president of the Company was there, and being desirous of seeing him, I called up there. For some time I got no answer, and then a man, apparently a janitor of some kind, called to me from below, and asked what I wanted. I said, "Is the president of the Converse Manufacturing Company up there?" He said "No." I said, "Who is in possession of this place?" He said, "The sheriff." I said I would like to see him, in order to see what this means, but I could not get any more answer from him. Then I called again and again, and finally a man

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put his head out of a window, and I said to him, "Who are you?" He said, "I am a constable." I said, "Are you in possession of this place?" He replied, "I don't know anything about it. You must go and see Mr. Woodruff. Mr. Woodruff told me to send anybody who came here to him."

I said to him "I simply want to know what you are in possession under." He replied "The mortgage is foreclosed, and I am in possession under the mortgage of the Converse Manufacturing Company to Frederick Woodruff." That is all the conversation I had. There was nothing else stated to me in relation to this subject.

Q. Do you wish to make any statement in regard to the telegram, or the answer to it, of April 10th?

A. Yes, when the chattel mortgage was put on record in accordance with the agreement made at the time, I met Mr. Woodruff on Friday, the 10th of April, to pay off the mortgage. Mr. Woodruff was not there, and as Mr. Converse represented that it was extremely important that one of the notes which was to be met under this agreement at Yonkers, should be paid at once, I went up there with him. While at Yonkers he suggested to me that it was important that Mr. Woodruff should know that the chattel mortgage was ready to be paid, and that he had negotiations in progress with reference to the settlement of all the other claims, and he was desirous that Mr. Woodruff should take no steps that would affect his credit, and to prevent him from raising money to pay off the claims. So he wrote a telegram, partly from my dictation, when I was with him in Yonkers, in which he stated, as near as I can recollect, "Have satisfaction piece ready for the chattel mortgage, as money will be paid to you tomorrow afternoon, Saturday. Negotiations are pending for the settlement of the other claims," "Or matters have been progressing," I forget which words he used. Then, on the following morning, Mr. Converse came to my office and handed me a

telegram, I think it was early in the morning, purporting to be signed by Mr. Woodruff, and I think I have it now at my office, stating that it was all right, and that he would have the satisfaction piece ready.

By Mr. WOODRUFF: That is correct. I remember it now.

By Mr. KIMBALL: That clears that up then.

By Mr. WOODRUFF: Yes, sir, I am satisfied about that now. 10

PHILEMON WOODRUFF, recalled for the defendants.

Direct Examination:

I now recollect sending the telegram above referred to, to Mr. Converse, as to having the satisfaction piece ready at any time. At that time I had in my mind the fact that a satisfaction piece would be required perhaps, for the proper cancellation of the mortgage; nothing was said about other claims as not being matters of record; no public cancellation, no notice would be necessary to be given; in regard to the statement made by the last witness as to the remarks made from the windows of the building of the Converse Manufacturing Company on the night of the 12th of April, I have only to say, that Richard Lewis was the man in charge there at that time, and he was simply there for the purpose of retaining possession of the place as my agent, and that the same is the case with reference to the constable John Murray, who had at that time prepared, who had before that time prepared advertisements of the property for sale, both under the chattel mortgage before alluded to, and under the pledge. 20 30

ISAAC E. BOARDMAN, a witness produced on the part of the aforesaid defendants, being duly sworn according to law, deposes and says :

Direct-examination by Mr. WOODRUFF :

Q. Do you reside in Newark ?

A. Yes, sir ; 61 Green street.

Q. Are you a machinst by trade ?

A. Yes, sir.

10 Q. You were formerly in the employ of the Converse Manufacturing Company ?

A. Yes, sir.

Q. In what capacity ?

A. I was a tool maker, and foreman.

Q. Have you any recollection relating to the removal of any goods from one floor of the building to another, that was occupied by the Converse Manufacturing Co. ?

Ar I have.

20 Q. What was removed ?

A. 617 nail pullers, or 620 I think altogether.

Q. Did you take any part in their removal ?

A. I helped to pack them up, and I helped to take them off the rack.

Q. How many were removed ?

A. I think 620.

Q. That were to be removed, or were actually removed ?

A. Were actually removed.

30 Q. Did you superintend their removal yourself ?

A. No more than I had orders to take them up and pack them in boxes : and helped to take them down stairs, and I think there was some other party helped ; I don't know who it was now, but someone else helped to carry them out.

Q. Under whose orders.

A. Under Mr. Beers'.

Q. You know the purpose for which they were removed ?

40 A. Yes, sir ; I know what I was told.

(Objected to, and admitted subject to the objection.)

He told me they were to be removed, to secure a claim of the steel works.

Q. Who were the steel works?

A. Benjamin Atha & Co.

Q. Do you recollect whether I was present at the time that was going on?

A. I believe you were; the first part of the time. Well, I was busy packing up some of them, and I think the remainder was removed after you went away from there. I recollect you came there afterwards to see if they had been removed. 10

Q. Do you recollect when this was?

A. I cannot remember the date.

Q. Well, about how long ago?

A. About three or four weeks I think, or somewhere like that.

Q. Have you any recollection of possession being taken; formal possession being taken of the shop? 20

A. I think I recollect your coming with the officers and taking possession.

Q. Who had possession of the keys at that time?

A. I think Mr. Beers, and Mr. Horter and I. We all three had keys.

Q. What did you do with the keys you had?

A. I gave them to you.

Q. Upon my request for them?

A. Yes, sir.

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Cross-examination by MR. KIMBALL:

Q. Mr. Boardman, you did not with your own hands remove those 620 nail-pullers?

A. I moved a portion of them, yes, sir.

Q. Do you know how many?

A. Well, I suppose I removed about half of them.

Q. Don't you know it was a fact that only 22 dozen were ever removed, the remainder never were removed into the rear shop? 40

A. 22 dozen were removed into Schultz', and a lot was taken down stairs, from up stairs that was to be removed into there, and I was told to leave them on the bench down stairs, and I did so.

Q. Told by whom ?

A. Mr. Beers.

Q. All your instructions were from him ?

A. Yes, sir.

Q. As you understood it, then, he was representing whom ?

A. The Converse Manufacturing Co. I supposed.

Q. You don't know how many were actually taken up into Schultz' ?

A. I could not swear to one nail-puller. There was from 617 to 620, and I think 620, that is what I mean to say, but that was never taken down or off the rack, and what was down stairs and what was up stairs.

Q. Do you know how many were taken out of the rooms occupied by the Converse Manufacturing Company into some other place or room ?

A. No, sir; I don't know the exact amount.

Q. When you speak about the removal of all of them you mean the removal from the room upstairs to the room down stairs ?

A. Yes, sir.

Q. But a considerable part of the nail-pullers removed were left still in the Converse Manufacturing Company's apartment ?

A. Yes, sir.

Q. You don't know how many ?

A. I do not.

Q. Did you ever know of your personal knowledge of Mr. Beers being there and representing anybody but the Converse Manufacturing Company ?

A. No, sir.

Q. That is all.

Re-direct :

Q. Did you ever make any inquiries in relation to that ?

A. No, sir; it was nothing concerning me; I didn't bother with it.

Q. Were you never informed by Mr. Beers anything in regard to it?

A. No, sir; not to my knowledge.

Q. Either before or after ?

A. There was one time he spoke, as I said some 10
time ago, in conversation with you. He said as
how I had told you and so you had said, that I un-
derstood he had charge, but I don't remember of
ever saying so; I never had any reasons for think-
ing so from any conversations I had with him, and
I certainly told him it was not so, or at least I do
not remember saying so.

Q. Have you any recollection of anything said to
you on the 12th day of April by Mr. Beers with re-
ference to your taking charge of the shop that 20
day ?

A. Yes, sir; he said that morning that he was
going to New York, and he would like to be back
in the afternoon, about two o'clock; I think that
was the time he said, and he said, "You will be
here when I come back;" I said "Yes." "Well,"
he said, "you take—" how did he word that now.
He said, "You look after the things while I am
away, and if I ain't back by two o'clock, will you
wait until I come back." I said I would, and I 30
waited, I guess, until nearly eight o'clock, or at
any rate somewhere about that time, and I then
met him at the depot, on the train. Frank Beers
and myself both waited there.

Q. Do you recollect receiving any telegram
from Mr. Beers that day ?

A. I did.

Q. Have you it with you ?

A. I believe I have.

Q. Will you produce it ?

A. Yes, sir. (Producing the same.)

By Mr. WOODRUFF: I desire to introduce this telegram simply as showing the condition of affairs at that shop. It reads as follows (Reading): "Isaac Boardman, care of the Converse Manufacturing Company, 211 Mulberry street. The shop is saved, thank God. Money cannot be had until Saturday afternoon.

"CHARLES F. BEERS,
M. D. CONVERSE."

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Q. Do you know what that telegram referred to?

A. Yes, sir; he was anxious about getting some money, and he went down to see about it.

(Objected to.)

Cross-examination by Mr. KIMBALL:

Q. Did you at any time about the 11th of April, 1885, tell Mr. Woodruff that you were there in possession for Mr. Beers, and Mr. Beers had asked you to hold possession for him, and that Mr. Beers had been holding the property for security for the debts of Atha & Co., George Havell and S. J. Meeker?

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A. No, sir.

Q. You are clear about that?

A. Yes, sir.

Q. That is all.

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Testimony closed.

IN CHANCERY OF NEW JERSEY.

Between—

THE DIRIGO TOOL COMPANY,
Complainant,

and

THE CONVERSE MANUFACTURING
COMPANY, *et al.*,
Defendants.

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Hearing before W. B. WILLIAMS, Advisory Master.

For complainant Mr. KIMBALL and Mr. HUNTINGTON, of New York.

For Defendants Mr. PHILEMON WOODRUFF.

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Conclusions.

1. Converse, for his company, agreed, on the evening of March 31st, to pledge the property in question to Woodruff.

The attempt of Converse and Beers to explain away the action and papers of March 30th and 31st are opposed to probability, and, at any rate, cannot prevail against the written evidence.

2. Woodruff took possession as pledgee on the morning of April 1st; the possession taken was sufficient in law to complete the pledge. 30

3. Woodruff lawfully employed Beers to maintain his possession, and it was so maintained until and after the giving of the complainant's mortgage.

The result is, that there was a valid pledge as against the complainants.

4. The other question discussed was that of estoppel. There was no estoppel against Woodruff by his own acts or omissions. 40

The pledge was not concealed by him.

When it was made, and when Huntington conversed with him on April 4th, all parties supposed that money enough was to be raised to pay all claims; there was nothing then to suggest the necessity of mentioning specially the pledge, and no questions were asked which would suggest to Mr. Woodruff any such necessity. He knew that Converse knew of the pledge, and that Huntington was
 10 in full communication with Converse.

I see no ground to impute any concealment to Mr. Woodruff.

There is no estoppel by reason of what Beers said or did. The action of Beers, April 1st, when Huntington came to take the Inventory was not fraudulent, but was consistent with the then belief of all, that money enough would be raised to pay all.

Beers' statements to Mr. Huntington on the 10th, when they came to get the mortgage executed, were
 20 a fraud on Huntington, and so was Converse's silence as to the pledge; but the fraud was theirs, and not Woodruff's.

Beers was knowingly violating his instructions in making such statements, and was doing it with intent to deceive Huntington.

An agent's deceit contrary to instructions will not be imputed to the principal who neither adopts nor profits by the fraud.

The title under the pledge must, in my opinion,
 30 be maintained.

The property having been sold by consent of parties, and enough of the proceeds deposited in Court to answer Woodruff's claims, a decree will be advised that his claims be paid out of that fund with costs, and the surplus, if any, paid to the complainant.

IN CHANCERY OF NEW JERSEY.

Between—

THE DIRIGO TOOL COMPANY,
Compl't.,*and*THE CONVERSE MANUFACTURING
COMPANY, *et als.*,

Def'ts.

On Bill, &c.

Final Decree.

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This cause coming on to be heard before Washington B. Williams, Esq., one of the Advisory Masters of the Court of Chancery of New Jersey, to whom the same was referred by an order duly entered in this cause on the twenty-third day of July last past, at his office in the City of Jersey City, in the presence of Charles W. Kimball, Esq., and Austin Huntington, Esq., of counsel for the complainants, and Philemon Woodruff, Esq., of counsel for all defendants other than the Converse Manufacturing Company, for whom no one appeared, and the pleadings having been read, and the evidence taken before the said Advisory Master, and the arguments of the respective counsel having been heard and considered, and it appearing that the complainants are not entitled to the relief sought and prayed for by them in their bill of complaint against the defendants, Philemon Woodruff, Benjamin Atha, John Illingworth, George Havell, and Stephen J. Meeker; and it further appearing that the title to the goods and chattels referred to in the said bill of complaint was duly vested in the defendant Philemon Woodruff as pledgee, and that they have been sold by the consent of all the parties interested therein under and by virtue of the chattel mortgage in said bill mentioned and the pledge in

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said answer mentioned, and that the sum of nineteen hundred and thirty-nine dollars and thirty-five cents, a part of the proceeds of said sale, has been deposited with the Clerk of this Court to abide the event of this suit, in pursuance of an order of this Court, bearing date on the fourteenth day of May last past; and it further appearing that there was due to the defendants, Benjamin Atha and John Illingworth, on the fifteenth day of December, inst.,

10 the sum of three hundred and thirty-eight dollars and forty-nine cents of principal from the defendants, the Converse Manufacturing Company, together with lawful interest thereon from the twenty-first day of October, A. D. eighteen hundred and eighty-four, making in the aggregate the sum of three hundred and sixty-one dollars and eighty-nine cents, and that the same was secured by the pledge of the goods and chattels so sold as aforesaid, recited in the defendants' answer; and it also appearing that

20 there was due to the defendant, George Havell, on said date the sum of forty-two dollars and seventy-two cents of principal from said defendant, the Converse Manufacturing Company, together with lawful interest thereon from the nineteenth day of March last past, making in the aggregate the sum of forty-four dollars and sixty-four cents and that the same was also secured by said pledge as aforesaid; and it also appearing that there was due to the defendant Stephen J. Meeker, on said date,

30 the sum of eleven hundred and sixty dollars and twenty-nine cents of principal from said defendants, the Converse Manufacturing Company, together with lawful interest from the twentieth day of March last past, making in the aggregate the sum of twelve hundred and eleven dollars and forty-nine cents, and that the same was also secured by said pledge as aforesaid; and it further appearing that the aforesaid goods and chattels were advertised for sale under and by virtue of the aforesaid

40 pledge prior to the filing of the bill in this cause,

and that said bill was stayed by the interlocutory order of this Court and that the pledgee Philemon Woodruff had theretofore expended for the proper advertising of said sale the sums of three dollars for hand bills, four dollars for advertising in the Newark Daily Advertiser, two dollars and thirty cents for advertising in the Newark Evening News, and two dollars and fifty cents for the posting of the hand bills aforesaid, and had also expended the sum of one dollar and fifty cents per day and one dollar and fifty cents per night for each day and night, from the eleventh day of April last past to the twenty-eighth day of said month (altogether the sum of fifty-one dollars) for the wages of watchman to care properly for and protect said goods and chattels, making in the aggregate for such advertising and wages of watchmen, the sum of sixty-two dollars and eighty cents; and it further appearing that the complainants, after the payment of said sums and the defendants' costs, are entitled to the balance of the amount deposited as aforesaid. 10 20

It is, on this twenty-eighth day December, A. D., eighteen hundred and eighty-five, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainants' bill be, and the same is hereby dismissed with costs. And it is further ordered, adjudged and decreed, that the Clerk of this Court, at the expiration of ten days from the filing of this decree do pay, unless otherwise hereafter ordered, out of the fund in Court as follows, viz.:—To the defendants, Benjamin Atha and John Illingworth or their solicitor, from said sum of nineteen hundred and thirty-nine dollars and thirty five cents, so deposited with him as aforesaid, the sum of three hundred and sixty-one dollars and eighty-nine cents with interest from the fifteenth day of December, inst., and to the defendant George Havell, or his solicitor, the sum of forty-four dollars and sixty-four cents from said 30 40

sum, with interest as aforesaid, and to the defendant Stephen J. Meeker, or his solicitor, the sum of twelve hundred and eleven dollars and forty-nine cents from said sum, with interest as aforesaid, and that he do also pay from said sum to the defendant Philemon Woodruff the sum of sixty two dollars and eighty cents, for the aforesaid advertising and wages of watchman paid by him as pledgee as aforesaid ; and that he do also pay to the solicitor of the defendants aforesaid from said sum their costs to be taxed by said Clerk, and that he do pay to the complainants, or their solicitor, all such part of the aforesaid sum as may remain in his hands after the payment of the above mentioned amounts together with such interest as may have been realized by said Clerk from said moneys while they have remained in his hands less his lawful commissions thereon.

And it is further ordered, adjudged and decreed that the order to show cause filed on the thirteenth day of July last past, in behalf of certain employees of The Converse Manufacturing Company be dismissed.

THEODORE RUNYON. C.,

Respectfully advised,
WASHINGTON B. WILLIAMS,
Advisory Master.

A true copy.

G. S. DURYEE,
30 Clk.

COURT OF ERRORS AND APPEALS OF
NEW JERSEY.

Between—

THE DIRIGO TOOL COMPANY,
Appellant,

and

PHILEMON WOODRUFF, BENJAMIN
ATHA, JOHN ILLINGWORTH, GEORGE
HAVELL and STEPHEN J. MEEKER,
Respondents.

On Appeal from
Chancery.

Petition of Ap- 10
peal.

To the Honorable the Court of Errors and Appeals
in the Last Resort in all Causes :

The humble petition of the Dirigo Tool Com-
pany, the appellant in the above stated cause, re- 20
spectfully shows that your petitioner finds itself
aggrieved by a final decree made in the Court of
Chancery by his Honor, Theodore Runyon, Chan-
cellor of New Jersey (advised by Hon. Washington
B. Williams, Advisory Master) bearing date on the
28th day of December, 1885, wherein the said The
Dirigo Tool Company was complainant, and The
Converse Manufacturing Company, Philemon
Woodruff and others were defendants, in this re-
spect, to wit : That the said decree adjudges that 30
the said complainant's bill of complaint be dis-
missed with costs, and directs that the Clerk of
this Court, at the expiration of ten days from the
filing of said decree, pay, unless otherwise ordered,
out of the moneys heretofore deposited with the
Clerk of this Court, by the consent of the parties
hereto, to the defendants, Benjamin Atha and John
Illingworth, or their solicitor, three hundred and
sixty one dollars and eighty nine cents, with interest
from December 15, 1885, and to the defendant, 40

George Havell, or his solicitor, forty-four dollars and sixty-four cents with interest as aforesaid, out of said moneys, and to the defendant, Stephen J. Meeker, or his solicitor, the sum of twelve hundred and eleven dollars and forty-nine cents, with interest as aforesaid, out of said moneys, and that he pay also from said moneys to the defendant, Philemon Woodruff, sixty-two dollars and eighty cents for advertising and wages of watchman paid by him
 10 as pledgee, as in said decree recited, and that he also pay to the solicitor of defendants aforesaid, out of said moneys, their costs to be taxed.

And your petitioner humbly appeals from that part of the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the complainant's bill should not have been dismissed, and the chattel mortgage of complainant in the bill of complaint in said cause
 20 described was a first and valid lien upon the chattels therein enumerated, prior and superior to the lien of title of Philemon Woodruff, the alleged pledgee (and of the other defendants); and said pledgee, Philemon Woodruff and the other defendants Benjamin Atha, John Illingworth, George Havell and Stephen J. Meeker, have not, nor has either of them, any valid title to or lien or claim upon said chattels as against the complainant, your petitioner; and said sum of nineteen hundred and thirty-nine dollars and thirty-five cents deposited
 30 with the Clerk of this Court, as in said decree recited (less said clerk's lawful commissions) belonged to complainant, and no part thereof belonged to said defendants, or any or either of them. And the said Court should have decreed accordingly.

Your petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such

relief in the premises as to this Honorable Court shall seem meet.

CHAS. W. KIMBALL,
Solicitor and of Counsel for Appellant.

Formal answer to petition of appeal filed January 9, 1886.

Exhibit 1 for Complainant.

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Know all men by these presents, That the Converse Manufacturing Company, a corporation organized pursuant to the laws of the State of New York and having a place of business in the City of Newark, in the County of Essex and State of New Jersey, party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of one dollar to it duly paid by the Dirigo Tool Company, a corporation organized pursuant to the laws of the State of New York party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents does bargain and sell, unto the said party of the second part, its successors and assigns, all the goods and chattels mentioned in the schedule hereto annexed marked "Schedule A" and hereby made a part hereof, and now in the shops of the said party of the first part at Nos. 211 and 213 Mulberry street, in the City of Newark, Essex County, New Jersey, together with six splitting dies now in the shop of the Newark Stamping Company, Mulberry street, in said City of Newark, and one duplicate set of boot-patterns and two sets of handle patterns now in the foundry of S. J. Meeker, in Clay street, in said City of Newark.

To have and to hold, all and singular the said goods and chattels above bargained and sold, or intended so to be, unto the said party of the second

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part its successors and assigns, forever. And the said party of the first part, for itself and its successors, all and singular the said goods and chattels above bargained and sold, unto the said party of the second part, its successors and assigns, against the said party of the first part, and against all and every person or persons whomsoever shall and will warrant and forever defend.

10 Upon condition that if the said party of the first part shall and does well and truly pay unto the said party of the second part, its successors and assigns, the just and full sum of five thousand seven hundred and sixty-four dollars, on demand, together with interest on said sum from the date hereof, at the rate of six per cent. per annum, without any fraud or other delay, then these presents shall be void. And the said party of the first part, for itself, its successors and assigns, does covenant and agree to and with the said party of the second part, 20 its successors and assigns, that in case default shall be made in the payment of the said sum above mentioned, on demand, then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for and the said party of the first part does hereby authorize and empower the said party of the second part, its successors and assigns, with the aid and assistance of any person or persons, to enter any shop, foundry, store, dwelling-house or other premises, and such other place or places whatsoever in 30 which the said goods and chattels, or any of them, are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same, rendering the surplus (if any) unto the said party of the first part, its successors or assigns.

40 In witness whereof, the said party of the first

\$5,764, besides lawful interest thereon from the date of said mortgage.

LAWSON VALENTINE.

Sworn and subscribed this }
10th day of April, 1885, }
before me,

CHAS. W. KIMBALL,

Master in Chancery of New Jersey.

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STATE OF NEW JERSEY, }
County of Essex. } ss.:

Be it remembered, that on this tenth day of April, 1885, personally appeared before me, the subscriber, one of the Masters in Chancery of New Jersey, Alfred Wild, who, being duly sworn according to law, on his oath, saith: That he is the Secretary of the Converse Manufacturing Company; that he
20 knows the common seal of said company; that the seal affixed to the foregoing instrument is the common seal of said company; that Maschil D. Converse is the president of said company, and did, by direction of the board of directors of said company sign, seal and deliver the said instrument as their voluntary act and deed in the presence of deponent, and that deponent did, at the execution thereof, subscribe his name as a witness thereto.

ALFRED WILD.

30 CHAS. W. KIMBALL,
Master in Chancery of New Jersey.

We, the undersigned, constituting a majority of the stockholders and owners of upwards of two-thirds of the entire one thousand (1,000) shares of the capital stock of the Converse Manufacturing Company, a corporation organized under the Laws of the State of New York on or about the 30th day of June, 1884, do, and each of us does, hereby
40 assent to the execution and delivery of a mortgage

by said company to the Dirigo Tool Company upon all or any part of the goods and chattels, of whatever kind and nature, of the said Converse Manufacturing Company, now in its shops at Nos. 211 and 213 Mulberry street, Newark, New Jersey, or elsewhere in said city of Newark, to secure the payment of the sum of \$5,764 to said Dirigo Tool Company on demand.

M. D. CONVERSE,
 MARY H. CONVERSE, 10
 ALFRED WILD.

Signed in triplicate this }
 the 9th day of April, }
 1885. }

Witness :

E. NORA HORNISH.

Endorsed—Received in the Register's office of the County of Essex, N. J., on the 10th day of April, A. D. 1885, at 5 P. M., and recorded in 20
 book No. 13 of Chattel Mortgages on pages 436,
 437 and 438.

EMIL TARVING,
 Register.