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Phillips & Boswell, printers, No. 4 Chancery-court, Trenton.

New Jersey Court of Errors and Appeals.

Between

THE HUNTERDON COUNTY BANK, appellant,

and

THE NASSAU BANK, appellee,

} On appeal.

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To his Honor Benjamin Williamson, esquire, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor the Nassau Bank, a body corporate in fact and in law, duly chartered, organized, and associated for the purpose of carrying on the business of banking, in the city and state of New York, under the authority and pursuant to the provisions of the laws of the state of New York in such case made and provided—that, on 10 or about the twentieth day of December, in the year of our Lord eighteen hundred and fifty-six, your orators were carrying on the ordinary business of banking, under the authority aforesaid, in the said city of New York, at a bank of discount and deposits; and that, on or about the day and year last aforesaid, one Thomas McElrath, then of the said city of New York, applied to your orators to lend him, by discounting his note for that amount, the sum of eight thousand dollars, and offered to deposit with your orators, as a pledge or collateral security for the repayment of said loan, one hundred shares of 20 the capital stock of the Trenton Iron Company, (a corporation created by the laws of the state of New Jersey) of the par value of one hundred-dollars per share, in all of the par value of ten thousand dollars, to be held by your orators as such

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pledge or collateral security until the said Thomas McElrath should have fully paid off and taken up the original note so offered to be discounted by your orators, and any other note or notes which might be given by said McElrath to your orators in renewal of the original note, or any other note representing the said original indebtedness, or any part thereof; that your orators acceded to the proposal of the said Thomas McElrath, and did, on the said twentieth day of December, in the year aforesaid, discount to said McElrath his promissory
10 note of that date for the sum of eight thousand dollars, payable three months after date, and lent and paid over to said McElrath the net proceeds of said note, after deducting the discount therefrom; and in accordance with the terms of his aforesaid proposal, the said Thomas McElrath deposited with your orators, as a pledge or collateral security for the repayment of said loan, and for the payment of the money mentioned in the note so discounted, and for the payment of any notes taken by your orators by way of renewal or representing the said
20 original indebtedness, or any part thereof, one hundred shares of the capital stock of the said Trenton Iron Company, and delivered to your orators, and deposited with them as such pledge or collateral security as aforesaid, a certain certificate, numbered one hundred and twelve, issued by the said the Trenton Iron Company under the hands of their president and secretary, bearing date on the second day of June, in the year of our Lord eighteen hundred and fifty-four, which said certificate certifies and declares that Thomas McElrath is the owner of fifty shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by
30 him or his attorney on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part of the same, with full power one or more attorneys under him to appoint for that purpose; also, a certain other certificate, numbered one hundred and seventy, issued by the said the Trenton Iron Company under the
40 hands of their president and secretary, bearing date on

the third day of October, in the year of our Lord eighteen hundred and fifty-four, which said certificate certifies and declares that Thomas McElrath is the owner of thirty-five shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part of the same, with power one or more attorneys under him to appoint for that purpose. 10

Also a certain other certificate, numbered two hundred and eighty-six, issued by the said the Trenton Iron Company under the hands of their president and secretary, bearing date on the seventh day of March, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of thirteen shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain deed, or instrument of writing, whereby he bargained, sold, assigned, and transferred unto your orators, to be held as security for any or all indebtedness to your orators, whether due or not, the said last named thirteen shares, with the two other shares herein after mentioned, making in all fifteen shares of said capital stock, and did constitute and appoint Hamilton Blydenburg his attorney irrevocable for him, and in his name and stead, but to the use of your orators, to sell, assign, transfer, and to set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power. 20 30

Also a certain other certificate, numbered three hundred and sixty-five, issued by the said the Trenton Iron Company under the hands of their president and secretary, bearing date on 40

the twenty-second day of March, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of one share of the capital stock of the Trenton Iron Company, transferable only on the books of said company by him or his attorney on the surrender of said certificate; and he, the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power
 10 of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the said share, with full power one or more attorneys under him to appoint for that purpose.

Also a certain other certificate, numbered three hundred and seventy-four, issued by the said the Trenton Iron Company under the hands of their president and secretary, bearing date on the thirty-first day of March, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of one share of
 20 the capital stock of the Trenton Iron Company, transferable only on the books of said company, by him or his attorney, on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the said share, with full power one or more attorneys under him to appoint for that purpose, which said shares together make the said
 30 number of one hundred shares transferred to your orators, and held by them as collateral security as aforesaid, as by the said several certificates and the said several powers of attorney, now in your orators' possession, and ready to be produced and proved as this honorable court may direct, will more fully and at large appear, and to which, for greater certainty, your orators pray leave to refer, if it should be necessary for them so to do.

And your orators further show, that afterwards, to wit, on or about the eleventh day of February, in the year of our
 40 Lord eighteen hundred and fifty-seven, while your orators

were still carrying on their said banking business at the place, in the manner, and by the authority aforesaid, the said Thomas McElrath applied to your orators to lend him, by discounting his notes for that amount, the further sum of five thousand dollars, and offered to deposit with your orators, as a pledge or collateral security for the repayment of said loan, fifty shares of the capital stock of the said Trenton Iron Company, of the par value of one hundred dollars per share, in all of the par value of five thousand dollars, together with other securities to be delivered to your orators, to be held by your orators as such pledge, or collateral security, until the said Thomas McElrath should have fully paid off and taken up the original notes he offered to be discounted by your orators, and any other note or notes which might be given by said McElrath to your orators in renewal of the said original notes, or any other note representing the said original indebtedness, or any part thereof; that your orators also acceded to said proposal of said Thomas McElrath, and did, on the said eleventh day of February, in the year aforesaid, discount to said Thomas McElrath his promissory note of that date for the sum of five thousand dollars, payable three months after date; and on the twelfth day of February, in the year aforesaid, discounted to said Thomas McElrath his promissory note of that date for the sum of five thousand dollars, payable three months after date, together making the amount of ten thousand dollars, and lent and paid over to said McElrath the net proceeds of said note, after deducting the discount therefrom; and in accordance with the terms of his aforesaid proposal, the said Thomas McElrath deposited with your orators, as a pledge or collateral security for the repayment of the money mentioned in the notes so discounted, and for the payment of any notes taken by your orators by way of renewal or representing the said original indebtedness, or any part thereof, fifty shares of the capital stock of the said Trenton Iron Company, together with the securities, and delivered to your orators, and deposited with them as such pledge or collateral security aforesaid, a certain certificate, numbered two hundred and fifty-eight, issued by the said Trenton Iron Company under the hands of their president and secretary, bearing date the fourteenth day of December, in the year of our Lord eighteen hundred and

fifty-five, which said certificate certifies and declares that Thomas McElrath is the owner of thirty shares of the capital stock of the Trenton Iron Company, transferable only on the books of said company by him or his attorney or the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part of the said shares, with full power one or more attorneys under him to appoint for that purpose.

Also a certain other certificate, numbered three hundred and seventy-five, issued by the said Trenton Iron Company under the hands of their president and secretary, bearing date on the thirty-first day of March, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of twenty shares of the capital stock of the Trenton Iron Company, transferable only on the books of said company by him or his attorney on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain deed of bargain and sale, whereby he sold, assigned, and transferred unto your orators, to be held as security for any or all indebtedness to said bank, whether due or not, said fifty shares, and a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part of the same, with full power one or more attorneys under him to appoint for that purpose, which said shares together make the said number of fifty shares transferred to your orators, and held by them as collateral security as aforesaid, as by the said certificates, deed, and powers of attorney, now in your orators' possession, and ready to be produced and proved as this honorable court may direct, will more fully appear, and to which, for greater certainty, your orators pray leave to refer, if it should be necessary so to do.

And your orators further show, that afterwards, to wit, on

or about the sixteenth day of May, in the year of our Lord eighteen hundred and fifty-seven, while your orators were still carrying on their said banking business, at the place, in the manner, and by the authority aforesaid, the said Thomas McElrath applied to your orators to lend him, by discounting his note for that amount, the further sum of twelve thousand dollars, and offered to deposit with your orators, as a pledge or collateral security for the repayment of said loan, seventy-five shares of the capital stock of the said Trenton Iron Company, of the par value of one hundred dollars per share, in all of the par value of seven thousand and five hundred dollars, to be held by your orators as such pledge or collateral security until the said Thomas McElrath should have fully paid off and taken up the original note so offered to be discounted by your orators, and any other note or notes which might be given by said McElrath to your orators in renewal of the said original note, or any other note representing the said original indebtedness, or any part thereof; that your orators also acceded to said proposal of the said Thomas McElrath, and did, on the said sixteenth day of May, in the year of our Lord eighteen hundred and fifty-seven, discount to said Thomas McElrath his promissory note of that date for the sum of twelve thousand dollars, payable on demand, with interest at seven per cent., the legal rate of interest in said state, and lent and paid over to said McElrath the full amount of said note; and in accordance with the terms of his aforesaid proposal, the said Thomas McElrath deposited with your orators, as a pledge or collateral security for the repayment of the money mentioned in the note so discounted, and for the payment of any notes taken by your orators by way of renewal or representing the said original indebtedness, or any part thereof, seventy-five shares of the capital stock of the said Trenton Iron Company, and delivered to your orators, and deposited with them as such pledge or collateral security aforesaid, a certain certificate, numbered two hundred and forty-nine, issued by the said Trenton Iron Company under the hands of their president and secretary, bearing date the seventh day of September, in the year of our Lord eighteen hundred and fifty-five, which said certificate certifies and declares that Thomas McElrath is the owner of thirty shares of

the capital stock of the Trenton Iron Company, transferable only on the books of the company, by him or his attorney on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part of the same, with full power one or more attorneys
 10 under him to appoint for that purpose.

Also a certain other certificate, numbered two hundred and sixty-three, issued by the said Trenton Iron Company under the hands of their president and secretary, bearing date the sixteenth day of January, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of forty-five shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney on the surrender of said certificate; and the said Thomas
 20 McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain deed or instrument of writing, whereby he bargained, sold, assigned, and transferred unto your orators, to be held as security for any or all indebtedness to your orators, whether due or not, the said last mentioned forty-five shares of said capital stock; and did make, constitute, and appoint Hamilton Blydenburg his attorney irrevocable for him, and in his name and stead, but to the use of your orators, to sell, assign, transfer,
 30 and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, as by the said two certificates, instrument of writing, and powers of attorney, now in your orators' possession, and ready to be produced and proved as this honorable court may direct, will more fully appear, and to which, for greater certainty, your orators pray leave to refer, if it benecessary so to do.

And your orators further show unto your Honor, that at
 40 the said several times aforesaid of the pledge or deposit as

collateral security of said stock as aforesaid the said shares expressed in said certificates stood on the books of the Trenton Iron Company in the name of said Thomas McElrath, and actually were his property, and that said shares have not been transferred on the books of said company; but that said shares have always since the times of said several deposits and delivery been in the possession of your orators, and still remain in their possession, and that the transfer office for transferring said certificates is in the city of New York.

And your orators further show, that the said Thomas Mc- 10
Elrath did not pay the said four notes, so discounted to him as aforesaid by your orators, or any of them, or any part thereof, when the same became due (excepting one of the said notes of five thousand dollars, which was paid by the sale of said other securities deposited with your orators, and a part of the said other note for five thousand dollars, part of which was also paid by said other securities, leaves a balance of three thousand and three hundred dollars due thereon), but from time to time gave other notes to your orators, as each succeeding note fell due, for the said several principal sums of 20
the original indebtedness and said balance of said note, and left unpaid the interest or discount on the renewal notes, and the said interest or discount on the preceding notes was added to the amount of said renewal notes at the request of the said Thomas McElrath and for his accommodation.

And your orators further show to your Honor, that the said Thomas McElrath, being and continuing indebted to your orators on the said original indebtedness, and the interest thereon, in renewal of said notes and each of them, on the thirteenth day of January last, at New York, made and de- 30
livered to your orators, in renewal of the said first above note, and including the interest thereon, his certain note of hand to your orators, which said note was increased by five hundred dollars paid by your orators for the said Thomas McElrath at the time of giving said last named note as a requisition made on the stockholders of the Delaware, Lackawana, and Western Railroad Company upon one hundred shares of stock of said railroad held by your orators as collateral security for said sum of twelve thousand dollars, and paid at said McElrath's request, whereby he promised to pay, three months 40

after date to your orators, or order, at their bank, in the city of New York, eighty-eight hundred and seventeen dollars and fourteen cents, for value received, having pledged to your orators, as security (with authority to sell the same on the non-performance of said promise, in such manner as they in their discretion might deem proper without notice, either at public or private sale, and to apply the proceeds thereof) the said first above named one hundred shares of the Trenton Iron Company pledged to your orators as security for said original
 10 loan of eight thousand dollars, and the renewal thereof as aforesaid.

And on the eighteenth day of January, in the year of our Lord eighteen hundred and fifty-eight, at New York, also made and delivered to your orators, in renewal of said balance of the said second above named note of five thousand dollars, and and interest thereon, his certain other note of hand to your orators, whereby he promised to pay, ninety days after date, to your orators or order, at their bank in the city of New York, thirty-three hundred and fifty-nine dollars and fifteen
 20 cents, for value received, having pledged to your orators as security (with authority to sell the same, on the nonperformance of said promise, in such manner as they, in their discretion, might deem proper without notice, either at public or private sale, and to apply the proceeds thereon) the said second above named fifty shares of the capital stock of the Trenton Iron Company, pledged to your orators as security for said original loan of ten thousand dollars, and the renewal thereof as aforesaid.

And on the fifteenth day of January last, at New York,
 30 also made and delivered to your orators, in renewal of the said third above note, and including the interest thereon, his certain note of hand to your orators, whereby he promised to pay, on demand to your orators, or order at their bank in the city of New York, twelve thousand two hundred and nineteen dollars and thirty-four cents, for value received, with interest at the rate of seven per cent. per annum, having pledged to your orators as security, with authority to sell the same on the nonperformance of said promise, in such manner as they in their discretion might deem proper without notice, either at

public or private sale, and to apply the proceeds thereon the said third above named seventy-five shares of the capital stock of the Trenton Iron Company pledged to your orators as security for said original loan of twelve thousand dollars, and the renewals thereof as aforesaid.

And your orators further show, that the said Thomas McElrath did not pay the said last three named renewal notes, or any part of them, when the same became due or at any other time, excepting what arose from the sale of certain other securities held as collateral for the loan of said twelve thousand dollars, the net amount of said sale being two thousand five hundred and thirty-four dollars and seventy-six cents, reducing said note to that extent as a payment thereon, and that the whole amount of the said several notes, with interest thereon, still remains due and unpaid to your orators, excepting the proceeds of said sale aforesaid, and your orators still held the said shares of stock of the Trenton Iron Company as security for the amount due upon said notes, respectively, in the manner above particularly set forth, and the property of your orators therein has become absolute. 20

And your orators further show unto your Honor, that on or about the twenty-fourth day of August, in the year of our Lord eighteen hundred and fifty-seven, the Hunterdon County Bank caused a certain writ of attachment to be issued out of the Supreme Court of the state of New Jersey against the rights and credits, moneys and effects, goods and chattels, lands and tenements, of the said Thomas McElrath, upon an affidavit that the said Thomas McElrath owed them the sum of six thousand dollars, or some other sum, and that he resided out of the state of New Jersey, and that said writ of attachment was delivered to the sheriff of the county of Mercer, who, in execution of said writ, on or about the twenty-fourth and twenty-sixth days of August last aforesaid, attached, as it is alleged, three hundred shares of the capital stock of the Trenton Iron Company as the property of the said Thomas McElrath, among which shares, so alleged to have been attached, are the aforesaid two hundred and twenty-five shares, so as aforesaid pledged by said McElrath to your orators. 30

And your orators further show, that such proceedings were 40

had upon the said attachment, that afterwards, to wit, at the November term of said Supreme Court, in the year last aforesaid, William M. Force, Daniel B. Bodine, and William R. Murphy were appointed by the said court to be the auditors under said attachment, and afterwards, to wit, on the sixth day of March, in the year of our Lord eighteen hundred and fifty-eight, a judgment was entered upon said attachment in favor of the Hunterdon County Bank, and against the said Thomas McElrath, for the sum of eight thousand seven hundred and fifty-eight dollars and seventy-four cents, or some
10 other sum; and the auditors did also report that there was due to the Mechanics and Manufacturers Bank at Trenton, on the third day of March last, the date of their report, the sum of two thousand five hundred and sixty-eight dollars and seventy-five cents, and to the Bank of Jersey City the sum of two thousand and fifty-three dollars and thirty-one cents, and to William Wright the sum of two thousand and fifty-four dollars; and by their further report, dated the sixth day of March last, that there was due to the Broadway Bank of
20 New York the sum of four thousand and eighty dollars and eleven cents, which said several parties were admitted as creditors under the said proceedings in attachment, under and by virtue of which said judgment and proceedings in attachment the said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey City, William Wright, the Broadway Bank, William M. Force, Daniel B. Bodine, and William R. Murphy claim to have some lien upon or interest in the aforesaid two hundred and twenty-five shares of capital stock of the Trenton Iron Com-
30 pany, so as aforesaid pledged by the said Thomas McElrath to your orators, and held by them; but your orators expressly charge the truth to be, that the said two hundred and twenty-five shares were pledged to and deposited with your orators as aforesaid long before the issue and execution of said writ of attachment, and to secure the payment of money lent by your orators to said McElrath long before such issue and execution; and that if the aforesaid defendants have any lien upon or interest in said two hundred and twenty-five shares of stock under and by virtue of said proceedings and judg-
40 ment in attachment, which your orators expressly deny, that

such lien or interest is subsequent and subject to the prior lien thereon of your orators by virtue of the pledge and deposit aforesaid.

And your orators further show unto your Honor, that they are informed, and believe it to be true, that the said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey City, William Wright, and the Broadway Bank, severally received from said McElrath, and now hold divers securities and property of great value other than the aforesaid two hundred and twenty-five shares pledged 10 to your orators, upon which they claim a lien under said attachment, which said securities and property they hold as sureties or pledges for the payment of the respective debts due to them from said McElrath, and your orators therefore charge and insist, that if the said above named parties under said attachment shall be held to have a lien upon said two hundred and twenty-five shares of stock prior or equal to the lien thereon of your orators under the pledge aforesaid, that then the said shares will be insufficient to pay your orators' said claims and debts after paying the debts due to the defendants, 20 or dividing the assets ratably among all; and that the said defendants ought to be compelled to resort to and exhaust such other securities as they may respectively hold for the payment of their respective debts aforesaid before they are permitted to resort to the said two hundred and twenty-five shares of stock pledged to your orators for the satisfaction of the said respective claims of the above named parties to said attachment.

And your orators further show unto your Honor, that the said William M. Force, Daniel B. Bodine, and William R. 30 Murphy, proceeding, as they allege, in the execution of their duties as auditors under the said proceedings in attachment, and by order of the Supreme Court, have advertised, by advertisements published in the public newspapers of the city of Trenton, and by advertisements signed by them and set up at the most public places in the said city of Trenton and elsewhere, that on Monday the twenty-sixth day of April, instant, at two o'clock in the afternoon, in the city of Trenton, at the public house of Samuel Kay, they will sell at public sale three 40 hundred shares of the capital stock of the Trenton Iron Com-

pany, taken, as they allege, under said attachment, among which said three hundred shares are included and intended to be sold the two hundred and twenty-five shares pledged to your orators, and held by them as aforesaid ; and your orators also say, that they have notified the said William M. Force, Daniel B. Bodine, and William R. Murphy that the said shares have been pledged to and are now held by your orators, and requested them to desist from said sale ; but the said William M. Force, Daniel B. Bodine, and William R. Murphy positively refuse to stop the said sale, but, on the contrary, say that they will sell said shares at the time and place advertised ; and your orators verily believe that the said William M. Force, Daniel B. Bodine, and William R. Murphy, acting as auditors under said attachment, will sell said two hundred and twenty-five shares pledged to and held by your orators at the time and place above named, unless restrained by the action of this honorable court.

And your orators further show, that if the said auditors should sell the said shares at public sale they would not produce their real value, owing to the conflicting claims to said shares and the uncertainty of the lien under said attachment ; that such sale, or attempted sale, would cloud the title of your orators to said shares pledged to them, and prevent a sale or disposition of them by your orators for the payment of their debts, and would lead to litigation between your orators and the purchaser or purchasers at said sale and the parties under the said attachment.

And your orators further show unto your Honor, that they have frequently and in a friendly manner applied to the said Thomas McElrath, the Hunterdon County Bank, the Bank of Jersey City, the Mechanics and Manufacturers Bank at Trenton, William Wright, and the Broadway Bank, William M. Force, Daniel B. Bodine, and William R. Murphy, and requested them to pay the amounts due unto your orators for principal and interest upon the aforesaid loans made by your orators to the said Thomas McElrath, and your orators well hoped that the said parties above named would have complied with such reasonable request, as in equity and good conscience they ought to have done ; but now so it is, may it please your Honor, the said defendants, combining and confederating with

divers other persons at present unknown to your orators, but whose names, when discovered, your orators pray may be inserted herein with apt words to charge them as defendants hereto, not only refuse to pay to your orators the said several principal sums of money and interest thereon so due to your orators as aforesaid from said Thomas McElrath, and to desist from the sale of the said shares so pledged to and held by your orators as aforesaid as security for the payment of the same, but they sometimes give out and pretend, in speeches, that the said Thomas McElrath never did take the said several loans of money from your orators, and never did pledge to your orators the said two hundred and twenty-five shares of the capital stock of the Trenton Iron Company as collateral security for the payment of the aforesaid loans, and never did deliver to your orators the said several certificates and powers of attorney, and that the pledge of said shares was of no validity as against the creditors of said Thomas McElrath, because said two hundred and twenty-five shares of stock were not actually transferred by said McElrath to your orators on the books of said company, and the certificates delivered up, whereas your orators charge the contrary to be true; and at other times they give out and pretend that the said McElrath has fully paid and satisfied the original debt by him contracted to your orators, with the interest thereon, and to secure which the aforesaid two hundred and twenty-five shares were pledged and delivered to your orators, whereas your orators charge the contrary thereof to be true, and that no part thereof has been paid excepting the amount paid on account of the said loan of ten thousand dollars and of the said loan of twelve thousand dollars, reducing them as is above set forth.

And the said defendants also pretend that they have not advertised or procured to be advertised, the said shares held by your orators for sale at public vendue at the time and place above named, whereas your orators charge the contrary thereof to be true.

All which actings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orators.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises by the strict rules of

common law, and are relievable only in a court of equity, where matters of this kind are properly cognizable and relievable—to the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective corporal oaths and affirmations, full, true, perfect, and distinct answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they interrogated thereto paragraph by paragraph, and that they may set forth and disclose whether the

10 said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey City, William Wright, or the Broadway Bank, have received any and what securities from the said Thomas McElrath, and what they now hold as collateral security for the respective debts due them from said McElrath, or if they have held the same, how they have disposed thereof; and that if the said above named parties, or any of them, have other securities, that they may be decreed to exhaust such other securities before resorting to the said two hundred and twenty-five shares of stock so

20 pledged to your orators as aforesaid; and that the defendants may be decreed to pay to your orators by a short day, to be appointed by this court, the said several principal sums of money so as aforesaid due to your orators from the said Thomas McElrath, with interest thereon at the rate of seven per cent. per annum, according to the tenor and effect of the said last named promissory notes given in continuance and renewal of said original loans, together with your orators' costs in this behalf, and that on failure of payment thereof, the said two hundred and twenty-five shares may be decreed to be the

30 property of your orators, to be sold or disposed of according to their discretion in the payment of their said claim, or that said shares may be sold, under the direction and decree of this court, to pay and satisfy to your orators the debt due to your orators as aforesaid from said Thomas McElrath, to be applied to the payment of such loans and the notes held by your orators representing the same, as the court may direct, with your orators' costs in this behalf; and that your orators may have such further and other relief as the nature and circumstances of the case may require, and as may be agreeable

40 to equity and good conscience.

May it please your Honor, the premises considered, to grant to your orators not only the state's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Thomas McElrath, the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey City, William Wright, the Broadway Bank, William M. Force, Daniel B. Bodine, and William R. Murphy, restraining them and each of them, their or each of their attorneys, servants, and agents from selling, or attempting to sell, any of the said two hundred and twenty-five shares of 10 the capital stock of the Trenton Iron Company contained in certificates numbering one hundred and seventy, one hundred and twelve, two hundred and eighty-six, three hundred and sixty-five, three hundred and seventy-four, three hundred and seventy-five, two hundred and fifty-eight, two hundred and forty-nine, and two hundred and sixty-three, given and pledged to your orators, the Nassau Bank, by the said Thomas McElrath, and taken in attachment among other shares of said stock, as is said in certain proceedings under attachment in the Supreme Court of New Jersey, at the suit of the Hunterdon County Bank against the said Thomas McElrath, and from otherwise attempting to alienate the same from your orators, to cause or procure transfers of the same to be made or in any way to dispose of or intermeddle with the same in such way as to deprive your orators of the security given them by the pledging said shares, and the holding of the same by your orators, but also the state's writ of subpœna, issuing out of and under the seal of this court, to be directed to the said Thomas McElrath, the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey 30 City, William Wright, the Broadway Bank, William M. Force, Daniel B. Bodine, and William R. Murphy, therein and thereby commanding them, on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to and abide and perform such decree therein as to your Honor shall seem meet. And your orators will ever pray, &c.

EDWARD W. SCUDDER,

Solicitor and of counsel with complainants. 40

State of New York, city of New York, *ss.*—Hamilton Blydenburg, of the city of New York, in the state of New York, of full age, being duly sworn according to law saith—that he is the president of Nassau Bank, of the city of New York, the above named complainants, and that the matters and things set forth in the above bill, so far as they relate to the acts and deeds of the complainants, are true, and so far as they relate to the acts and deeds of others, he believes them to be true; and that Thomas McElrath did borrow the said
 10 several sums of money of said bank at the times and in manner named in the above bill, and that the said two hundred and twenty-five shares, above set forth and described, of the capital stock of the Trenton Iron Company were pledged by said McElrath to the complainants at the time of making said loans as security for the same, and the renewals of the same, until all should be paid; and that the said Thomas McElrath still owes the complainants, upon said original loans, an amount exceeding twenty-two thousand dollars, for payment of which, and as security, the complainants held the said two
 20 hundred and twenty-five shares of said stock; and further, that the said Thomas McElrath is insolvent, and unable to pay his indebtedness to the complainants, and they must lose the same if the said stocks be taken from them; and this deponent has been informed, and believes, that under certain proceedings or attachment in the state of New Jersey, the Hunterdon County Bank claim some interest in the said shares held by the complainants, and have advertised the same for sale on next Monday, and will sell the same, unless restrained by the order of the Court of Chancery.

30

HAMILTON BLYDENBURG.

Sworn and subscribed, at the city of New York, this twenty-third day of April, A. D. 1858, before me.

MOSES B. MACLAY,

*New Jersey commissioner in New York to take affidavits,
&c., duly commissioned and qualified.*

*State of New Jersey, *ss.*—William Napton, of the city of Trenton, in the county of Mercer and state of New Jersey, of
 40 full age, being duly sworn according to law, saith—that he is

the sheriff of the said county of Mercer, and, as such sheriff, executed a writ of attachment issued out of the Supreme Court of the state of New Jersey at the suit of the Hunterdon County Bank against Thomas McElrath, named in the foregoing bill of complaint, by taking three hundred shares of the capital stock of the Trenton Iron Company, belonging, or said to belong, to said Thomas McElrath; that among said shares so taken by this deponent are, as this deponent has been informed and believes to be true, two hundred and twenty-five shares of said capital stock, upon which the Nassau 10 Bank have, or pretend to have, some lien and claim.

That the auditors appointed under said attachment, William M. Force, Daniel B. Bodine, and William R. Murphy, have advertised said three hundred shares of stock for sale at public vendue, on Monday next, the twenty-sixth instant, at two o'clock in the afternoon, at the public house of Samuel Kay, in the city of Trenton, by advertisements in the public newspapers and by printed bills set up in the most public places about the city of Trenton, and the said William M. Force, Daniel B. Bodine, and William R. Murphy, auditors as afore- 20 said, have engaged this deponent to act as crier and auctioneer in the sale of said shares; and this deponent believes that the said shares will be offered for sale and sold by the said auditors at the time and place aforesaid, unless they are prevented by some proceedings at law.

WILLIAM NAPTON.

Sworn and subscribed at Trenton, this twenty-third day of April, A. D. 1858, before me.

J. WILSON, M. C.

IN CHANCERY OF NEW JERSEY. 30

Between

NASSAU BANK, complainants,
and

THOMAS McELRATH, the HUNTERDON
COUNTY BANK, et al., defendants,

} Amended bill.

An amended bill, made in the above stated cause in pursuance of an order of the Court of Chancery, bearing date the

twentieth day of June, in the year of our Lord eighteen hundred and sixty, as follows, to wit :

Beginning on page (3), in the nineteenth line, take out all that part of the bill beginning with the words "one hundred and seventy," down to the words "purpose," on page (6), line 7th, and insert the following: two hundred and fifty-eight, issued by the said Trenton Iron Company, under the hands of their president and secretary, bearing date the fourteenth day of December, in the year of our Lord eighteen
 10 hundred fifty-five, which said certificate certifies and declares that Thomas McElrath is the owner of thirty shares of the capital stock of the Trenton Iron Company, transferable only on the books of said company by him, or his attorney, on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificates to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part
 20 of the said shares, with full power one or more attorneys under him to appoint for that purpose.

Also a certain other certificate, numbered three hundred and seventy-five, issued by the said Trenton Iron Company, under the hands of their president and secretary, bearing date on the thirty-first day of March, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of twenty shares of the capital stock of the Trenton Iron Company, transferable only on the books of said company by him, or his attorney, on the surrender of said certificates; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered unto your orators, a certain deed of bargain and sale, whereby he sold, assigned, and transferred unto your orators, to be held as security for any or all indebtedness to said bank, whether due or not, said
 30 fifty shares, and a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part of the same, with
 40 full power one or more attorneys under him to appoint for that purpose.

And, beginning on page (7), in the thirty-third line, take out all that part of the bill beginning with the words "two hundred and fifty-eight," down to the word "purpose," on page (9), line 1st, and insert the following: one hundred and seventy, issued by the said the Trenton Iron Company, under the hands of their president and secretary, bearing date on the third day of October, in the year of our Lord eighteen hundred and fifty-four, which said certificate certifies and declares that Thomas McElrath is the owner of thirty-five shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him, or his attorney, on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the whole or any part of the same, with power one or more attorneys under him to appoint for that purpose; also a certain other certificate, numbered two hundred and eighty-six, issued by the said the Trenton Iron Company, under the hands of their president and secretary, bearing date on the seventh day of March, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of thirteen shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company, by him or his attorney, on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain deed, or instrument of writing, whereby he bargained, sold, assigned, and transferred unto your orators, to be held as security for any and all indebtedness to your orators, whether due or not, the said last named thirteen shares, with the two other shares herein after mentioned, making in all fifteen shares of said capital stock, and did constitute and appoint Hamilton Blydenburg his attorney irrevocable for him, and in his name and stead, but to the use of your orators, to sell, assign, transfer, and set over all or any part of the said stock, and for that purpose to make

and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full powers; also a certain other certificate, numbered three hundred and sixty-five, issued by the said the Trenton Iron Company, under the hands of their president and secretary, bearing date on the twenty-second day of March, in the year of our Lord eighteen hundred and fifty-six; which said certificate certifies and declares that Thomas McElrath is the owner of one share of the capital stock of the Trenton Iron Company, transferable
 10 only on the books of said company by him, or his attorney, on the surrender of said certificates; and the said Thomas McElrath, at the same time that he deposited and delivered said certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the said share, with full power one or more attorneys under him to appoint for that purpose.

Also a certain other certificate, numbered three hundred and
 20 seventy-four, issued by the said the Trenton Iron Company, under the hands of their president and secretary, bearing date the thirty-first day of March, in the year of our Lord eighteen hundred and fifty-six, which said certificate certifies and declares that Thomas McElrath is the owner of one share of the capital stock of the Trenton Iron Company, transferable only on the books of said company by him or his attorney on the surrender of said certificate; and the said Thomas McElrath, at the same time that he deposited and delivered said
 30 certificate to your orators, made and executed, under his hand and seal, and delivered to your orators, a certain power of attorney, whereby he appointed Hamilton Blydenburg his attorney irrevocable for him to sell and transfer the said share, with full power one or more attorneys under him to appoint for that purpose.

By which said two above amendments, certificates numbers 374, 365, 170, and 286 of the capital stock of the Trenton Iron Company are changed from the first loan of Thomas McElrath (as is erroneously set forth in the original bill of complaint) to the second loan, as collateral security for the same;
 40 and certificates numbers 258 and 375 of said capital stock from

the second loan of said McElrath to the first loan, as collateral security therefor.

Also, in the fifth line of page nine of the original bill, strike out the word "two."

Also, after the eleventh line of page (9), insert the following additional statement, *viz.* and your orators further show that the said above named several deeds of bargain, sale, and transfer, and powers of attorney attached to and transferring all the foregoing and above named certificates of stock, both on the first and second loan, were not at the time of delivery 10 filled with the date of said delivery, but were left in blank, as is the custom in such cases; and that, on or about the twentieth day of April, in the year of our Lord eighteen hundred and fifty-eight, and just before the filing of this bill, the said dates were filled in; and through mere inadvertency and accident, and without other cause, the said transfers and powers of attorney attached to said certificates, numbers three hundred and seventy-four, three hundred and sixty-five, one hundred and seventy, and two hundred and eighty-six were filled in with the date of the first loan, to wit, the twentieth day of 20 December, in the year of our Lord eighteen hundred and fifty-six; and the said transfers and powers of attorney attached to certificates numbers two hundred and fifty-eight and three hundred and seventy-five were filled in with the date of the second loan, to wit, the eleventh day of February, in the year of our Lord eighteen hundred and fifty-seven, and so continued to be erroneously dated and attached to the notes representing the said two several loans respectively.

EDWARD W. SCUDDER,

Solicitor for and of counsel with complainants. 30

ANSWER OF HUNTERDON COUNTY BANK.

IN CHANCERY OF NEW JERSEY.

The answer of the Hunterdon County Bank, a body corporate in fact and in law, duly organized and chartered for the purpose of carrying on the business of banking at Flemington, in the county of Hunterdon, by an act of the legislature of the state of New Jersey, one of the defendants to the bill of complaint of the Nassau Bank, complainant.

This defendant, now and at all times hereafter saving and
 10 reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much thereof or such parts thereof as this defendant is advised is material for it to make answer unto, this defendant answers and says—that whether the said Thomas McElrath, on or about the several times in the complainant's bill mentioned, applied to the complainant for the several loans in the complainant's bill mentioned, and whether the said Thomas McElrath offered to deposit with the complainant, as a
 20 pledge or collateral security for the repayment of said loans, the said several number of shares in the complainant's bill mentioned, or any number of shares of the capital stock of the Trenton Iron Company (a corporation created by the laws of the state of New Jersey), to be held by the said complainant as a pledge or collateral security until the said Thomas McElrath should have fully paid off and taken up the original notes offered to be given for the several aforesaid loans, and any other notes which might be given by said McElrath to said complainant in renewal of either the said original notes
 30 or any other notes representing the said original indebtedness, or any part thereof, and whether the said complainant acceded to the said several proposals of the said Thomas McElrath, and did, at the several times in the complainant's bill mentioned, or at any time, discount said McElrath's said several notes, or any of them, for the said several sums in the complainant's bill specified, and whether the said Thomas McEl-

rath deposited with the complainant, for the purposes in said bill mentioned, the said several certificates in said bill mentioned purporting to be certificates for the several numbers of shares, in said bill specified, of the capital stock of the said the Trenton Iron Company, with the several powers of attorney to Hamilton Blydenburgh, as in said bill mentioned, and whether the said Thomas McElrath owes to the complainant any sum of money, this defendant does not know, and is unable to answer, but prays that the said complainant may be required to make strict and ample proof thereof. 10

And this defendant further answering says, that on or about the second day of June, in the year of our Lord one thousand eight hundred and fifty-seven, this defendant was carrying on the ordinary business of banking, under the authority aforesaid, at Flemington aforesaid, as a bank of discount and deposit, and that, on or about the day and year last aforesaid, John S. King & Co. applied to this defendant to lend them, by discounting a draft, dated April twentieth, eighteen hundred and fifty-seven, at four months, drawn by said John S. King & Co., and accepted by said Thomas 20 McElrath, for that amount, the sum of two thousand dollars, and this defendant being informed, and believing that the said Thomas McElrath was the owner of three hundred shares of the capital stock of the said the Trenton Iron Company, and that, by the charter of the said the Trenton Iron Company, all transfers of stock thereof were required to be made upon the books of the said company, and that the said three hundred shares stood on the books of the said company in the name of the said Thomas McElrath, and without any knowledge that the several certificates for the several numbers of 30 shares in the complainant's bill mentioned, or any of them, were pledged to said complainant, acceded to the proposal of the said John S. King & Co., acting upon and influenced by the belief aforesaid, and did, on or about the said second day of June, discount to said John S. King & Co. the said draft accepted by said McElrath, and lent and paid over to said John S. King & Co. the net proceeds of said draft, after deducting the discount therefrom.

And this defendant further answering says, that on or about the thirtieth day of June, in the year last aforesaid, and while 40

this defendant was carrying on the business of banking as aforesaid, the said John S. King & Co. applied to this defendant to lend them, by discounting two other drafts, each dated April twentieth, of the year last aforesaid, at four months, and of equal amount, drawn by said John S. King & Co., and accepted by said Thomas McElrath for that amount, the further sum of four thousand dollars; and this defendant, before discounting the said two drafts, applied to the vice president of the said the Trenton Iron Company to ascertain whether the

10 said Thomas McElrath owned any portion of the capital stock of the said the Trenton Iron Company, and being informed by the said vice president, and believing that the said Thomas McElrath was the owner of three hundred shares of the capital stock of the said iron company, and that, by the charter of the said iron company, all transfers of its stock were required to be made upon the books of said company, and that the said three hundred shares stood on the books of the said iron company in the name of the said Thomas McElrath, and without any knowledge that the several certificates for the

20 several numbers of shares in the complainant's bill mentioned, or any of them, were pledged to the complainant, acceded to the proposal of said John S. King & Co., acting upon and influenced by the information and belief aforesaid, and did, on or about the said thirtieth day of June, discount to John S. King & Co. the said drafts last mentioned accepted by said Thomas McElrath, and lent and paid over to said John S. King & Co. the net proceeds of said two drafts, after deducting the discount therefrom.

And this defendant further answering says, that on or about

30 the twenty-first day of July, in the year last aforesaid, and while this defendant was carrying on the business of banking as aforesaid, the said John S. King & Co. applied to this defendant to lend them, by discounting a certain other draft, dated June the fifteenth, of the year last aforesaid, at ninety days, drawn by said John S. King & Co., and accepted by said Thomas McElrath for that amount, the further sum of twenty-five hundred dollars; and this defendant, before discounting said last mentioned draft, applied to the vice president of the said the Trenton Iron Company to ascertain

40 whether the said Thomas McElrath owned any portion of the capital stock of the said Iron company, and being informed by

the said vice president, and believing that the said Thomas McElrath was the owner of three hundred shares of the capital stock of said iron company, and that, by the charter of the said the Trenton Iron Company, all transfers of the capital stock thereof were required to be made upon the books of the said company, and that the said three hundred shares stood on the books of the said company in the name of the said Thomas McElrath, and without any knowledge that the several certificates for the several numbers of shares in the complainant's bill mentioned, or any of them, were pledged 10 to said complainant, acceded to the proposal of the said John S. King & Co., acting upon and influenced by the information and belief aforesaid, and did, on or about the said twenty-first day of July, discount to said John S. King & Co. the said last mentioned draft accepted by said McElrath, and lent and paid over to said John S. King & Co., the net proceeds of said draft, after deducting the discount therefrom.

And this defendant further answering says, that neither of the said four several drafts so accepted by said Thomas McElrath was paid at maturity, but the same were severally 20 duly protested for nonpayment, and the whole amount thereof remains due and unpaid to this defendant.

And this defendant further answering says, that on or about the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, this defendant, in order to secure the moneys due as aforesaid from the said Thomas McElrath to this defendant, caused a writ of attachment to be issued out of the Supreme Court of this state against the estate of the said Thomas McElrath, and that the said writ of attachment was delivered to the sheriff of the 30 county of Mercer, who, on the twenty-fourth and twenty-sixth days of August, in the year last aforesaid, attached thereunder three hundred shares of the capital stock of the said the Trenton Iron Company as the property of the said Thomas McElrath (including the two hundred and twenty-five shares the certificates for which the complainant pretends were pledged to him); that on the twenty-third day of September, in the same year, the Bank of Jersey City filed an affidavit in the said Supreme Court that said McElrath owed them the sum of two thousand dollars, and was admitted as 40

an applying creditor under said attachment, and that, on the same day and year last aforesaid, the Mechanics and Manufacturers Bank at Trenton filed an affidavit in said court that said McElrath owed them the sum of twenty-five hundred dollars, and were admitted as applying creditors under said attachment, and that, on the thirteenth day of September, in the year last aforesaid, one William Wright filed his affidavit in said court that said McElrath owed him the sum of two thousand dollars, and was admitted as an applying creditor
 10 under said attachment, and that, at the November term of said court, in the year last aforesaid, William M. Force, Daniel B. Bodine, and William R. Murphy were appointed by the said court to be auditors in said attachment.

And this defendant further answering says, that the said William M. Force, Daniel B. Bodine, and William R. Murphy, the auditors appointed in said attachment, by their report, dated March the third, in the year of our Lord one thousand eight hundred and fifty-eight, duly approved by said Supreme Court, and ordered to be filed, did report that there was due
 20 from said Thomas McElrath, at the date of their said report, to this defendant the sum of eight thousand seven hundred and fifty-eight dollars and seventy-four cents, to the Mechanics and Manufacturers Bank at Trenton the sum of two thousand five hundred and sixty-eight dollars and seventy-eight cents, to the Bank of Jersey City the sum of two thousand and fifty-three dollars and thirty-three cents, and to William Wright the sum of two thousand and fifty-four dollars.

And this defendant further answering says, that the Broadway Bank was afterwards admitted as a creditor under said
 30 attachment, and the said auditors, by a supplementary report, reported that there was due to the said the Broadway Bank, from the said Thomas McElrath, the sum of four thousand and eighty dollars and eleven cents.

And this defendant further answering says, that such further proceedings were taken, under and by virtue of said attachment in the said Supreme Court, that on the sixth day of March, in the year last aforesaid, judgment final was entered in said court in favor of the said the Hunterdon County Bank, the said plaintiff in attachment, and against the said Thomas
 40 McElrath, the said defendant in attachment, for the sum of

eight thousand seven hundred and fifty-eight dollars and seventy-four cents, besides costs of suit, and the said auditors were ordered by the said court to proceed to sell said three hundred shares of the capital stock of the Trenton Iron Company, attached as aforesaid, according to law.

And this defendant further answering says, that the said the Trenton Iron Company was chartered by an act of the legislature of the state of New Jersey entitled "An act to incorporate the Trenton Iron Company," approved February the sixteenth, eighteen hundred and forty-seven, and that, by the said charter, all transfers of the capital stock of said company are required to be made upon the books thereof; that the said three hundred shares of the capital stock of said company, so attached as aforesaid, still stands upon the books of said company in the name of said Thomas McElrath; and this defendant charges expressly that the pretended pledge of two hundred and twenty-five, or any number of the said three hundred shares of the said capital stock of the said iron company to the said complainant, as in his bill mentioned, is of no validity as against this defendant and the applying creditors 20 under said attachment; that neither of the said two hundred and twenty-five shares, or any part thereof, have ever been transferred by said McElrath to said complainant, but at the time of executing the said writ of attachment the said two hundred and twenty-five shares of capital stock, and every of them, were the property of the said Thomas McElrath, and liable to be attached and taken by virtue of the said attachment for the benefit of this defendant, the plaintiff in attachment, and other creditors who might apply, and that the said writ of attachment was issued and served before the said two 30 hundred and twenty-five shares, or any of them, were transferred to the said complainant, and is a valid lien upon said two hundred and twenty-five shares of said capital stock prior to the lien of the said complainant under their pretended pledge.

And this defendant in further answering says, that by the several certificates for the said two hundred and twenty-five shares of said capital stock, which the complainant pretends were pledged to them as collateral security, the said two hundred and twenty-five shares were expressly stated to be trans- 40

ferable only on the books of the said the Trenton Iron Company, and this defendant charges that the said several certificates gave full notice to said complainant that they could only effect a valid transfer of said two hundred and twenty-five shares upon the books of said company; and this defendant further charges, that the failure of the complainant to effect the transfer thereof on the books of the said the Trenton Iron Company for so long a space of time was a waiver of the right thereto, at least as against this defendant, and worked a fraud
 10 upon this defendant, who had no notice of such pledge.

And this defendant in further answering says, that at the time of executing the aforesaid writ of attachment the said the Trenton Iron Company had not been advised or informed by the said complainant, or by any other person, nor did they know until long after the execution of said writ of attachment, that the complainant pretended to have any claim whatever to the said two hundred and twenty-five shares of said capital stock, or any part thereof.

And this defendant further answering says, that the said
 20 Thomas McElrath has fully paid and satisfied the several original notes given by the said McElrath for the several debts contracted to the complainant, and that thereby the lien of the complainant upon the said two hundred and twenty-five shares of said capital stock of the Trenton Iron Company for the payment of said original notes, if any existed, which this defendant denies, was fully discharged; and this defendant further says, that the pretended pledge to the complainant of the said two hundred and twenty-five shares, collateral security for the payment of the several renewal notes in the
 30 complainant's bill particularly specified, was made subsequent to the service and execution, and with full knowledge of the aforesaid writ of attachment issued by this defendant against the estate of the said Thomas McElrath, and that the lien of this defendant, by virtue of said attachment upon the said two hundred and twenty-five shares, is prior to any lien which the complainant may have acquired by virtue of the said pretended pledge.

And this defendant further answering denies that it ever received from the said John S. King & Co., or Thomas McEl-
 40 rath, or any other person or persons, any security or property

whatever for the payment of the aforesaid sum of money due from said McElrath to this defendant, or that it now has or holds any security whatever for the sum so due this defendant, other than the lien of the said attachment upon the said three hundred shares of the capital stock of the Trenton Iron Company; and this defendant avers that this defendant discounted the aforesaid several drafts for John S. King & Co. upon the faith and belief that the said Thomas McElrath was the owner of the said three hundred shares of the capital stock of the said the Trenton Iron Company, and that the said 10 three hundred shares so attached as aforesaid are a slender and scanty security for the said sum due this defendant from the said McElrath and the several claims of the applying creditors.

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

State of New Jersey, Hunterdon county, ss.—Charles Bartles, of full age, being duly sworn according to law, on his oath says—that he is the president of the Hunterdon County Bank, the above named defendant, that the matters and things set forth in the above answer, so far as relate to his own acts, are true, and so far as they relate to the acts of others, or in- 30 formation derived from others, he believes them to be true.

Sworn and subscribed, before me, June

A. D. 1858.

ANSWER OF THE AUDITORS.

IN CHANCERY OF NEW JERSEY.

The joint and several answers of William M. Force, Daniel B. Bodine, William R. Murphy, three of the defendants to the bill of complaint of the Nassau Bank, complainant.

These defendants, now and at all times saving and reserving to themselves all manner of benefit and advantages of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or
 10 unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, these defendants answer and say—that whether the said Thomas McElrath, on or about the several times in the complainants' bill mentioned, applied to the complainant for the several loans in the complainant's bill mentioned, and whether the said Thomas McElrath offered to deposit with the complainant as a pledge, or collateral security for the repayment of the said loans, the said several numbers of shares in the complainant's bill mentioned, or any number of shares of the capital stock of the
 20 Trenton Iron Company (a corporation by the laws of the state of New Jersey) to be held by the said complainant as a pledge or collateral security until the said Thomas McElrath should have fully paid off and taken up the original notes offered to be given for the several aforesaid loans, and any other notes which might be given by said McElrath to said complainant in renewal of either, the said original notes, or any other notes representing the said original indebtedness, or any part thereof, and whether the said complainant acceded to the said several proposals of the said Thomas McElrath, and did, at the several
 30 times in the complainant's bill mentioned, or at any time, discount said McElrath's said several notes, or any of them, for the said several sums in the complainant's bill specified, and whether the said Thomas McElrath deposited with the complainant, for the purposes in said bill mentioned, the said several certificates in said bill mentioned, purporting to be certificates for the several numbers of shares, in said bill specified, of the capital stock of the said Trenton Iron Com-

pany, with the several powers of attorney, to Hamilton Blydenburgh, as in said bill mentioned; and whether the said Thomas McElrath owes to the complainant any sum of money, these defendants do not know, and are unable to answer, but pray that the said complainant may be required to make strict and ample proof thereof.

And these defendants, further answering, admit that, at the time in the bill of complaint mentioned, the said the Hunterdon County Bank caused a writ of attachment to be issued out of the Supreme Court of the state of New Jersey, and that, on the twenty-fourth and twenty-sixth days of August, in the year of our Lord one thousand eight hundred and fifty-seven, the sheriff of the county of Mercer, by virtue of said writ, did attach three hundred shares of the capital stock of the Trenton Iron Company as the property of Thomas McElrath, among which shares so attached are the two hundred and twenty-five shares which the complainant pretends were pledged to him. 10

And these defendants further answering, admit that they were appointed by the said Supreme Court to be the auditors under said attachment, and that such further proceedings were had therein that judgment final was entered upon said attachment in favor of the said the Hunterdon County Bank and against the said Thomas McElrath at the the time and for the sum in the complainant's bill specified; and that these defendants, as auditors under said attachment, did report that there was due to the several applying creditors under said attachment the several sums as in said bill of complaint set forth. 20

And these defendants further answering show that they have been informed, and believe it to be true, that at the time the said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Jersey City Bank, and William Wright discounted the acceptances of said Thomas McElrath upon which their claims under the aforesaid attachment are founded, the said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Jersey City Bank and William Wright were informed, and believed it to be true, that the said Thomas McElrath was the owner of three hundred shares of the capital stock of the said the 30 40

Trenton Iron Company ; that said three hundred shares stood on the books of said iron company in the name of said McElrath, and was required by the charter of said iron company to be transferred on their books, and that, acting upon and influenced by such information and belief, and without any notice of the pretended pledge of two hundred and twenty-five of said shares, as in the complainant's bill mentioned, the said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey City and William
 10 Wright, discounted the said acceptances of said Thomas McElrath.

And these defendants further answering say, that the said the Trenton Iron Company was chartered by an act of the legislature of the state of New Jersey, entitled "An act to incorporate the Trenton Iron Company," approved February the sixteenth, eighteen hundred and forty-seven, and that, by the said charter, all transfers of the capital stock of said company are required to be made upon the books thereof; that the said three hundred shares of the capital stock of said com-
 20 pany, so attached as aforesaid, still stand upon the books of said company in the name of said Thomas McElrath; and these defendants expressly charge that the pretended pledge of two hundred and twenty-five, or any number of the said three hundred shares of the said capital stock of said iron company to the complainant, as in his bill mentioned, is of no validity as against the said plaintiff in the said attachment and the applying creditors thereunder; that neither the said two hundred and twenty-five shares, or any part thereof, have been transferred by said McElrath to said complainant, but at
 30 the time of executing the said writ of attachment the said two hundred and twenty-five shares of said capital stock, and every of them, were the property of the said Thomas McElrath, and liable to be attached and taken by virtue of the said attachment for the benefit of the said plaintiff in said attachment and other creditors who might apply, and that the said writ of attachment was issued and served before the said two hundred and twenty-five shares, or any of them, were transferred to the said complainant, and is a valid lien upon said two hundred and twenty-five shares of said capital stock prior
 40 to the lien of the said complainant under their pretended pledge.

And these defendants in further answering say, that by the several certificates for the said two hundred and twenty-five shares of said capital stock, which the complainant pretends were pledged to them as collateral security, the said two hundred and twenty-five shares were expressly stated to be transferable only on the books of the said the Trenton Iron Company, and these defendants charge that said several certificates gave full notice to said complainant that they could only effect a valid transfer of said two hundred and twenty-five shares upon the books of said company ; and these defendants further charge, that the failure of the complainant to effect the transfer thereof on the books of the said the Trenton Iron Company for so long a space of time was a waiver of the right thereto, at least as against the said plaintiff in said attachment and the applying creditors thereunder, and worked a fraud upon the said plaintiff in said attachment and the said applying creditors who had no notice of such pledge. 10

And these defendants further answering say, that at the time of executing the aforesaid writ of attachment the said the Trenton Iron Company had not been advised or informed by the said complainant, or by any other person, nor did they know, until long after the execution of said writ of attachment, that the complainant pretended to have any claim whatever to the said two hundred and twenty-five shares of said capital stock, or any part thereof. 20

And these defendants further answering say, that the said Thomas McElrath has fully paid and satisfied the said several original notes given by the said McElrath for the several debts contracted to the complainant, and that thereby the lien of the complainant upon the said two hundred and twenty-five shares of said capital stock for the payment of said original notes, if any existed, which these defendants deny, was fully discharged ; and these defendants further say, that the pretended pledge to the complainant of the said two hundred and twenty-five shares, as collateral security for the payment of the several renewal notes in the complainant's bill particularly specified, was made subsequent to the service and execution, and with full knowledge of the aforesaid writ of attachment issued by the said the Hunterdon County Bank against the said Thomas McElrath, and that the lien of the said attachment 40

upon the said two hundred and twenty-five shares is prior to any lien which the complainant may have acquired by virtue of the said pretended pledge.

And these defendants further answering say, that as they have been informed, and believe it to be true, the said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey City, and William Wright, have never received from the said Thomas McElrath, or any other person or persons, any security or property whatever for the payment of the aforesaid several sums of money due them from the said Thomas McElrath, and that they neither have nor hold any security whatever for the several sums due them, as in said bill mentioned, from said Thomas McElrath, other than the lien upon the said three hundred shares of the capital stock of the said the Trenton Iron Company by virtue of the attachment aforesaid; and these defendants further say, that they believe it to be true that the said the Hunterdon County Bank, the Mechanics and Manufacturers Bank at Trenton, the Bank of Jersey City and William Wright, discounted and received the acceptances of the said Thomas McElrath aforesaid upon the faith and belief that the said Thomas McElrath was the owner of the said three hundred shares of the capital stock of the said the Trenton Iron Company, and that the said three hundred shares so attached are a slender and scanty security for the said sums of money due the Hunterdon County Bank, the plaintiff in the said attachment, and the said applying creditors; and these defendants deny all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for these defendants to make answer, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

B. VANSYCKEL,

Solicitor for and of counsel with said defendants.

State of New Jersey, Mercer county, ss.—William M. Force, Daniel B. Bodine, and William R. Murphy, the above named defendants, being duly sworn, on their oaths do severally say, that the matters and things set forth in the above answer, so far as relate to their own acts, are true, and so far as they relate to the acts of others they believe them to be true.

Sworn and subscribed, before me,

General replications.

CROSS-BILL.

*To his Honor Benjamin Williamson, Chancellor of the state 10
of New Jersey.*

Humbly complaining, show unto your Honor your orators, William M. Force, Daniel B. Bodine, and William R. Murphy, auditors appointed by the Supreme Court of Judicature of New Jersey, in a certain attachment issued out of said court, at the suit of the Hunterdon County Bank, against one Thomas McElrath, a nonresident debtor, that on or about the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, the Nassau Bank filed their bill in this honorable court against your orators and the Bank of 20 Jersey City, William Wright, the Hunterdon County Bank, the Broadway Bank, Thomas McElrath, and the Mechanics and Manufacturers Bank at Trenton, praying that two hundred and twenty-five shares of the capital stock of the Trenton Iron Company (a corporation created by the laws of this state), which the said the Nassau Bank pretend was deposited with them by the said Thomas McElrath as a pledge or collateral security for the payment of a certain debt, in said original bill particularly specified, due from the said Thomas McElrath to the said the Nassau Bank, may be sold, under the direction and de- 30 cree of this honorable court, to pay and satisfy to the said the Nassau Bank the debt so due to them, to which said original bill,

now pending in this court, these complainants and each of the other defendants (except Thomas McElrath and the Broadway Bank) have filed their answers.

And your orators further show, that the said the Nassau Bank, in and by their said bill, have alleged, and it is true, that on or about the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, the Hunterdon County Bank caused a writ of attachment to be issued out of the Supreme Court of this state against the estate of the said Thomas McElrath, upon an affidavit that the said McElrath owed them the sum of six thousand dollars, and that said writ of attachment was delivered to the sheriff of the county of Mercer, who, on the twenty-fourth and twenty-sixth days of August, in the year last aforesaid, attached thereunder three hundred shares of the capital stock of the Trenton Iron Company as property of said McElrath, among which shares so attached are the aforesaid two hundred and twenty-five shares so as aforesaid alleged to have been pledged by said Thomas McElrath to the said the Nassau Bank; and that such proceedings were had upon the said attachment, that afterwards, to wit, at the November term of said Supreme Court, in the year last aforesaid, William M. Force, Daniel B. Bodine, and William R. Murphy were appointed by the said court to be the auditors under said attachment, and afterwards, to wit, on the sixth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, a judgment was entered upon said attachment in favor of the Hunterdon County Bank and against the said Thomas McElrath for the sum of eight thousand seven hundred and fifty-eight dollars and seventy-four cents, or some other sum; and that said auditors did also report that there was due to the Mechanics and Manufacturers Bank at Trenton, on the third day of March last, the date of their report, the sum of two thousand five hundred and sixty-eight dollars and seventy-five cents, and to the Bank of Jersey City the sum of two thousand and fifty-three dollars and thirty-one cents, and to William Wright the sum of two thousand and fifty-four dollars; and by their further report, dated the sixth day of March last, that there was due to the Broadway Bank of New York the sum of four thousand and eighty dollars and eleven cents, which said seve-

ral parties were admitted as creditors under the said proceedings in attachment.

And your orators further show, that in said original bill it is pretended that the said two hundred and twenty-five shares of the capital stock of the Trenton Iron Company were pledged to and deposited with the said the Nassau Bank as aforesaid long before the issue or execution of said writ of attachment, and that if the said writ of attachment is a lien upon the said two hundred and twenty-five shares of stock, it is subsequent and subject to the prior lien thereon of the said pretended 10
pledge of the said the Nassau Bank.

And your orators further show, that they have been informed, and believe it to be true, and it is so alleged in said original bill, that the said the Nassau Bank have received from the said Thomas McElrath, and now hold, divers securities and property of great value, other than the aforesaid two hundred and twenty-five shares of stock of the Trenton Iron Company, as security or pledges for the payment of the debt due from the said Thomas McElrath to the said the Nassau Bank, in said original bill specified; that among such other 20
securities so held by the Nassau Bank are one hundred shares of the stock of the Delaware, Lackawana, and Western Railroad Company, besides divers other securities and property of great value, the particulars of which are unknown to these complainants.

And your orators further show, that if the said the Nassau Bank shall be held to have a lien upon the said two hundred and twenty-five shares of stock of the Trenton Iron Company, by reason of their pretended pledge prior to the lien of the aforesaid attachment, the remainder of said shares of the 30
stock of the Trenton Iron Company, attached as aforesaid, will be insufficient to pay and satisfy the claims of the said the Hunterdon County Bank and the applying creditors under said attachment, and that the said the Nassau Bank ought to be compelled to resort to and exhaust such other securities as they may have for the payment of their said claim against said McElrath before they are permitted to resort for the satisfaction thereof to the said two hundred and twenty-five shares which they pretend was pledged to them as aforesaid.

And your orators further show, that they have frequently 40

and in a friendly manner applied to the said the Nassau Bank and Thomas McElrath, and requested them to pay and satisfy the said debt due from said McElrath to the said the Nassau Bank out of said securities and property which the said the Nassau Bank holds, other than the said two hundred and twenty-five shares of stock of the Trenton Iron Company; and your orators well hoped that the said the Nassau Bank would have complied with such reasonable request as in equity and good conscience they ought to have done—but now, so it

10 is may it please your Honor, that the said defendants, combining and confederating with divers other persons who are unknown to your orators, but whose names, when discovered, your orators pray may be inserted herein with apt and proper words to charge them as defendants hereto, not only refuse to apply, in the first place, such other security and property to the payment of said debt due from said McElrath to said the Nassau Bank, but they sometimes give out and pretend, in speeches, that they, the said the Nassau Bank, have never held any securities or property for the payment of the said

20 debt due to them from said McElrath, other than the said two hundred and twenty-five shares of stock in the Trenton Iron Company, whereas your orators expressly charge the contrary thereof to be true; and at other times they give out and pretend that although the said the Nassau Bank did receive from the said Thomas McElrath divers security and property of great value, other than the said two hundred and twenty-five shares of stock, yet the said other securities and property have been applied to the payment of divers debts due from said McElrath to said the Nassau Bank, other than the indebted-

30 ness in the original bill specified, whereas your orators charge the contrary to be true; and at other times they give out and pretend that the said the Nassau Bank have discounted divers notes, to a large amount, for the said Thomas McElrath, other than those in the original bill specified, and that they have a right to hold such other securities and property until and for the payment of such other notes, whereas your orators charge the contrary thereof to be true. All which actings, pretences, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the

40 premises. In consideration whereof, and forasmuch as your

orators can have no remedy without the assistance of a court of equity—to the end, therefore, that the said the Nassau Bank and Thomas McElrath, and their confederates, when discovered, may upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that they may, in manner aforesaid, answer and set forth a particular and full statement and account of all the securities and property which the said the Nassau Bank have received from or on account of said Thomas McElrath, and what disposition and application has been made of such securities and property, and whether such securities and property, or any portion thereof, were received as security for the payment of any debt due from said McElrath to said the Nassau Bank other than that specified in the original bill, and if so, the nature of such indebtedness, and what portion of such securities and property was to be applied thereto; and whether such securities and property, or any portion thereof, were received as security for the payment of any note or notes other than those specified in the original bill, and if so a particular statement of such note or notes, and the portion of such securities to be applied thereto; and whether, at the time of discounting the original notes in the original bill specified, such securities and property, or any portion thereof, were pledged for the payment of any note or indebtedness other than said original note or notes; and whether the said the Nassau Bank discounted to said McElrath, subsequent to the said original notes, or any of them, any other note or notes, and if so, a full and particular statement of the amount and date thereof, and the time of discounting the same; and whether such notes, or any of them, were discounted for the benefit of said McElrath, or for and at the request of some other person; and whether the said McElrath has paid any portion thereof, or is entitled to any credits thereupon, and if so, a full and particular statement of all the payments made thereupon and credits to which said McElrath is entitled; and whether any agreement has been made between

said McElrath and the Nassau Bank touching such securities and property since the making of the original agreement in the original bill mentioned, and if so, what was the agreement and when was it made; and whether the said original agreement was made at the time of discounting the said original note or notes, or subsequent thereto; and whether the said agreement was made in writing, and what the said original agreement was specifically; and whether the agreement concerning such securities and property was renewed at the time of discounting any note subsequent to the original note or notes; and whether, upon any or either note discounted subsequent to the said original note or notes, there was an endorser or surety, and if so, upon what note or notes, and who was the endorser or surety; and whether the said certificates for the said two hundred and twenty-five shares of stock of the Trenton Iron Company were deposited with the Nassau Bank at the time of discounting the original notes; and whether the said the Nassau Bank have held in their own possession such certificates ever since they were deposited; and whether the said Thomas McElrath has not, at divers times since the said certificates were originally deposited, had them in his possession; and that the said confederates may be compelled to make a complete answer to the several matters aforesaid; and that the said the Nassau Bank may be decreed to exhaust such other securities and property for the satisfaction of their said claim against said McElrath before resorting to the said two hundred and twenty-five shares of stock of the Trenton Iron Company, which they pretend were pledged to them as collateral security as aforesaid, if they shall be said to have a lien upon said two hundred and twenty-five shares, by reason of their pretended pledge, prior to the lien of said attachment, and that your orators may have such other or further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor to grant unto your orators a writ or writs of subpœna of the state of New Jersey, to be directed to the Nassau Bank and Thomas McElrath, therein and thereby commanding them, and each of them, at a certain day and under a certain penalty, therein to be expressed, personally to be

and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet, &c. And your orators, &c.

B. VANSYCKEL,

Solicitor for and of counsel with complainant.

FINAL DECREE.

The bill of complaint filed in this cause having been heretofore ordered to be taken as confessed against the defendant, Thomas McElrath, and the cause coming on to be heard, in the term of October last, in the presence of the counsel of the complainants and the respective counsel of the defendants, the Hunterdon County Bank, the Bank of Jersey City, the Mechanics and Manufacturers Bank at Trenton, William Wright, Broadway Bank, William M. Force, Daniel B. Bodine, and William R. Murphy, and the pleadings, proofs, and exhibits in the cause having been read, and the arguments of counsel heard thereon, and the court having taken time to consider thereof, and it appearing, from the proofs and exhibits in the cause, that before the issuing of the writ of attachment against the estate of the said defendant, Thomas McElrath, at the suit of the defendants, the Hunterdon County Bank, as set forth in the pleadings in this cause, and before the alleged execution thereof upon the two hundred and twenty-five shares of the capital stock of the Trenton Iron Company mentioned in said bill, to wit, on the twentieth day of December, in the year of our Lord eighteen hundred and fifty-six, the said Thomas McElrath hypothecated to the complainants one hundred shares of the above mentioned two hundred and twenty-five shares of the capital stock of the Trenton Iron Company, and deposited with the complainants the certificates thereof, together with a duly executed power of attorney authorizing the sale and transfer of said one hundred shares of stock to be held by said complainants as collateral security for the payment of a certain promissory note for eight thousand dollars, made by said Thomas McElrath,

and discounted to him by said complainants on the day and year last aforesaid, and also for the payment of any note or notes of said Thomas McElrath given by him to said complainants on renewal of said loan or representing said indebtedness, and it forthwith appearing that there is due on this day from said Thomas McElrath to the said complainants, for principal and interest upon the aforesaid loan or discount, and the note representing the same, the sum of nine thousand eight hundred and thirty-eight dollars and seventy-eight cents.

10 And that, on the eleventh day of February, in the year of our Lord eighteen hundred and fifty-seven, the said Thomas McElrath hypothecated to the complainants thirty-seven shares of the said above mentioned two hundred and twenty-five shares of the capital stock of the Trenton Iron Company, and deposited with the complainants the certificates thereof, together with a duly executed power of attorney authorizing the sale and transfer of said thirty-seven shares of stock to be held by said complainants, together with certain other securities, as collateral security for the payment of a certain promissory note of five thousand dollars, made by said Thomas McElrath, and discounted to him by said complainants, on the day and year last aforesaid, and also for the payment of any note or notes of said Thomas McElrath given by him to said complainants in renewal of said loan or representing said original indebtedness.

20 And that, on the twelfth day of February, in the year of our Lord eighteen hundred and fifty-seven, the said Thomas McElrath hypothecated to the complainants thirteen shares of said above named two hundred and twenty-five shares of the capital stock of the Trenton Iron Company, and deposited with the complainants the certificates thereof, together with a duly executed power of attorney authorizing the sale and transfer of said thirteen shares of stock to be held by said complainants, together with certain other securities as collateral security for the payment of a certain promissory note of five thousand dollars, made by the said Thomas McElrath, and discounted to him by the complainants, on the day and year last aforesaid, and also for the payment of any note or notes of said Thomas McElrath, given by him to said complainants
 30 in renewal of said loan or representing said original indebted-

ness, and that, by payments on account, the said above named two several promissory notes were reduced, and a promissory note, bearing date the fifteenth day of August, in the year of our Lord eighteen hundred and fifty-seven, in renewal of said loans, and representing the balance of said indebtedness, was given by the said Thomas McElrath to the complainants, for the sum of nine thousand eight hundred dollars, with the said above named thirty-seven shares of capital stock of said Trenton Iron Company and said thirteen shares of said stock, making in all fifty shares of said capital stock, as security for the same; and it further appearing that, by payments on account, the said last above named note was further reduced, and that, for the balance of said indebtedness, the said Thomas McElrath, on the sixteenth day of November, in the year of our Lord eighteen hundred and fifty-seven, gave to the complainants his promissory note for the sum of three thousand three hundred dollars and twenty-nine cents, and that the said loan has been renewed and continued up to this time, with the said fifty shares of said capital stock as collateral security. 10

And it further appearing that there is due on this day from the said Thomas McElrath to the said complainants, for principal and interest upon the aforesaid loan or discount, and the note representing the same, the sum of three thousand nine hundred and seventy dollars and forty-seven cents, and that, on the sixteenth day of May, in the year of our Lord eighteen hundred and fifty-seven, the said Thomas McElrath hypothecated to the complainants seventy-five shares of the said above named two hundred and twenty-five shares of the capital stock of the Trenton Iron Company, and deposited with the complainants the certificates thereof, together with a duly executed power of attorney authorizing the sale and transfer of said seventy-five shares of stock, to be held by said complainants, together with certain other securities as collateral security for the payment of a certain promissory note of twelve thousand dollars, made by said Thomas McElrath, and discounted to him by said complainants on the day and year last aforesaid, and also for the payment of any note or notes of said Thomas McElrath given by him to said complainants in renewal of said loan, or representing said original indebtedness; and that the balance due on said loan, with interest, on 20 30 40

the fifteenth day of January, in the year of our Lord eighteen hundred and fifty-eight, amounted to the sum of twelve thousand two hundred and nineteen dollars and thirty-four cents, for which amount a renewal note of that date was given by said Thomas McElrath to the complainants.

And it further appearing that, on the fourth day of March, in the year of our Lord eighteen hundred and fifty-eight, all the collaterals held by the complainants for said loan, except the above named seventy-five shares of the capital stock of
 10 the Trenton Iron Company, were sold by the complainants, and that the proceeds of said sale amounted to the sum of two thousand five hundred and thirty-four dollars and seventy-six cents, and that there is due on this day from said Thomas McElrath to the said complainants, for the balance of principal and interest upon the aforesaid loan or discount, and the note representing the same, the sum of eleven thousand six hundred and seventy dollars and twenty-nine cents.

It is thereupon, on this twenty-sixth day of November, in the year of our Lord eighteen hundred and sixty, by the
 20 honorable Henry W. Green, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge, and decree that the said complainants are entitled to have the said two hundred and twenty-five shares of the capital stock of the Trenton Iron Company, held by them as aforesaid, sold, and the proceeds thereof applied to the payment of the said several loans and the balances thereof due from the said Thomas McElrath, together with
 30 complainant's costs of this suit, and that the one hundred shares of stock in the Trenton Iron Company, mentioned in certificates numbers one hundred and twelve, two hundred and fifty-eight, and three hundred and seventy-five, be sold to pay and satisfy, in the first place, the amount due to complainants for principal and interest on the first above named loan or discount, to wit, the sum of nine thousand eight hundred and thirty-eight dollars and seventy-eight cents, with interest from the date hereof; and that the fifty shares of stock in the Trenton Iron Company, mentioned in certificates numbers
 40 three hundred and seventy-four, three hundred and sixty-five,

one hundred and seventy, and two hundred and eighty-six, be sold to pay and satisfy, in the first place, the amount due to complainants for principal and interest on the second above named loan or discount, to wit, the sum of three thousand nine hundred and seventy dollars and forty-seven cents, with interest from the date hereof.

And the seventy-five shares of stock in the Trenton Iron Company, mentioned in certificates numbers two hundred and sixty-three and two hundred and forty-nine, be sold to pay and satisfy, in the first place, the amount due to complainants 10 for principal and interest on the third above named loan or discount, to wit, the sum of eleven thousand six hundred and seventy dollars and twenty-nine cents, with interest from the date hereof.

And that any surplus that may remain of these proceeds of the sale of said two hundred and twenty-five shares of stock be applied, in the next place, to the payment of the complainant's costs of this suit to be taxed; and if the proceeds of said sales, after paying thereout the said several sums, and interest thereon, due to the said complainants as aforesaid, shall prove 20 insufficient to satisfy to the said complainants their costs taxed in this suit, then it is hereby further ordered, adjudged, and decreed, that the defendants, the Hunterdon County Bank, the Bank of Jersey City, the Mechanics and Manufacturers Bank at Trenton, the Broadway Bank, William Wright, William M. Force, Daniel B. Bodine, and William R. Murphy do pay to the said complainants, or their solicitors, the taxed costs of the complainants in this suit, or such part thereof as shall remain unsatisfied, out of the proceeds of the sales aforesaid. 30

And it is further ordered, adjudged, and decreed, that Caleb S. Green, one of the masters of this court, do sell the aforesaid two hundred and twenty five shares of the capital stock of the Trenton Iron Company at public sale, to the highest bidder, in the city of Trenton, and that the said master do advertise said sale, by setting up at least three advertisements thereof in three public places in the said city of Trenton and by publishing the same, for at least one month, in one of the newspapers published in the city of Trenton, giving at least one month's notice of the time and place of such sale, 40

and that the said master apply the proceeds of such sale in the manner herein before mentioned.

And that in case more money shall be raised by said sales than shall be sufficient to satisfy the said complainant's debt, interest, and costs, according to the appropriation and in the manner and order aforesaid, that such surplus money be paid by said master into this court to abide the further order of this court, and that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in,
10 and to the said securities, when sold as aforesaid, by virtue of this decree.

HENRY W. GREEN, C.

EVIDENCE.

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein the Nassau Bank is complainant, and the Hunterdon County Bank, Thomas McElrath, and others are defendants, taken at Jersey City, on the twentieth day of January, in the year of our Lord one thousand eight hundred and fifty-nine, before John P. Vroom, on of the masters and examiners of the said court, at his office, in the presence of Edward W. Scudder, esq., solicitor and of counsel for the said complainant, of B. Vansyckel, solicitor and of counsel for the Hunterdon County Bank, of A. G. Richey, for the Mechanics and Manufacturers Bank of Trenton, and of Jacob Weart, for the Bank of Jersey City.

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George H. Briggs, of the city of New York, a witness produced on the part of the aforesaid complainant, being duly
30 sworn, deposeth and saith—I am paying teller in the Nassau Bank of New York, have been such since December 1st, 1857, prior to which I was discount clerk; I was discount clerk from July, 1853; the Nassau Bank is a bank of discount and deposit. I am acquainted with Thomas McElrath, of the city of New York; he resided in the city or state of New York in

1856 and 7; do not know whether he lived in the city or not; the Nassau Bank made a loan to Thomas McElrath; in December 20th, 1856, the bank made him a loan of \$8000, by discounting his note at three months—note was dated December 20th, 1856; he deposited, as collateral, one hundred shares of the capital stock of the Trenton Iron Company; those certificates of stock were left with the bank, in my charge; the note given was paid by renewal, and on the same security; the new note was for \$8000, at three months; the securities remained in my hands as security for the new note, which 10 was dated March 23d, 1857; this note was also renewed at maturity in the same manner; the date of this new note was June 26th, 1857, the securities still remaining in my hands; this note passed out of my hands before its maturity.

On February 11th, 1857, Mr. McElrath made another loan, and gave his note for \$5000, at ninety days, and gave as security thirty-seven shares of the Trenton Iron Company stock and seven shares Phœnix Oil and Candle Company stock, also another loan, on the 12th February, 1857, on his own note of \$5000, at ninety days, May 16th, 1857, on the security of thir- 20 teen shares of the Trenton Iron Company stock, ten shares of the Phœnix Oil and Candle Company stock, and a note of Chauncey Belknap for \$1000; one note fell due May 15th, 1857, the other May 16th, and were both renewed for ninety days each, due August 16th, on the same securities; August 15th, 1857, he gave his note for \$9800, at ninety days, due November 16th, 1857, in the place of these other two notes of \$5000 each, and on the same securities; the loan was thus reduced by the payment of \$200.

On November 16th, 1857, he gave his own note for 30 \$3300.29, at sixty days, due January 18th, 1858, and, as collateral, fifty shares of the Trenton Iron Company stock and C. Belknap's note for \$1000, being the same note and the same shares of stock; three notes of Charles A. Coe, one dated October 1st, 1857, for \$2266.66, at four months, due February 4th, 1858, drawn payable to the order of the Nassau Bank, another note dated October 1st, 1857, for \$2266.67, at eight months, due June 4th, 1858, also of said Coe, and drawn in the same way.

Another note, dated October 1st, 1857, for \$2266.67, at 40

twelve months, due October 4th, 1858, also of said Coe, and drawn as above.

These notes were discounted at the bank, and for Mr. McElrath; the seventeen shares of the Phœnix stock were left as security for these notes, and when the notes were paid Mr. Coe took the stocks; Mr. Coe bought these seventeen shares of Phœnix stock of Thomas McElrath, and gave these three notes for it; McElrath left these shares as security for his three notes, and when the notes were paid Coe took up the
 10 stock; the Coe notes were discounted for the benefit of McElrath, and passed to his credit; this transaction left a balance of \$3300.29 due on the \$9800 note, for which there was left, as security, fifty shares of the Trenton Iron Company stock (the same fifty shares) and a note of C. Belknap of the same amount as before; the loan continued in that position until I left the office of discount clerk.

May 16th, 1857, a loan was made to McElrath, on a sale note for \$12,000, for which was pledged, as collateral security, seventy-five shares of the Trenton Iron Company's
 20 stock, six bonds, of \$1000 each, of the Delaware, Lackawanna, and Western Railroad Company, one hundred shares of the stock of the same railroad company, and eleven shares of the stock of the Warren Railroad Company; there yet remains in the hands of the bank, as collateral for that loan, seventy-five shares of the Trenton Iron Company stock; I have understood the other stocks were sold—they were taken out of my possession for that purpose; there was a demand made of McElrath for the money, and he refused; we had a power of sale, and I understood the stock was sold.

30 Witness being shown certificate No. 112, dated June 2d, 1854—fifty shares of the Trenton Iron Company stock, issued to Thomas McElrath, marked *Exhibit No. 1* on the part of the complainant; another certificate, No. 170, dated October 3d, 1854, thirty-five shares of the same stock, issued to Thomas McElrath, marked *Exhibit No. 2*, as above; *Exhibits No's 1 and 2*, with power to transfer, dated December 20th, 1856; another certificate as above, No. 286, dated March 7th, 1856, for thirteen shares, issued to Thomas McElrath, marked
 40 *Exhibit No. 3*, as above; another certificate as above, No. 365, dated March 22d, 1856, one share, issued to the same

person, marked *Exhibit No. 4*; another certificate, No. 374, dated March 31st, 1856, one share, issued to the same person; a transfer of stock for the fifteen shares, included in *Exhibits No's 3, 4, & 5*, dated December 20th, 1856, from Thomas McElrath to Hamilton Blydenburgh, with a bargain and sale power to the bank, marked *Exhibit No. 6*, being shown to witness, he says—these are, to the best of my knowledge and belief, the certificates of stock which were transferred to the Nassau Bank as security for the first loan of \$8000, of December 20th, 1856; these certificates remained in my custody from December 20th, 1856, till I left the position of discount clerk, and December 1st, 1857, they were passed over to my successor, Henry S. Bidwell; I left one hundred shares of the Trenton Iron Company stock attached to the \$8000 note as security. *Exhibit No. 6*, shown to witness, he says—that is my name written to that transfer as subscribing witness, and that is Mr. McElrath's signature, which I witnessed.

The transfer and certificates, No's 3, 4, and 5, offered in evidence.

Certificate No. 375 of the Trenton Iron Company, dated 20 March 31st, 1856, twenty shares, marked *Exhibit No. 7*, issued to Mr. McElrath.

Certificate No. 258, dated December 14th, 1855, thirty shares of the Trenton Iron Company's stock, issued to the same person, marked *Exhibit No. 8*.

Bargain and sale power, dated 11th of February, 1857, Thomas McElrath to the Nassau Bank, marked *Exhibit No. 9*, being shown to witness, he says—I am the subscribing witness to that bargain and sale power executed by Thomas McElrath in my presence; those are the certificates of stock, the 30 fifty shares, of which I witnessed the transfer as security for the loans of the 11th and 12th of February, 1857.

Exhibits No's 7, 8, and 9, offered in evidence.

These fifty shares of stock, deposited as collateral for this loan, remained in my hands, as discount clerk, as long as I remained as discount clerk, and were given to Henry S. Bidwell, my successor; there were fifty shares deposited for the two loans of February the 11th and 12th, 1857, but I think there was one certificate of thirty-five shares, two of one share each, and one of thirteen shares, attached to the \$8000 40

note, as shown here to me ; these one hundred and fifty shares which you have shown me are the certificates which I handed over as security for the two first loans to Mr. McElrath, as I have stated.

Certificate No. 263, forty-five shares, dated January 16th, 1856, issued to Thomas McElrath, marked *Exhibit No. 10*.

Certificate No. 249, for thirty shares, dated September 7th, 1855, issued to the same person, marked *Exhibit No. 11*.

Bargain and sale power, Thomas McElrath to Nassau Bank, 10 May 16th, 1857, being shown to witness, he says—these are the certificates which were deposited for the \$12,000 loan of the 16th of May, 1857 ; I have held these since the 1st of December, 1857 ; they were held by the paying teller ; from May 16, 1857, when I became paying teller ; December, 1857, I took them ; according to the custom of the bank, securities for call loans go into the hands of the paying teller, and these have remained in my custody up to this time from the time I received them.

I am acquainted with George W. Lord, the instrumental 20 witness to the transfer of these last named certificates ; he resides either in Brooklyn or New York ; I have seen him write, and am acquainted with his signature—that is his signature to the transfer.

I also know Mr. McElrath's handwriting and signature—those are his signatures to the transfer.

Exhibits No. 10, 11, and 12 offered in evidence.

The notes given to banks whose stocks are pledged are of a peculiar form, and are called stock notes.

Being shown a printed form, he says it is the same as used 30 in our bank since I have been there ; that was the character of the note given by McElrath at the time of making the loan and of the renewals ; on all the loans made by him the notes have been of this character.

A printed blank offered in evidence, and marked *Exhibit No. 13*.

Cross-examined by Mr. Richey.—I have known Mr. Mc-Elrath since July, 1853 ; he was at that time the president of the Nassau Bank, and remained so until some time in 1857, I think ; I have been in the bank since July, 1853 ; he was 40 not president of the bank in December, 1857, when I left the discount desk ; previous to that time I was discount clerk ; it

is the duty of the discount clerk to make the entries of all the discounts and calculate the interest, &c., and also to fill up blank notes and stock notes on which loans are made.

Question. Had Mr. McElrath had discounts in your bank prior to December, 1856?

Answer. I do not know what line of discounts he had prior to that time; by "line" I mean the amount of discount; I can't call to mind whether he had other discounts at this time—can't tell without reference to the books; I can't now tell whether he gave an endorser on any of his loans; I know he got 10 a discount of \$8000 on the 20th December, 1856, because I passed it through the discount books to his credit; the loan must have been given by the sanction of the board of direction of the bank; I was not in that board of direction; it was communicated to me by the cashier or the president, or I found it out from the offering book, upon which the board passes yes or no; I have no particular recollection as to this particular discount, as to how I derived my knowledge of it; I have obtained the facts which I have communicated about this first loan by reference to the original entries on the dis- 20 count register and discount leger, or bill books, as we call them; these statements as to the first loan are given from my own entries in the book.

Exhibits No. 1, 2, 3, 4, and 5, in the whole, amounting to one hundred shares, are not the identical shares deposited with me for the security of the \$8000 loan of December 20th, 1856.

Exhibit No. 1, for fifty shares, is one of the certificates deposited with me on the discount of the \$8000 notes—I identify it more particularly by the date than any other way; there 30 is nothing else that I see on the certificate by which I can identify it; I have not had the custody of this certificate since December 1st, 1857; I do not know, from my own personal knowledge, where it has been. As regards the first loan, I do not identify any other certificate left as collateral for such loan; this discount of \$8000 was carried to Mr. McElrath's credit in our leger—the individual leger; it was the same account where the deposits were carried to his credit; I think there were no other discounts to Mr. McElrath between December 20th, 1856, until the loan of the 11th of February, 40

1857; when the note fell due it was renewed for the same amount—I speak from inspection of the books, and not from memory; I suppose it likely there were deposits made by Mr. McElrath from December 20th to February 11th, 1857, but I do not know without looking at the books—I have nothing to do with that part of the business.

In reference to the renewal of the \$8000 note, on June 26, 1857, I have no knowledge save by reference to the books; that note matured September 29th, 1857; it is entered in our 10 books as all other discounts are; I held the note in my charge until the 29th September, 1857, when it fell due; I suppose I then passed it over to the receiving teller, as all notes are, though I have no particular knowledge of it.

The second loan was made 11th February, 1857; I got my knowledge of it from my original entry made in the book; I have no particular recollection of this note, no more than I have of all notes discounted in the bank; I must have been informed by some of the officers of the bank to pass the note; I am not sure that Mr. McElrath was president of the bank 20 the 11th February, 1857; the books of the bank show the number of shares of each kind of collateral taken for each loan, and I get my knowledge from the books; the book giving this information is the discount register. On the second loan, the discount register shows as security thirty-seven shares of the Trenton Iron Company and seven shares of the Phœnix Camden and Oil Company stock; I cannot identify the certificate for these thirty-seven shares; I know I have one hundred and fifty shares of the Trenton Iron Company stock as security for the loans to McElrath, but I cannot identify 30 the particular shares for each particular loan; I cannot identify the thirty-seven shares of stock as being attached to that particular loan; there is nothing by which I can swear it is one of the certificates composing the one hundred and fifty; for the 12th of February there was another loan of \$5000; I learn it from my original entry in the discount register—I examined the book this morning; there were thirteen shares of the Trenton Iron Company stock pledged on that loan—I cannot swear that any of these certificates represent these thirteen shares—there is nothing by which I can 40 identify them; he had no other discounts, to my knowledge,

between the 12th February and the 26th day of June, 1857— I mean to say I don't know whether he had any or not ; I did not take a list of all the discounts he had ever had in the bank, but only of these particular loans—I did not look at any other.

Question. Did you take an account from the books of all the discounts McElrath had from December, 1856, to December, 1857?

Answer. I took a list of the notes, for which notes I knew was pledged one hundred and fifty shares of the Trenton Iron 10 Company stock.

I can't call to my mind now, without reference to the books, whether there were any other discounts during that period or not ; the discount book shows the number of shares pledged for each loan, but not the number of the certificate. In the discount of August 15th, 1857, for \$9800, there were fifty shares of the Trenton Iron Company pledged ; I cannot identify those certificates, that is I could not swear to their identity ; I cannot identify those certificates marked exhibits as being pledged on the loan of August, 1857, but I believe they 20 are the same as have always been in the bank ; I have had nothing to do with them since December, 1857 ; the loan of August 15th, 1857, went to Mr. McElrath's credit the same as all his other discounts and deposits ; I do not speak from memory in regard to any of the loans, but only from reference and examination of my entries in the books ; I give nothing at all from my memory in regard to these loans.

Mr. Richey objects to all the testimony of the above witness derived from his inspection of the books, without producing the books in evidence.

All the discounts to McElrath, from December, 1856, to De- 30 cember, 1857, are entered in one book ; on the 16th of November, 1857, there was a discount to Mr. McElrath, on his note for sixty days, for \$3300.29, for which was pledged fifty shares of Trenton Iron Company stock—at the same time the three Coe notes were discounted ; the proceeds of this note and the three Coe notes went to Mr. McElrath's credit in the personal ledger ; they appear in the books entered among the discounted notes as all other notes ; I forgot to state that the Belknap note was a collateral, also, on the McElrath note 40

for \$3300.29; I don't know what became of the Belknap note, nor do I know whether the Belknap note which I left there was the one originally given, but it was for the same amount, by the same man, and for the same person; this note was given to me as partial security for the payment of the loan; I derive this information from the books.

Cross-examination resumed, Friday morning, January 21st.

There was a call loan of \$12,000 made in May, 1857; I know it because I filled up the call loan note of \$12,000, and 10 passed it to the receiving teller to put it to the credit of McElrath on the books; I know it from memory and from the sight of the note itself, from my recollection of having the note in my possession after I became paying teller; at the time this call loan was made the securities were placed in my hands; I know what those securities were from memory, as I saw them very often; they did not remain in my hands from that time until I became paying teller; I have no doubt at all that the certificates marked *Exhibits No. 10* and *11* are the 20 on the certificates by which I can distinguish them, except I recollect there were seventy-five shares.

Exhibit No. 6 being shown to witness—I am the subscribing witness; I do not know that it was signed the day it bears date.

Exhibit No. 9 being shown to witness—I do not know that that power of attorney was executed on the day it bears date.

I left the discount desk December 1st, 1857; the discount register then used for entries was not full; since then I know 30 nothing about it, whether it is full or not; I examined it yesterday to get my memoranda; when I say I have had nothing to do with it since I left the discount desk, I mean I have made no entries in it; I do not know whether it is the one now in use or not—cannot tell whether it is full or not; I suppose the discount register is a book of 300 or 400 pages; the capital of the Nassau Bank is called \$1,000,000; the board meets twice a week, on Mondays and Saturdays, and paper not passed upon fully at the board is marked “refused paper,” 40 that is, if found good and satisfactory upon examination and inquiry, it is passed to the credit of the party. Some officers

of our bank have the power to pass upon paper when the board is not in session because they do do it—the president, cashier, or vice president have that right—that is to say, if a depositor of the bank should bring a note, and offer it to either of the above named officers, they have the power to pass it to the credit of the party offering it when they feel perfectly sure it is a safe transaction; this is not a very common thing, but it is done; I suppose there have been business days when no entry was made in the discount register, perhaps at times when we were short of money. I have been at the Nassau Bank 10 this morning; I looked in the discount register this morning; I looked at Mr. McElrath's discounts this morning; I did not look to see if there were any discounts entered to McElrath from December 20th, 1856, up to the present time, except those I told you of yesterday; I do not know whether there were any discounts to McElrath during that period, except those I told you of yesterday.

The only collaterals that the Nassau Bank received from McElrath for any loans, from December 20th, 1856, to the present time, that I know anything about are as follows: 100 20 shares of the Trenton Iron Company stock, 50 shares of the same, 17 shares of Phœnix Candle and Oil Company stock, \$1000 note of C. Belknap, 6 bonds, of \$1000 each, of Delaware, Lackawana, and Western Railroad Company, 100 shares of stock of Delaware, Lackawana, and Western Railroad Company, 11 shares of Warren Railroad Company stock, 75 shares of Trenton Iron Company stock.

The 17 shares of the Phœnix Oil and Candle Company stock were sold to Charles A. Coe for the three notes I have enumerated in my testimony; I don't know, from my own 30 knowledge, what became of the other securities, but I understood they were sold, as I had received a payment to reduce the \$12,000 loan some \$2500, leaving only the 75 shares of the Trenton Iron Company stock as collateral security for the balance of the \$12,000 loan; I learned this from Hamilton Blydenburgh, president of the Nassau Bank; I am now paying teller; I cannot tell whether Mr. McElrath has had, or now has, any balance to his credit in the individual leger since I became paying teller—I don't think he has; I have access to the individual leger; I have not looked to see, unless one of 40

his checks had been presented, in which case I would have looked to see if he had any money in the bank; I would not say I have paid no check of McElrath since December 1st, 1857, but I do not think I have; I do not know whether he had anything standing to his credit previous to December 1st, 1857, as I had nothing to do with that branch of the business; I have not examined the books to see; Mr. Tooker, one of the subscribing witnesses to the transfer, resides in the city of New York.

10 Re-examination on the part of the complainant.

Mr. McElrath has been reputed to be insolvent since some time in 1857—I do not know how early in that year; I think I can place it pretty near—it was before September in that year; Mr. McElrath never gave an endorser on any of the notes for these three loans—they were made entirely on the securities or collateralasls which I have named; this is one of the particulars in which stock loans differ from the ordinary discounting of a bank—in all other discounts it is required that an endorser should be given on the note. Loans are usually
20 made by the board of directors, and brought to my knowledge through them; there was nothing in the circumstances of these loans which would make me think they were made out of the usual course of making loans; I believe, from all the circumstances of these loans, that they were passed by the board of directors; all loans made to officers of the bank, I mean the president or vice president, must go before the board of directors—I suppose it is a rule, as it is a custom, and always has been done.

I have no doubt that 100 shares of the Trenton Iron Com-
30 pany stock was pledged as security for the \$8000 loan; I have no doubt that the same 100 shares have been continued in the bank as security for that loan and its continuance; I have no doubt that for the two or three loans, of \$5000 each, 50 shares of the same stock were placed and continued in the bank as security for the loans and their continuance; I have no doubt that the same shares are still held by the bank as a security for that loan and its continuance; those loans were reduced to \$9800 August 15th, 1857; one stock note was given for those two loans at that time, and those 50 shares were con-
40 tinued in the bank as security for that note.

I have no doubt that 75 shares of the Trenton Iron Com-

pany stock were left with the bank as security for the call loan of \$12,000, together with the other securities named; I have no doubt that the 75 shares still held by the bank for the balance of this loan are the same; these 75 shares have been in my custody, as paying teller of the bank, since December 1st, 1857, and are now produced by me as a witness on the part of the bank; the transfer is attached to these two certificates for 45 and 30 shares; the entries in the discount register of these three original loans are in my own handwriting, and also the continuance of the same, except at the time the \$9800 10 note was reduced to \$3300, at which time, I think, I was away; they may have been made by the person who attends to this in my absence; all the other entries of those loans are, to my recollection, in my own handwriting to the time I ceased to be discount clerk, in December, 1857; these entries were made by me in the usual course of the business of the bank; the testimony which I have here given in reference to these entries has been taken correctly from the discount register; I did not mean to say, on my cross-examination, that I had no knowledge of these loans except from the books of 20 the bank—I intended to say, but do not know whether I did, that I had no knowledge of whom I received the orders to pass the notes, whether from the cashier or president, or from the marks on the offering book, which marks were “A,” for accepted, and “no,” for rejected; I had a general outside knowledge that McElrath had loans upon these securities; I did not mean, on my cross-examination, to convey the idea that the only knowledge I had of these loans I received from the books of the bank yesterday morning; I wish to say why I knew more than from that examination, because, at certain 30 periods of the year, all the bonds, stocks, and notes which I held in my custody while discount clerk were examined by a committee appointed by the board of direction, and I can distinctly recollect comments by the committee made upon these particular loans; I meant the particulars of the dates, the amounts and the renewals, as derived from the books.

The Nassau Bank now holds certificates for 225 shares of the Trenton Iron Company stock as security for the three McElrath's loans; I can't say whether they hold the Belknap note now; these are all the securities that I know of that the 40

bank now holds; I have no doubt they are the only securities the bank now holds.

Re-cross-examined.—All discount notes, whether by pledge of collaterals or by endorser, are entered in the same discount register; my knowledge of the action of the board, whether as to discounts of notes by endorsers or on collaterals, is derived in the same way; we have but one discount register where all discounted notes are entered, no matter what the security; we have but the one offering book which goes before the board; the offerings at the board vary from ten to sixty; the entry of the discount of the Coe notes, and also of the \$3300 loan to McElrath, is entered in the discount register in the handwriting of Caleb F. Coles, a general book-keeper of the bank, if I am not mistaken; he must have got his information or instructions from the same source that I did; I was away at the time of the reduction of the \$9800 note to \$3300, and it was explained to me when I came back; I could not have told the exact amount and particulars of the securities given for these loans without referring to the books; I referred to the books to learn the amounts of the stock and the dates of the notes; I looked at the books again this morning, to see if my memorandum was correct; I took my memorandum, from which I have given the particulars, from the original entries in the books.

There were a number of transactions loaning money upon stock, with other persons, from December 20th, 1856, to December, 1857; when I made these entries of the McElrath transactions, I did not expect to be called upon to testify about it; at the time it was not impressed upon my mind more than ordinary transactions of that nature, or, at least, not until after his failure, and then, of course, I looked into things; I then got the particular impression on my mind from the discount register and my examination of the certificates; I can tell the particulars of discounts made to other parties during that time on collaterals who have failed; I can't recollect every transaction that every man has in the bank among four hundred or five hundred dealers; my attention was more particularly called to this transaction from the fact, that McElrath was president of the bank when the loans were originally made; I cannot at present call to mind the particulars of any loan

made on collaterals from December, 1856, to December, 1857, unless the person to whom the loan was made has failed—I might, perhaps, if I should take time to reflect—I am sure I could; I could recall instances as far back as 1855, that is the kind of collateral, but not the number of the share of each certificate; I know that every loan made to McElrath, while he was president, had the sanction of the board of directors before it was passed; I know it from the fact that it has always been the custom of the bank, while Mr. McElrath was president; when he desired a discount, he would request me 10 to place his name on the offering book; since he left the presidency, the information would always come from the board in the usual way, or from the president or cashier.

Question. Can you swear that the 150 shares of the Trenton Iron Company stock, that you left December 1st, 1857, are the same 150 shares that have been produced here?

Answer. I cannot swear that they are the same, but I have not the remotest doubt but that they are the same.

GEO. H. BRIGGS.

Sworn and subscribed, this 21st day of January, 1859, before me.

JOHN P. VROOM, M. C.

Abram S. Hewitt, a witness produced and duly sworn on the part of the complainant, deposes and saith—I am secretary of the Trenton Iron Company, also a director; the office of transfer of stock of that company is in the city of New York, by statute of New Jersey, from the 27th of February, 1857; previous to that time the transfers were always made there, but I obtained the passage of the statute in order to leave no doubt of where the transfers should be made; I 30 have not examined the transfer books, but I think none have been made at Trenton since 1848, unless at an annual meeting, one to qualify a person elected as director; the transfer books of that company have always been kept at New York, except at the annual meeting, when they were taken to Trenton to compare with the stock leger; I have been secretary of the company since its organization in 1847; I am one of the officers who sign certificates of stock; my legal residence

is at Ringwood, in New Jersey; my place of business is in the city of New York—I have a house there.

Cross-examined by Mr. Richey.—The general books of the company are kept at Trenton; our balances are all made by the Trenton books; the accounts from the other offices are arranged or balanced in the book kept at Trenton; we are bound by statute to have an office there; the stock leger is kept in the city of New York; we always have the stock leger at Trenton at the annual meeting; we have always held
10 the meeting for the election of directors at Trenton, with the exception of one year, the cholera season, when we held it at Schooleys mountain.

Re-examined in chief.—A person examining the books of the company at Trenton could not find out in whose name the stock of the company stood; the principal sales of the company are made in the city of New York; the treasurer of the company resides in Brooklyn, and his office is in the city of New York.

Re-cross-examined.—The vice president of the company
20 resides at Trenton—his name is Timothy Abbott; application made to Mr. Abbott at Trenton for information as to transfers of stock could be obtained by writing to me at New York.

Re-examined.—Peter Cooper is the president, and he resides in the city of New York; on application to Mr. Cooper at the office one could find out at once who holds the stock.

Re-cross-examined.—We have no knowledge of any transfers saving those made on the transfer books in our office.

Re-examined.—I have frequently heard of the stock being hypothecated—that is a common thing.

30 ABRAM S. HEWITT.

Sworn and subscribed, this 20th day of January, 1859, before me.

J. P. VROOM, M. C.

Examination of witnesses in the above stated cause before Jacob R. Wortendyke, a master in said court, at his office in Jersey City, commencing August 27th, 1860, at four o'clock, P. M., in the presence of Edward W. Scudder, esq., solicitor and of counsel with the complainant, Mercer Beasley, esq., solicitor for and of counsel with the Mechanics and Manufacturers Bank of Trenton, and Bennett Vansyckel, esq., solicitor for and of counsel with the Hunterdon County Bank.

Before the examination commenced, Mr. Beasley objected 10
to the taking of this testimony, on the ground that the cross-
bill had not been answered.

Henry S. Bidwell, a witness called on the part of the complainant, being duly sworn, says—I reside in New York city; I am discount clerk in the Nassau Bank; that bank does business at the corner of Beekman and Nassau streets, in the city of New York; I have brought with me to-day the discount register of that bank, that is a book of original entries of all time discounts made by the bank; call loans are in a separate book. 20

The witness, producing a book, continues—This discount register commences on the 1st October, A. D. 1856, and ends on the 18th of February, 1859, inclusive; this book contains the two time loans to Thomas McElrath by the Nassau Bank in litigation in this cause.

Said book, being the discount register, No. 3, of Nassau Bank, was here offered in evidence, and marked *Exhibit A*.

Mr. Beasley objected to the book as incompetent evidence.

Witness continues—The first loan is in December 20th, 1856, for eight thousand dollars, at three months—this is entered on 30
page 39; the note became due on the 23d of March, 1857; on that day the note was renewed for the same amount of \$8000 for three months—this is on page 90; the second renewal was on the 26th June, 1857, for three months, same amount \$8000—this is on page 141; when this note matured, on the 29th of September, 1857, it remained unpaid until January 13th, 1858, when five hundred dollars were advanced by the bank,

and a Delaware, Lackawana, and Western Railroad Company's bond for \$500 was taken as security, which, with the interest from September 29th, 1857, made the amount of the note \$8817.14, which was discounted January 13th, 1858, from which time the note has remained unpaid; this note was for three months; this is on page 232 of the said register.

The second loan was on the eleventh of February, 1857, at ninety days, for five thousand dollars—this is on page 68; there was a note discounted on the next day, January 12th, 10 1857, for five thousand dollars at ninety days—this is on page 69; on the 15th of May, 1857, both notes were renewed at ninety days—this is on page 121; the abbreviation "coll. in vault" signifies *collaterals in vault*; on the 15th of August, 1857, the above notes were put into one, and cut down two hundred dollars, which made the new note nine thousand eight hundred dollars, which was discounted for ninety days—this is on page 169.

On the 16th of November, 1857, a new note for \$3300.29 was discounted at sixty days—this is on page 205.

20 On the 20th of January, 1858, the interest was added, making the note \$3359.15, which was discounted at ninety days—this is on page 236, from which time the note remains unpaid.

The third loan was a call loan or demand loan.

I have brought with me the book of original entries of those call loans of said bank; this book [the witness produces a book] contains all the original entries of all the call loans, including this one to Thomas McElrath; the date of this loan is May 16th, 1857.

30 [The said book, being "Loan Book, No. 1, Nassau Bank," was here offered in evidence by complainant's solicitor, and is marked *Exhibit B.*]

[Mr. Beasley objected to the book as evidence.]

Witness continues—this is on page 44; the loan was twelve thousand dollars; it remained until the 15th of January, 1858, in the same shape, when the interest was added, less two hundred and ten dollars, the interest on the Delaware, Lackawana, and Western Railroad bonds, which made the new note twelve thousand two hundred and nineteen dollars and thirty-four 40 cents, which remains unpaid—this is on page 59; it remains

in the same shape still ; I have the notes that are now held by said bank for these loans.

[The complainant's solicitor now offered in evidence a note dated January 13th, 1858, marked *Exhibit C.*]

Witness then continues—I am acquainted with the handwriting of Thomas McElrath, have seen him write, and saw him sign this note ; the note is filled in with my handwriting ; this note belongs to the first loan, which was originally eight thousand dollars.

[The complainant's solicitor here offered a note, dated January 18th, 1856, at ninety days, for \$3359.15, which being shown to the witness] the witness says—that is the signature of Mr. McElrath ; I saw him write it ; the filling in is in my handwriting. 10

[Said note was offered in evidence, and marked *Exhibit D.*]

The witness continues—this note belongs to the second loan, originally in two notes of five thousand dollars each.

[The complainant's solicitor now offered a note, dated January 15th, 1858, on demand, for \$12,219.34, which being shown to witness, he says]—this is Thomas McElrath's signature—I saw him write it ; the filling up is in my handwriting. 20

[Said note was offered in evidence, and marked *Exhibit E.*]

The witness being shown a bargain and sale power of attorney from Thomas McElrath to the Nassau Bank, dated February 11th, 1857, for 50 shares of the Trenton Iron Company, he says—George H. Briggs is the subscribing witness to this transfer ; he resides in New York city ; I know his handwriting and the handwriting of Thomas McElrath ; these are their genuine signatures. 30

[Mr. Beasley here objected to the re-offering of any papers that have already been offered in this cause and proved by subscribing witnesses.]

[Said paper being offered in evidence by complainant's solicitor, is marked *Exhibit F.*]

The witness being shown a power of attorney, dated 20th December, 1856, attached to certificate No. 112, for 50 shares of the Trenton Iron Company, he says—the subscribing witness is W. P. Talboys ; he resides on Staten Island, I think ; he acknowledged to me that this is his handwriting and signa- 40

ture; the genuine signature of Thomas McElrath is also to this power of attorney.

[The said certificate, No. 112, and power of attorney were now offered in evidence by the complainant's solicitor, and marked *Exhibit G*.

Also certificate No. 258 of the Trenton Iron Company for 30 shares, and marked *Exhibit H*.

Also certificate No. 375 of Trenton Iron Company for 20 shares of the capital stock, with a transfer power of attorney subscribed, and marked *Exhibit I*.]

The last mentioned certificate, No. 375, with transfer power of attorney subscribed, being shown to the witness, he says—George W. Lord is the subscribing witness to this power of attorney—his business is in the city of New York; I don't know where he resides; I am acquainted with his handwriting; this is his genuine signature—I have seen him write; he was Mr. McElrath's book-keeper for a long time; this is, I think, Mr. McElrath's handwriting to this power of attorney.

[Mr. Beasley here objected to this paper being received in evidence, on the ground that it had not been proved that the subscribing witness lives out of this state.]

A bargain and sale power of attorney from Thomas McElrath to the Nassau Bank, dated 20th December, 1856, for 15 shares of the capital stock of the Trenton Iron Company, being shown to the witness, he says—George H. Briggs is the subscribing witness; he resides in New York; I am acquainted with his handwriting; I have seen him write; this is his genuine signature, also the signature of Mr. McElrath.

[Said paper was now offered in evidence, and marked *Exhibit K*.]

[Also certificate No. 374, for one share of the Trenton Iron Company offered in evidence, marked *Exhibit L*.

Also a certificate No. 365, for one share of the Trenton Iron Company, and marked *Exhibit M*.

Also certificate No. 286, for 13 shares of the Trenton Iron Company, and marked *Exhibit N*.

Also certificate No. 170, for 35 shares of the Trenton Iron Company, with transfer power of attorney attached, the latter dated December 20th, 1856, were produced and shown to the witness.]

Witness says—the subscribing witness to this power of attorney is R. A. Tooker; he resides in New York city; this is his signature; I have seen him write; he has been cashier of a bank for a great many years; the signature of Mr. McElrath to this power of attorney is his genuine signature.

[Said certificate, No. 170, and power of attorney were offered in evidence, and marked *Exhibit O*.]

A note of Chauncey Belknap, dated March 27th, 1858, at three months, for \$900, being shown to the witness, he says—I know the handwriting of Chauncey Belknap; this is his signature subscribed to this note. 10

[The note is marked *Exhibit P*, and is offered in evidence by complainant's solicitor.]

Witness continues—this note was originally for one thousand dollars, and has been reduced by the payment of one hundred dollars.

[Here the examination was adjourned to to-morrow, at nine o'clock A. M., at the same place.]

Tuesday, August 28th, 1860, nine o'clock A. M., present the same solicitors and counsel that attended yesterday, and C. L. C. Gifford appeared as solicitor for William Wright; no other parties were present. 20

The examination of the same witness, Henry S. Bidwell, continues.

Being cross examined by Mr. Beasley, the witness says—I was appointed discount clerk in the Nassau Bank on December 1st, 1857; I then took the position; was appointed a few days previous, I believe; I came into the bank about November, 1855, as assistant teller; in a little less than a year I was appointed book-keeper, which position I held until I was appointed discount clerk; as book-keeper I had nothing to do with this book marked *Exhibit A*; I generally entered the discounts in the dealers' pass-books; that (I mean the dealers' pass-book) shows the amount and the discount and the net amount; I would make the entry in the dealer's book from a small book which each book-keeper has; they are entered on a separate book for the book-keepers to post; in the Nassau Bank the president and the board of directors have the power to make discounts—between the sessions of the board the 30

president has the power ; when the board of directors are in session they have an offering book, in which the offerings for discount are recorded ; that offering book is made up by the discount clerk ; when a dealer applies for a discount on the strength of collaterals, the discount clerk enters the offer in that form in the offering book ; the discount clerk sends in his book to the sessions of the board, and does not attend personally ; when the board of directors agree to make a discount, it is evidenced by a mark made by the president on the offering book—the mark is a small “a,” standing for *accepted* ; after the board get through their session, the offering book is taken by the discount clerk, who makes up the discount from the offering book as it is accepted ; this book, marked *Exhibit A*, was made up in that way from the offering book ; it is a copy of the offerings, and also of the discounts made by the president between the sessions of the board ; it is not an exact copy of the offering book ; the offering book is in a more condensed form—it does not give the details ; the date of the note and the time, and the discount off, are omitted in the offering

10 book, also the makers of the note, when there is more than one note offered ; the discount clerk arrives at those details from the notes themselves ; the notes themselves are sent in with the offering book to the board of directors in all cases where the notes are left ; sometimes propositions are made before the notes are left at the bank ; George H. Briggs was the discount clerk of the Nassau Bank immediately preceding me ; he is now the paying teller of the Nassau Bank, resides in New York ; the book marked *Exhibit A*, that part of it

20 prior to the time of my appointment, is in his handwriting ; I noticed one instance in which the handwriting is that of the general book-keeper in the absence of Mr. Briggs ; that is on November 16th, 1857 ; it is the entry on page 205 of Thomas McElrath’s note for \$3300.29, dated November 16th, 1857, at sixty days ; the general book-keeper, whose handwriting this is, is Caleb F. Coles ; he is still the general book-keeper in that bank.

[Mr. Beasley here entered his objection to this discount register, marked *Exhibit A* as evidence, on the ground that it has not been properly proved.]

40 Witness continues—the call loan book, marked *Exhibit B*,

is not made up from an offering book in the same way as the time discount book; call loans are usually made between the sessions of the board; the clerk gets his information from the president and from the note itself to make up this book from; call loans are sometimes made by the board itself, and they are in that case generally entered in the offering book by the president; they are copied from the notes themselves into the call loan book; propositions are generally made for call loans without the notes—in that case they are accepted just as time loans are. 10

[Mr. Beasley here objected to the book marked *Exhibit B* as evidence, on the ground that it has not been properly proved.]

Witness continues—Before I became discount clerk, I had no other knowledge of the discounts than from posting them into the ledger.

[The attention of the witness was called to paper marked *Exhibit F.*]

Witness says—The body of this instrument is in Mr. Blydenburgh's handwriting; he is the president of the Nassau Bank; I don't recollect when he was appointed; he came in immediately on the resignation of Thomas McElrath; before his appointment as president, he, Mr. Blydenburgh, was vice president. 20

[*Exhibit G* was now shown to the witness.]

Witness says—The body of this deed of transfer is in Mr. Blydenburgh's handwriting; the witness is W. B. Talboys; he *is not* an officer in the bank; he *was not* an officer of the bank.

[*Exhibit K* was now shown to the witness.] 30

He says—the body of this transfer is also in the handwriting of Mr. Blydenburgh.

[*Exhibit O* is now shown to the witness.]

Witness says—the filling up of this power of attorney is also in Mr. Blydenburgh's handwriting; the subscribing witness is R. A. Tooker; he lives in New York; he was at that time cashier of the Nassau Bank; he is now cashier of the Artisans Bank.

[Paper marked by Mr. Vroom *Exhibit No. 12*, is now shown to the witness.] 40

Witness says—a part of the body of this paper is in the handwriting of Mr. Blydenburgh, and part of it is in the handwriting of Mr. Lord; the words “*forty-five shares,*” “*my,*” “*Trenton Iron Co.,*” “*I,*” “*16th,*” “*May,*” and “*fifty-seven*” are in the handwriting of George W. Lord.

[The paper marked by Mr. Vroom *Exhibit No. 11* is shown to the witness.]

Witness says—The handwriting of this power of attorney is in the handwriting of Mr. Blydenburgh.

10 [Mr. Vansyckel, on the part of the Hunterdon County Bank, here offered a paper, marked *Exhibit No. 1*, on the part of the defendants, being a draft dated, April 20th, 1857, for \$2000, at four months. And cross-examining the witness.]

The witness says—I am acquainted with Thomas McElrath’s handwriting; I think this is his handwriting.

[Witness being shown *Exhibit No. 2*, on the part of the defendants.]

He says—this is a draft drawn by John S. King & Co., dated June 15th, 1857, at ninety days, for \$2500, accepted by
20 Thomas McElrath; the signature is the genuine signature of Mr. McElrath, I think.

[The paper marked *Exhibit No. 3* is shown to the witness.]

He says—this is a draft drawn by John S. King & Co., dated April 20th, 1857, at four months, for \$2000, accepted by Thomas McElrath; the signature of Thomas McElrath is his genuine signature.

[Paper marked *Exhibit No. 4* shown to the witness.]

He says—This is a draft drawn by John S. King & Co., dated April 20th, 1857, at four months, for \$2000, accepted
30 by Thomas McElrath; the signature of Thomas McElrath’s name is his genuine signature.

[The paper marked by Mr. Vroom *Exhibit No. 5*, bearing a judgment in attachment of Hunterdon County Bank against Thomas McElrath, is offered in evidence.]

[The paper marked by Mr. Vroom *Exhibit No. 1*, on the part of the Mechanics and Manufacturers Bank, being shown to the witness.]

He says—this is a draft drawn by John S. King & Co., June 21st, 1857, at ninety days, for \$2500, accepted by Thomas
40 McElrath.

The witness being re-examined in chief by Mr. Scudder, he says—if Mr. McElrath were to ask the bank for a discount of say \$8000, and to offer his note with collaterals, his name would appear on the offering book with the amount—the entry then would be “*Thomas McElrath \$8000;*” if accepted, it would be indicated by the letter, “a”—that is the only entry made by the president; in that shape it would be handed to the discount clerk with the note, when he brought it in, and from that the discount clerk would make his entry in the discount register from the note; if collaterals were offered with the note, it would appear upon the face of the note what those collaterals were, and the notes would be in the form of these notes that have been here offered in evidence; that is the form of the note that we require from every one when the loan is made with security or collaterals; these notes are called “stock notes.” In the ordinary course of business of our bank, the entry of a call loan is entered on the loan book with the securities; the entry consists of the maker of the note, the securities, the amount, and the date.

HENRY S. BIDWELL. 20

Taken, sworn, and subscribed, on the days and year above written, before me.

J. R. WORTENDYKE, M. C.

Hamilton Blydenburgh, a witness called on the part of the complainant, being duly sworn, says—I reside in the city of New York, and am president of the Nassau Bank, which does business in the city of New York, at the corner of Nassau and Beekman streets; it is a bank of discount and deposit, incorporated under the general law of the state of New York; I became a director of the bank in June, 1853, and was elected vice president in November, 1856, and acting president; Mr. McElrath was very little there after I became vice president; he occasionally attended the meetings of the board, but did not attend to the active duties of president, as he had theretofore done; I know and am familiar with the particulars of the three loans made to Mr. McElrath; as an officer of the bank, I had personal knowledge of these loans, when they were made and during their continuance; the first loan, of December 20th,

1856, was commenced by a discount made on that day, Mr. McElrath being at that time present at a meeting of the board; he was present occasionally; he made an application for \$8000; the discount was granted; he was to give satisfactory security for it; his note was discounted at three months for the \$8000 on 100 shares of the Trenton Iron Company as collateral security; the shares on that loan originally were No. 112, fifty shares, No. 258 thirty shares, and No. 375 twenty shares; the certificates that are now attached to the note remaining with
 10 that loan are the certificates that were originally given; these certificates were received as collateral security for this loan; they went into the charge of the discount clerk, who has charge of collaterals of notes discounted on time; they were deposited in the vault of the bank, and have never been out of the custody of the bank since; one power of attorney is attached to the certificate, No. 112, for fifty-shares; in the other shares, on No's 258 and 375, a separate power of attorney was given; these were not filled up at the time of the making of the loan—it is not customary, when we lend on
 20 stocks; the dates of the powers of attorney attached to those stocks are usually left blank; these were signed by Mr. McElrath, and witnessed in blank.

I have a general knowledge of the continuance of this loan from my recollection; speaking from my own memory and knowledge, I say that the notes were renewed for three months when the times for renewal came around, no portion ever being paid except the interest; they were renewed at intervals of three months until after the failure of Mr. Elrath; the note that became due on the 26th September, 1857, was not re-
 30 newed—it remained in that state, Mr. McElrath having failed, until January 13th, 1858; on that date it was taken up for renewal; a new note was drawn for \$8817.14—that is the note which originally commenced on the loan of the 20th December, 1856; five hundred dollars was paid to the Delaware, Lackawana, and Western Railroad Company, at his request and by his authority, and a bond for the same amount taken from the company; the \$500 that was advanced to the Delaware, Lackawana, and Western Railroad Company was to pay an assessment of ten per cent. on the stock which we
 40 held as collateral on the third loan; we had \$5000 of their

stock as collateral on that loan—a bond was issued to us by the company to cover the amount of the assessment; that \$500 and \$317.14 of interest makes the addition to the original \$8000 \$8817.14; the original loan remains now unpaid in the shape of this note of \$8817.14; it became due on 16th April, 1858, three months from the time of its date.

The second loan commenced on the 11th February, 1857, of \$5000; in that loan 37 shares of the Trenton Iron stock and 7 shares of the Phoenix Oil and Candle Company were the collaterals; the Phoenix Oil and Candle stock are \$1000 10 each share; the thirty-seven shares of the Trenton Iron Company's stock were No. 170 thirty-five shares, No. 374 one share, No. 365 one share; these are the certificates to the note held for the balance of the second loan; these certificates were passed to the custody of the bank on the 11th February, 1857; the custody has continued the same up to this time.

There was a loan made the next day, February 12th, 1857, for \$5000—the securities were 13 shares of Trenton Iron stock, 10 shares of Phoenix Oil and Candle Company, and a note of C. Belknap for \$1000; these constituted the sureties 20 on the 12th of February loan; the certificate for the 13 shares of the Trenton Iron Company is No. 286, and is now attached to the residue of that loan; those notes were both three months—one would mature on May 14th, and the other on May 15th; on the 15th May both of those notes were renewed without any alteration on the same securities; on the 15th August they were renewed and put into one note of \$9800, the interest and a portion of the principal having been paid; the securities were 50 shares of the Trenton Iron stock, 17 shares of Phoenix Oil and Candle Co., and also the note of C. 30 Belknap for \$1000—all their securities were the same as before; on the 16th November, 1857, \$3300.29 was renewed as a continuance of the \$9800—securities 50 shares of the Trenton Iron Company and a note of Belknap, the balance having been liquidated by three notes, of \$2266.66 each, of Charles A. Coe; Phoenix Oil and Candle stock was sold to Coe, for which these notes were taken.

On the 20th January, 1858, was renewed for \$3359.15—that was the former note and the interest added; the securities were 50 shares of the Trenton Iron stock and note of Bel- 40

knep, in which position it now is ; I can't speak fully when, but there evidently was \$100 paid on the Belknap note, and the loan was reduced \$200 besides the interest ; the note of Belknap is of no value ; he has failed, and the note has been protested ; there appears to be on the certificate No. 170, for 35 shares, a power attached to the bottom of the certificate ; for the remaining 15 shares, a separate bargain and sale power is given ; these were signed and witnessed, and left in blank, as in the former loan.

- 10 The 37 shares, as I have stated, on the loan of \$5000 of February 11th, 1857, are now attached to this loan ; these 37 shares, these certificates, I am confident were originally with this loan, because I recollect receiving the securities and examining them when the discount was passed ; there are no other certificates that will make 37 shares ; the 13 shares on the second loan were received on the 12th February, 1857 ; in some way, during the renewal of some of these loans, these 50 shares, that is the 37 and the 13, which were originally placed on the loans of the 11th and 12th of February, got
- 20 changed on to the loan of \$8000, made the 20th December, 1856, and the like amount of shares got from that loan on to this ; the certificates, No. 258, of 30 shares, and No. 375, of 20 shares, got changed on to the second loan, where the 35, 13, 1, and 1 belonged—the change was unintentional ; I will now state that all the powers were left in blank—that will explain the discrepancies in dates. In the month of September, 1857, after the failure of Mr. McElrath, when it was apparent that we would probably have to have recourse to the securities, I thought it advisable to have this stock put in to the name of
- 30 the bank ; before doing so, it is necessary to fill up the powers and dates ; the proper dates would be the time of the commencement of the loan for which they were pledged ; these 50 shares, which were originally placed and properly belonged on the loan of the 11th and 12th of February, had got on to the loan of the 20th of December, and the two certificates of 20 and 30 shares, which properly belonged there, had been transposed to the loan of the 11th and 12th of February ; taking up those loans, I naturally filled in the dates to correspond with the date of the loans to which I found them at-
- 40 tached, consequently, that power that is dated February 11th,

1857, marked *Exhibit F*, should have been dated 20th December, 1856; the same would and did occur in transferring the other shares; those transfers still remain erroneously dated; the certificates themselves are right, but the powers have the errors remaining; this error was discovered on the former examination.

George W. Lord, the subscribing witness spoken of in the examination of Mr. Bidwell, lives in Brooklyn.

A note of Thomas McElrath, dated January 15th, 1858, on demand, for \$12,219.34, already marked *Exhibit E*, being 10 shown to the witness, he says—this is the note now attached to the third loan.

[The bargain and sale of Thomas McElrath to the Nassau Bank, dated 16th May, 1857, for 45 shares of the Trenton Iron Company, offered in evidence, and marked *Exhibit Q*.]

[Certificate of Trenton Iron Company No. 263, for 45 shares, offered in evidence, and marked *Exhibit R*.]

[Certificate of Trenton Iron Company No. 249, for 30 shares, with power of attorney attached, marked *Exhibit S*, offered in evidence.] 20

[Certificate No. 375 Trenton Iron Company, already marked *Exhibit I*, re-offered by complainant's solicitor in evidence.]

Witness continues—the certificate No. 263, for 45 shares, is attached to the third loan; this third loan is what has been called the call loan; I have personal knowledge, as an officer of the bank, of that loan from its inception to the present time; this third or call loan on demand has only been changed once, and was then changed to this note, dated January 15th, 1856; the collaterals on this third loan, other than the 75 shares of the Trenton Iron Company, were sold; the proceeds of the 30 sale were \$2534.76, which is to be applied to the reduction of the note as now held with interest; for the money owing by Thomas McElrath to us, we hold 225 shares of the Trenton Iron stock; it is worth about 60; we also hold that note of Belknap; we have no other securities for Mr. McElrath's indebtedness to the bank.

Offering book of Nassau Bank, No. 2, being shown to witness, marked *Exhibit T*, he says—this book contains the original offerings by parties formally made to the board; all but one of the offerings of McElrath's loans are entered in this 40

book; this one, I think I did, as president, between boards; the 11th of February was an offering day—the 12th of February was not an offering day.

H. BLYDENBURGH.

Taken, sworn, and subscribed, on the 28th day of August, A. D. 1860, before me.

J. R. WORTENDYKE, M. C.

State of New Jersey, Hunterdon county, ss.—Charles Bartles, being duly sworn according to law, on his oath deposes
 10 and saith—that he was one of the directors of the Hunterdon County Bank at the time the drafts marked *Exhibits 1, 2, 3,* and 4 on the part of the Hunterdon County Bank were discounted; that the first of said drafts was discounted upon a representation that Thomas McElrath was a heavy stockholder in the Trenton Iron Company; that according to the best of this deponent's recollection, before any other of said drafts were discounted, this deponent applied to the vice president of the said the Trenton Iron Company, Timothy Abbott, esq., to know whether he, McElrath, was a stockholder
 20 of the said the Trenton Iron Company, and also the amount of stock he, McElrath, owned, and was informed by said Abbott that he, McElrath, owned thirty thousand dollars' worth of said stock, according to the best of deponent's recollection, of the amount, and deponent was present afterwards at the said board of directors, when the drafts marked *Exhibits 3* and 4 were discounted, and stated to the members of the board then present the information he had received from T. Abbott, esq., and that the said drafts were discounted upon the faith and belief that said McElrath was the *bona fide* owner of that
 30 amount of the capital stock of the Trenton Iron Company.

C. BARTLES.

Sworn and subscribed before me, this day of October, A. D. 1860.

B. VANSYCKEL, M. C.

EXHIBITS ON PART OF COMPLAINANT.

Exhibit A.

Discount register No. 3, Nassau Bank.

Exhibit B.

Loan book No. 1, Nassau Bank.

Exhibit C.

§8817.14. New York, January 13th, 1858.

Three months after date I promise to pay to the Nassau Bank, or order, at their bank in the city of New York, eighty-eight hundred and seventeen fourteen-hundredths dollars, for 10 value received, with interest at the rate of per cent. per annum, having pledged to the said company, as security, (with authority to sell the same on the non-performance of this promise, in such manner as they, in their discretion, may deem proper, without notice, either at public or private sale, and to apply the proceeds thereon,) 100 shares Trenton Iron Company stock, 1 bond Delaware, Lackawana, and Western Railroad.

THOMAS McELRATH.

Exhibit D.

20

§3359.15. New York, 18th January, 1858.

Ninety days after date I promise to pay to the Nassau Bank, or order, at their bank in the city of New York, thirty-three hundred and fifty-nine fifteen-hundredths dollars, for value received, having pledged to the said company, as security, (with authority to sell the same on the non-performance of this promise, in such manner as they, in their discretion, may deem proper, without notice, either at public or private sale, and to apply the proceeds thereon,) 50 shares Trenton Iron Company, \$1000 note of C. Belknap.

30

THOMAS McELRATH.

Exhibit E.

\$12,219.34. New York, January 15th, 1858.

On demand I promise to pay to the Nassau Bank, or order, at their bank in the city of New York, twelve thousand two hundred and nineteen thirty-four-hundredths dollars, for value received, with interest at the rate of seven per cent. per annum, having pledged to said company, as security, (with authority to sell the same on the non-performance of this promise, in such manner as they, in their discretion, may deem
 10 proper, without notice, either at public or private sale, and to apply the proceeds thereon,) 6 bonds Delaware, Lackawana, and Western Railroad Company, 100 shares Delaware, Lackawana, and Western Railroad Company, 75 shares Trenton Iron Company stock, 11 shares Warren Railroad Company stock.

(Signed,)

THOMAS McELRATH.

Exhibit F.

Transfer of stock.

Know all men by these presents, that I, Thomas McElrath,
 20 for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto the Nassau Bank, New York, to be held as security for any or all indebtedness to said bank, whether due or not, fifty (50) shares capital stock standing in my name on the books of the Trenton Iron Company, and do hereby constitute and appoint Hamilton Blydenburgh my true and lawful attorney irrevocable for me and in my name and stead, but to use,
 to sell, assign, transfer and set over all or any part of the said stock, and for that purpose to make and execute all necessary
 30 acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand and seal, the 11th day of February, eighteen hundred and fifty-seven.

Sealed and delivered in the presence of

GEO. H. BRIGGS.

THOMAS McELRATH, [L. S.]

Exhibit G.

State of New Jersey, the Trenton Iron Company, No. 112,
50 shares.

Be it known that Thomas McElrath is the owner of fifty shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, June 2d, 1854.

ABRAM S. HEWITT, *Secretary.* PETER COOPER, *President.*

Know all men by these presents, that I, Thomas McElrath, 10 do hereby appoint Hamilton Blydenburgh attorney irrevocable for me to sell and transfer to Nassau Bank the whole or any part of the above named stocks, with power one or more attorneys under him to appoint for that purpose.

Witness my hand and seal, this 20th day of December, 1856.

THOMAS MCELRATH, [L. S.]

In presence of W. B. TALBOYS.

Exhibit H.

State of New Jersey, the Trenton Iron Company, No. 258,
30 shares. 20

Be it known that Thomas McElrath is the owner of thirty (30) shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, December 14th, 1855.

ABRAM S. HEWITT, *Secretary.* PETER COOPER, *President.*

Exhibit I.

State of New Jersey, the Trenton Iron Company, No. 375,
20 shares.

Be it known, that Thomas McElrath is the owner of twenty 30 (20) shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, March 31st, 1856.

ABRAM S. HEWITT, *Secretary.* PETER COOPER, *President.*

(1) share of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, March 31st, 1856.

ABRAM S. HEWITT, *Secretary*. PETER COOPER, *President*.

Know all men by these presents, that _____ do hereby
 appoint _____ attorney irrevocable for
 to sell and transfer _____ the whole or any part of the
 above named stocks, with power one or more attorneys under
 to appoint for that purpose. 10

Witness _____ hand and seal this _____ day of _____

In presence of _____

Exhibit M.

State of New Jersey, the Trenton Iron Company, No. 365,
 one share.

Be it known, that Thomas McElrath is the owner of one
 (1) share of the capital stock of the Trenton Iron Company,
 transferable only on the books of the company by him or his
 attorney upon the surrender of this certificate.

Trenton, March 22d, 1856.

20

ABRAM S. HEWITT, *Secretary*. PETER COOPER, *President*.

Know all men by these presents, that _____ do hereby
 appoint _____ attorney irrevocable for
 to sell and transfer _____ the whole or any part of the
 above named stocks, with power one or more attorneys under
 to appoint for that purpose.

Witness _____ hand and seal this _____ day of _____

In presence of _____

Exhibit N.

State of New Jersey, the Trenton Iron Company, No. 286, 30
 13 shares.

Be it known, that Thomas McElrath is the owner of thir-
 teen (13) shares of the capital stock of the Trenton Iron Com-

pany, transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, March 7th, 1856.

ABRAM S. HEWITT, *Secretary.* PETER COOPER, *President.*

Know all men by these presents, that _____ do hereby appoint _____ attorney irrevocable for _____ to sell and transfer _____ the whole or any part of the above named stocks, with power one or more attorneys under _____ to appoint for that purpose.

10 Witness _____ hand and seal this _____ day of _____
In presence of _____

Exhibit O.

State of New Jersey, the Trenton Iron Company, No. 170, 35 shares.

Be it known that Thomas McElrath is the owner of thirty-five shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, October 2d, 1854.

20 ABRAM S. HEWITT, *Secretary.* PETER COOPER, *President.*

Know all men by these presents, that I, Thomas McElrath, do hereby appoint Hamilton Blydenburgh attorney irrevocable for me to sell and transfer to Nassau Bank the whole or any part of the above named stocks, with power one or more attorneys under him to appoint for that purpose.

Witness my hand and seal, this 20th day of December, 1856.

THOMAS McELRATH, [L. s.]

In presence of R. A. TOOKER.

Exhibit P.

30 \$900.00.

New York, 27th March, 1858.

Three months after date I promise to pay to the order of Thomas McElrath nine hundred dollars, at the Nassau Bank, for value received.

June 30.

CHAUNCEY BELKNAP.

[3561.]

United States of America, state of New York, *ss.*—On the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-eight, at the request of the Nassau Bank, in the city of New York, I, John Oakey, notary public, duly admitted and sworn, did present the original promissory note (hereto annexed) to paying teller at the Nassau Bank, and demanded payment of the same, which was refused—
“no funds.”

Whereupon I, the said notary, at the request aforesaid, did 10
protest, and by these presents do publicly and solemnly protest, as well against the maker and endorser of the said promissory note as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the said promissory note.

Thus done and protested, in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

JOHN OAKEY, 20

Notary public, attorney and counsellor at law,
133 Nassau street, N. Y.

Exhibit Q.

Transfer of stock.

Know all men by these presents, that I, Thomas McElrath, for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto the Nassau Bank, forty-five shares standing in my name on the books of the Trenton Iron Co., and do hereby constitute and appoint Hamilton Blydenburgh my true and lawful attorney 30
irrevocable for me and in my name and stead, but to use, to sell, assign, transfer and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal

the 16th day of May, one thousand eight hundred and fifty-seven.

THOMAS McELRATH, [L. S.]

Sealed and delivered in the presence of GEO. W. LORD.

Exhibit R.

State of New Jersey, the Trenton Iron Company, No. 263, 45 shares.

Be it known, that Thomas McElrath is the owner of forty-five shares of the capital stock of the Trenton Iron Company, 10 transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, January 14th, 1856.

ABRAM S. HEWITT, *Secretary.* PETER COOPER, *President.*

Know all men by these presents, that do hereby
appoint attorney irrevocable for
to sell and transfer the whole or any part of the
above named stocks, with power one or more attorneys under
to appoint for that purpose.

Witness hand and seal this day of
20 In presence of

Exhibit S.

State of New Jersey, the Trenton Iron Company, No. 249, 30 shares.

Be it known, that Thomas McElrath is the owner of thirty (30) shares of the capital stock of the Trenton Iron Company, transferable only on the books of the company by him or his attorney upon the surrender of this certificate.

Trenton, September 7th, 1855.

ABRAM S. HEWITT, *Secretary.* PETER COOPER, *President.*

30 Know all men by these presents, that I, Thomas McElrath, do hereby appoint Hamilton Blydenburgh attorney irrevocable for me to sell and transfer to Nassau Bank the whole or

any part of the above named stocks, with power one or more attorneys under him to appoint for that purpose.

Witness my hand and seal this 16th day of May, 1857.

THOMAS McELRATH, [L. S.]

In presence of GEO. W. LORD.

Exhibit T.

Offering book Nassau Bank, No. 2.

EXHIBITS ON PART OF DEFENDANTS.

Draft of John S. King & Co. on Thomas McElrath, dated April 20, 1857, at four months, for \$2000, accepted by Thomas McElrath and protested for nonpayment; marked *Exhibit No. 1*, on the part of the Hunterdon County Bank.

Draft of John S. King & Co. on Thomas McElrath, dated June 15, 1857, at ninety days, for \$2500, accepted by Thomas McElrath and protested for nonpayment; marked *Exhibit No. 2*, on the part of the Hunterdon County Bank.

Draft of John S. King & Co. on Thomas McElrath, dated April 20, 1857, at four months, for \$2000, accepted by Thomas McElrath and protested for nonpayment; marked *Exhibit No. 3*, on the part of the Hunterdon County Bank. 20

Draft of John S. King & Co. on Thomas McElrath, dated April 20, 1857, at four months, for \$2000, accepted by Thomas McElrath and protested for nonpayment; marked *Exhibit No. 4*, for the Hunterdon County Bank.

Record of judgment in attachment in the Supreme Court of New Jersey, at the suit of the Hunterdon County Bank against Thomas McElrath, upon the four above stated drafts, which were endorsed by John S. King & Co. to the Hunterdon County Bank; judgment signed March 6th, A. D. 1858, and marked *Exhibit No. 5*, on the part of the said the Hunterdon County Bank. 30

CHANCELLOR'S OPINION.

The property which forms the subject of controversy consists of fifty shares of the capital stock of the Trenton Iron Company, of the par value of one hundred dollars each, standing on the books of the company in the name of McElrath. On the second of June, 1854, the certificate of the stock, accompanied by a power of attorney irrevocable for the transfer thereof, was delivered to the Broadway Bank, as collateral security on a loan of \$4000, obtained by McElrath from the bank, upon his individual note at four months. The loan was made upon the agreement of McElrath to deposit the stock as a collateral security for the repayment of the loan, including as well the original note as all renewals thereof. The note was renewed, and the accruing interest paid, from time to time, until the 22d of November, 1857, when the last renewal was made.

On the 24th of August, 1857, the Hunterdon County Bank sued out of the Supreme Court of this state a writ of attachment against the estate of the said McElrath, as a nonresident debtor, by virtue of which the stock in question was attached as the property of McElrath. Judgment having been rendered in favor of the plaintiff in attachment, and also in favor of sundry applying creditors, the auditors in attachment were proceeding to make sale of the stock in question to satisfy those judgments, when they were restrained by an injunction issuing in this cause. The complainants insist that they have an equitable lien upon the stock for the payment of the debt for which it was hypothecated as security. The defendants claim that they have acquired a valid title to the stock at law and in equity by virtue of the attachment.

The stock, irrespective of the complainants, was undoubtedly, under the provisions of the statute, the subject of attachment. The judgment at law has established the claims of the plaintiff and the applying creditors in attachment. The validity of the proceedings under the attachment are not drawn in question. The defendant's right to the property is unquestioned, except so far as it conflicts with the prior rights of the complainants.

By the 5th section of the charter of the Trenton Iron Company, approved February 16th, 1847, (*Pamph. Laws* 61) it is enacted that "the capital stock of the said corporation shall be deemed personal estate, and be transferable upon the books of the said corporation;" and by the 9th section of the charter, it is further enacted, "that books of transfer of stock shall be kept, and shall be evidence of the ownership of said stock in all elections and other matters submitted to the decision of the stockholders of the said corporation."

Independent of the provisions of the charter, the stock of an incorporated company is deemed personal estate, and may be transferred by a certificate of stock accompanied by a power of transfer. *Angel & Ames on Corp.* § 564.

And where it is provided by the charter or by-laws that the stock shall be transferred only upon the books of the corporation, there is a decided weight of authority in support of the position, that a *bona fide* transfer by delivery of the certificate is nevertheless valid as between vendor and vendee, that the equitable title passes by such transfer, and that the claim of the vendee is good in equity against the claim of an execution or attaching creditor of the vendor, such provision, whether by charter or by law, is regarded as designed to protect the interests of the corporation, and as applying solely to the relation between the corporation and its stockholders. Its only office is held to be equivalent to that of the provision contained in the ninth section of the charter of the Trenton Iron Company, *viz.* "to afford evidence of the ownership of the stock in all elections and other matters submitted to the decision of the corporation," including all questions as to the ownership of the stock as between the corporation and its members. *Angel & Ames on Corp.* § 354; *Bank of Utica v. Smalley*, 2 Cowen 770; *Gilbert v. Manchester Iron Co.*, 11 Wend. 627; *Kortright v. Buffalo Commercial Bank*, 20 Wend. 91; same case in error, 22 Wend. 348; *Quiner v. Marblehead Insurance Co.*, 10 Mass. 476; *Union Bank of Georgetown v. Baird*, 2 Wheat. 390; 3 Howard 513; *Stebbins v. Phoenix Fire Insurance Co.*, 3 Paige 361; 3 Binney 394; *Grant v. Mechanics Bank*, 15 Sug. & R. 143; *Bank of Kentucky v. Schuylkill Bank*, 1 Parsons 247; *United States v. Cutts*, 1 Sumner 133.

There is not an entire uniformity of authority upon the question, whether a transfer or pledge of stock as collateral security without a transfer upon the books of the company, as required by the charter, will protect the holder against the claims of an attaching creditor, though the weight of authority is decidedly in favor of the right of the assignee.

It is the well settled rule in New York, where this contract was made, and where the contracting parties had their domicile at the time of the contract, and the pledge of the stock by
10 McElrath to the bank.

It was so expressly decided in this state long prior to the date of that contract. *Rogers et al. v. Stevens*, 4 *Halst. Ch.* 167.

So far as judicial determination could settle the question, it was settled prior to the pledge of this stock, both in the state where the contracting parties had their domicile and in the state where the corporation was transferred, was chartered, and transacted its business. The parties to the contract may fairly
20 their rights. It is of the utmost importance that questions so extensively and vitally affecting the rights of the business community should be regarded as settled by judicial decision, and not liable to be disturbed, except for the most cogent reasons. Upon the faith of decisions already made upon this very point, contracts have doubtless been entered into and securities taken to a very large amount. Whatever might be my conclusion as to the true construction of the statute, were the question now for the first time agitated, it would be alike unwise and unjust to overturn or impair rights acquired upon
30 the faith of recognised legal principles.

I think it clear moreover, whatever might be the strict legal interpretation of the provision in question, that the legislature never designed it to impair the validity of a transfer of stock, as between the parties making it. It was not intended a new mode of acquiring title to stocks, much less to operate as a registry law, by furnishing conclusive evidence to the public of the ownership of the property. If such had been the design, it might have been expected that the legislature would have required that the books of transfer should be at all times
40 open to public inspection, and the record, not in certain speci-

fied cases merely, but in all cases, made evidence of ownership.

Nor does sound policy require such construction to be given to the act. The pledge of stocks as collateral security has become a prevalent, and to the borrower, especially, an advantageous mode of effecting loans. In manufacturing companies especially, where the business of the company is carried on by the stockholder, and where his capital is mainly or exclusively vested in the stock, and employed in the active operations of business, the pledge of stocks affords the most ready and advantageous mode of effecting loans for the demands of business. To require a transfer of the stock to the lender as security for the loan against the right of attaching or execution creditors will at once destroy the value of the security, or compel the borrower to divest himself of his character as corporation to forfeit his control of the business of the corporation, of his right to dividends, and of all his other rights as a stockholder in the corporation. Why should the owner of stocks be deprived of the privilege of mortgaging or pledging his stock for the security of a loan, without stripping himself of all his rights of ownership, more than the owner of any other property?

The objection is, that it will open the door to fraud, and deprive an execution or attaching creditor of the means of ascertaining the real ownership of the stock. It is worthy of notice that this clause requiring a transfer of stock on the books of the company was inserted in numerous charters long before the stock was made the subject of execution. But the objection, as applied to a transfer of stock, is of less weight than against a chattel mortgage, the chattel remaining in the hands of the mortgagor, which is held to be a valid security. *Runyon v. Groshon*, 1 *Beasley* 86.

The transfer book is not the only evidence of the ownership of stock. The certificate has always been deemed *prima facie* evidence of ownership, is the only evidence in possession of the owner, and where there has been no transfer, is the only recognised evidence of title.

It is urged that the contract for the pledge of this stock was executory merely; that it does not purport to transfer the ownership of the shares, but simply gives an authority to

transfer upon failing to pay the debt; and hence it is further argued, that the stock cannot be held as a pledge, because that requires a transfer of possession. The contract between the parties was in no sense executory. It was fully executed according to the intention of the parties. The absolute ownership of the stock, it is true, was not transferred, nor was it intended it should be. The spirit and design of the contract was that the legal ownership of the stock should continue in Mc-Elrath; that he should remain a member of the corporation, with the right to receive the dividends upon the stock, to vote at all elections, and with all other rights pertaining to him as a stockholder and member of the company, and that the bank should hold the stock as collateral security for the payment of the loan, with the absolute and irrevocable right of transferring the legal ownership upon failure to pay the debt. The same objection existed in many of the reported cases, where the right of the party holding the certificate of stock as evidence of his claim was sustained against the claims of attaching or execution creditors. 3 *Binney* 394; 4 *Halst. Ch.* 167.

20 Such a certificate annexed to or accompanying a blank power of attorney we cannot doubt, not only according to the understanding of men in business, but upon well settled principles of law, passes by delivery an equitable title to a *bona fide* purchaser; nor can such purchaser be justly prevented from converting his equitable into a legal title by filling up and exercising the power, whenever he is entitled to do so by the nature and terms of the contract under which the certificates were delivered to him. When the stock is sold absolutely his right then to perfect his title is immediate; when it is hypothecated, the right accrues when the debt meant to be secured becomes due and remains unpaid. Per ACKLEY, C. J., in *Fatman v. Lobach*, 1 *Duer* 361.

It is obvious moreover, that so far as regards the legal ownership of the stock, if the transfer upon the books of the company alone can constitute legal ownership, that the contract of sale is as fully executed by delivering the certificate, with the power of immediate transfer on the books of the company, as by a formal assignment accompanying the certificate.

The holder of a certificate of shares of stock, accompanied by an irrevocable power of attorney to transfer them, is the

apparent owner, and when he is the holder for value without notice his title cannot be impeached. *Leavitt v. Fisher*, 4 Duer 1.

Aside from the general principles by which I think the case must be controlled, it is worthy of notice that the charter of the company, the stock of which is here the subject of controversy, is somewhat variant from many of those which have formed the subject of adjudication. In the case of *Fisher v. The Essex Bank*, 5 Gray 373, the act of incorporation declared that the stock of the bank should be transferable *only* 10 at its banking house and on its books. The court say that the word "only" carries an implication, as strong as negative words could make it, that the transfer should be in no other mode. It was not to prescribe one mode, leaving others unaffected; it made that mode exclusive. The charter of the Trenton Iron Company contains no such exclusive language. It declares merely that the stock shall be transferable on the the books of the company, and further provides that the books of transfer shall be evidence of ownership, as between the company and its stockholders. If the transfer on the books 20 was designed to be the only evidence of ownership, the later provision would seem to be unnecessary.

The right of the bank is in no wise prejudiced by the fact, that they appeared as applying creditors under the attachment, and presented their claim to the auditors.

The *bona fides* of their claim is not questioned, and they are entitled to the stock in question clear of the lien of the attachment.

Decree accordingly.

HENRY W. GREEN, C.

PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS.

Between

THE HUNTERDON COUNTY BANK, THE BANK
OF JERSEY CITY, et al., appellants,

and

THE NASSAU BANK, appellee,

} *On bill, &c.*

To the Honorable the Court of Appeals in the last resort in all causes of law, the humble petition of the Hunterdon County Bank, the Bank of Jersey City, the Mechanics and Manufacturers Bank at Trenton, William Wright, William M. Force, Daniel B. Bodine, and William R. Murphy, the appellants, respectfully showeth, that your petitioners find themselves aggrieved by a final decree, made in the Court of Chancery by His Honor Henry W. Green, Chancellor of the state of New Jersey, bearing date the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and sixty, wherein the said the Nassau Bank was complainant, and Thomas McElrath, the Hunterdon County Bank, the Bank of Jersey City, the Mechanics and Manufacturers Bank at Trenton, William Wright, the Broadway Bank, William M. Force, William R. Murphy, and Daniel B. Bodine were defendants, in this respect, to wit, that the said decree adjudges that the said complainant is entitled to have the said two hundred and twenty-five shares of the capital stock of the Trenton Iron Company, held by them as in their said bill mentioned, sold, and the proceeds thereof applied to the payment of the several loans and the balance thereof due from the said Thomas McElrath to the complainant, together with lawful interest thereon from the date of the said decree. And your petitioners humbly appeal from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said complainant is not entitled to have the said two hundred and twenty-five shares of said capital stock sold, and the proceeds thereof applied as in said decree is adjudged; but that the said appellants are entitled

to have the said shares sold under and by virtue of the attachment in the complainant's bill mentioned.

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

B. VANSYCKEL,

Sol. and of counsel with appellants.

Dated March 12th, 1861.

10

ANSWER TO PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS.

The answer of the Nassau Bank, respondents, to the petition and appeal of the Hunterdon County Bank, the Bank of Jersey City, the Mechanics and Manufacturers Bank at Trenton, William Wright, William M. Force, Daniel B. Bodine, and William R. Murphy, appellants.

The respondents, not confessing or acknowledging all or any of the matters and things in the said petition and appeal mentioned to be true, as the same are therein set forth, and 20 reserving to themselves all benefit and advantage of exception to the errors, defects, and imperfections in the said appeal contained, for answer thereunto say—that they admit that the said Court of Chancery did make such final decree as in said petition and appeal are mentioned and complained of; but as to the date and contents of such decree, the respondents, for greater certainty, refer to said decree, when the same shall be produced; but these respondents are advised, and humbly apprehend, that the final decree complained of is agreeable to equity and justice, and therefore humbly pray that the same 30 will be affirmed, and the appeal dismissed with costs.

Dated April 6th, 186 .

EDWARD W. SCUDDER,

Sol. and of counsel with respondents.

to have the said shares sold under and by virtue of the ar-
restment in the complainant's bill mentioned.
Your petitioners therefore pray that the said decree of the
said Chancellor may be in the premises aforesaid reversed,
set aside, and the nothing ordered, and that your petitioners
may have such relief in the premises as to His honorable court
shall seem meet.

B. TANSICKER.

Sol. and of counsel with appellants.

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Dated March 13th, 1861.

ANSWER TO PETITION OF APPELLANT.

Court of Chancery and Appeals.

The answer of the Roman Bank respondents to the bill
and appeal of the Chesapeake County Bank, the
Bank of Jersey City, the Mechanics and Manufacturers
Bank of Trenton, William Wright, William M. James,
Daniel B. Bellac, and William K. Murphy, appellants.

The respondents, not desiring or acknowledging all or
any of the matters and things in the said petition and appeal
alleged to be true, as the same are therein set forth, and so
refusing to themselves, and advantage of excep-
tions, demurrers, and objections in the said appeal
contained for answer thereto, say that they submit that the
said Court of Chancery did make such final decree as is said
petition and appeal are mentioned and complained of; but as
to the date and contents of such decree, the respondents, for
greater certainty, refer to said decree, when the same shall be
produced; but these respondents are advised, and humbly ap-
prehend, that the final decree complained of is erroneous in
equity and justice, and therefore humbly pray that the same
will be affirmed, and the appeal dismissed with costs.

Dated April 2nd, 1861.

EDWARD W. SCOTTER.

Sol. and of counsel with respondents.